

**SECRET**

# INSPECTOR GENERAL

*U.S. Department of Defense*

JANUARY 10, 2025



## (U) Review of the Responsibilities and Actions Related to the Secretary of Defense's Hospitalizations and the DoD's Policies and Procedures for Notification and Transfer of Functions and Duties

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# I. (U) Introduction and Summary

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(U) The DoD OIG initiated this review on January 10, 2024, with two stated objectives. First, the review examined the processes, procedures, and actions related to the transfer of functions and duties from Secretary of Defense Lloyd J. Austin III (Secretary Austin), to Deputy Secretary of Defense Kathleen Hicks (Deputy Secretary Hicks), during Secretary Austin’s hospitalizations in December 2023, January 2024, and February 2024.<sup>1</sup> The DoD uses the term “Assumption of Functions and Duties” (AFD) to identify the collective processes, procedures, and actions related to this issue.<sup>2</sup>

(U) This review also assessed whether the DoD’s policies and procedures are sufficient to ensure timely and appropriate notifications and the effective assumption of functions and duties by the Deputy Secretary or other senior DoD leadership in the chain of succession as may be warranted due to health-based or other unavailability of the Secretary or the Deputy Secretary.

## A. (U) Origin of the Issues Under Review

(U) Secretary Austin underwent a scheduled prostatectomy at Walter Reed National Military Medical Center (WRNMMC) on December 22, 2023.<sup>3</sup> In preparation for the medical procedure, he directed a transfer of authorities to Deputy Secretary Hicks effective December 22, 2023, and resumed those authorities on December 23, 2023. Secretary Austin experienced medical complications on January 1, 2024, and was transported to WRNMMC by ambulance and admitted to the hospital. Secretary Austin’s condition worsened on January 2, 2024, and, that afternoon, his staff directed a transfer of authorities to Deputy Secretary Hicks.

(U) On January 5, 2024, the DoD issued a press release stating that Secretary Austin had been admitted to WRNMMC on January 1, 2024, “for complications following a recent elective medical procedure.” The press release stated, “At all times, the Deputy Secretary of Defense was prepared to act for and exercise the powers of the

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<sup>1</sup> (U) We began our review on January 10, 2024, and subsequently included Secretary Austin’s hospitalization of February 2024 as this event was also relevant to our review.

<sup>2</sup> (U) The Office of the Secretary of Defense used the terms “transfer of authorities” and “TOA” until January 8, 2024, to describe the transfer of certain operational authorities from the Secretary of Defense to the Deputy Secretary of Defense. On or about January 8, 2024, the Office of the Secretary of Defense started using the term “Assumption of Functions and Duties (AFD).” Unless specifically referring to other phrases used in documents or by witnesses, we use the terms “Assumption of Functions and Duties,” “AFD,” or “transfer of authority” in this report to describe the processes, procedures, and actions related to the transfer of the Secretary of Defense’s functions and duties to the Deputy Secretary of Defense.

<sup>3</sup> (U) Walter Reed National Military Medical Center (WRNMMC) is a military hospital located near Washington, D.C. WRNMMC provides medical services to eligible members of the military, including retirees and family members, as well as the President and other senior Government officials.

(U) Secretary, if required.” Numerous media outlets reported concerns about the DoD’s perceived lack of transparency regarding Secretary Austin’s hospitalization. The reports included concerns about whether Secretary Austin was incapacitated or under general anesthesia while in the hospital.<sup>4</sup>

(U) The DoD issued a statement from Secretary Austin on January 6, 2024, about his medical care. Secretary Austin stated, in part:

(U) I also understand the media concerns about transparency and I recognize I could have done a better job ensuring the public was appropriately informed. I commit to doing better. But this is important to say: this was my medical procedure, and I take full responsibility for decisions about disclosure.

(U) A number of Members of Congress wrote letters during the period of January 9 through 11, 2024, to Secretary Austin, Deputy Secretary Hicks, and Ms. Kelly Magsamen, Chief of Staff to Secretary Austin, conveying concerns and questions about whether appropriate officials in the DoD, White House, and Congress had been notified in a timely fashion about Secretary Austin’s hospitalization.

(U) In the meantime, on January 8, 2024, Ms. Magsamen announced a DoD 30-Day Review of the notification process for the assumption of functions and duties of the Secretary from January 2 through 5, 2024.<sup>5</sup>

(U) The DoD OIG initiated this independent review on January 10, 2024. We evaluated the information in this review against the standards summarized throughout this report. We conducted this independent, objective review in accordance with the Quality Standards for Federal Offices of Inspectors General, August 2012, developed by the Council of the Inspectors General on Integrity and Efficiency, which sets the overall quality framework for managing, operating, and conducting the work of Offices of Inspector General.

## **B. (U) Review Scope and Methodology**

(U) We assembled a multidisciplinary team of DoD OIG administrative investigators, evaluators, auditors, and attorneys to conduct the review. We obtained and searched through more than 617 gigabytes of data, which contained over 56 million items including text messages, instant messages, and classified and unclassified emails and attachments. We reviewed press releases, press conferences, and responses to congressional letters from Secretary Austin and other DoD personnel related to

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<sup>4</sup> (U) See, for example, AP News, “Senior Biden Leaders and Pentagon officials Unaware for Days that Defense [S]ecretary was Hospitalized,” January 6, 2024. CNN, Politics, “Deputy [D]efense [S]ecretary was not told Austin had been hospitalized when she assumed his duties,” January 7, 2024.

<sup>5</sup> (U) We discuss the DoD 30-Day Review later in this report and in Appendix B.



(U) Secretary Austin’s hospitalization. We also reviewed documents related to the AFD, including the DoD policies regarding the order of succession to the Secretary of Defense; the DoD Continuity of Operations Plan; DoD AFD reporting requirements; and Office of the Secretary of Defense (OSD) protective operations policies.

(U) We reviewed Secretary Austin’s medical records for the relevant time period, with a particular focus on events and medications that may have impacted or had the potential to impact his cognitive state and ability to carry out the functions and duties of the Secretary of Defense, including the potential impact of his medical treatment on his ability to access secure communications in a timely manner. We only included in this report information regarding Secretary Austin’s medical condition and treatment that related to these issues.<sup>6</sup> We also reviewed Secretary Austin’s February 29, 2024 testimony and written statement provided to the Committee on Armed Services, U.S. House of Representatives (HASC). Additionally, we reviewed the DoD’s post-hospitalization actions, including the results of the internal DoD 30-Day Review.

(U) We conducted 49 sworn and recorded interviews of 44 witnesses, including:

- (U) Secretary Austin and members of his immediate staff, including his Chief of Staff, Deputy Chief of Staff, his three military assistants (MAs), members of his protective security detail, and his military communications support team;<sup>7</sup>
- (U) Deputy Secretary Hicks and members of her immediate staff, including her Chief of Staff, her three MAs, members of her protective security detail, and her military communications support team;

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<sup>6</sup> (U) When we initially sought medical records in this matter, we informed Secretary Austin that we did not then anticipate the need to report specific diagnoses, procedures, or medications administered or prescribed to him, except to the extent he had already made such information public. As the review progressed and we learned additional information, including the events of January 6 and 8 described in this report, we determined that it was important to include a limited amount of additional information directly relevant to our conclusions. Following his interview with the OIG on this matter, Secretary Austin wrote the Inspector General to express concerns about the extent to which he was asked about such information and to convey his expectation that medical information protected by the Health Insurance Portability and Accountability Act (HIPAA) of 1996 would not be included in our report. The concerns raised by Secretary Austin did not impact the findings, conclusions, and recommendations contained in our review. We address our consideration of Secretary Austin’s privacy interests on page 4 of this report.

<sup>7</sup> (U) The three military assistant positions are the senior military assistant (SMA), principal military assistant (PMA), and junior military assistant (JMA). The Secretary’s SMA, PMA, and JMA are in the grades of O-9, O-6, and O-6, respectively. The Deputy Secretary’s SMA, PMA, and JMA are in the grades of O-7, O-6, and O-5, respectively. Department of Defense Instruction (DoDI) O-2000.22, “Designation of Physical Protection of DoD High Risk Personnel,” June 19 2014 (Incorporating Change 2, November 2, 2023), defines protective security detail as trained and armed protective security officials capable of providing continuous protection for a designated official, referred to in this issuance as “high-risk personnel.” The personal security officer (PSO) is a member of the protective security detail. The personal communicator (PC) is a member of the military communications support team.

- (U) General (Gen) Charles Q. Brown, Jr., U.S. Air Force, Chairman of the Joint Chiefs of Staff;
- (U) Secretary of the Army Christine E. Wormuth (Secretary Wormuth)<sup>8</sup> and Mr. Gregory D. Ford, Director, Department of the Army Criminal Investigation Division (CID);<sup>9</sup>
- (U) Director of WRNMMC, six physicians, and three nurses who provided medical care for Secretary Austin during his hospitalizations at WRNMMC; and
- (U) Office of the Secretary of Defense Continuity Program Manager, and two senior military officers assigned to the National Military Command Center (NMCC) with relevant knowledge of the relevant reporting requirements.<sup>10</sup>

(U) We provided a copy of our draft report to the DoD for the purpose of identifying information it determined to be classified or to warrant marking and safeguarding in accordance with the DoD Controlled Unclassified Information (CUI) Program. As part of this review, the DoD Office of General Counsel (OGC) objected on behalf of the DoD and Secretary Austin to the inclusion of a substantial amount of information on the bases that it contained personal health and other privacy protected information and that disclosure could create a chilling effect on those considering whether to seek medical care in the future at a military medical treatment facility.

(U) In preparing this report and consistent with the law and our standard practices, we considered the comments submitted by the DoD OGC and balanced the asserted interests against the need for the information and the resulting public interest in disclosure of such information, taking into account the information Secretary Austin and the DoD previously disclosed publicly regarding his hospitalizations. As a result, we redacted or modified our report in limited instances where required while ensuring the greatest possible transparency as to the findings, conclusions, and recommendations resulting from our review.

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<sup>8</sup> (U) The Secretary of the Army, consistent with Executive Order 13963, is next in the order of succession after the Deputy Secretary of Defense to perform the functions and duties of the Secretary during any period in which the Secretary has died, resigned, or otherwise becomes unable to perform the functions and duties of that office.

<sup>9</sup> (U) DoDI O-2000.22 assigned the U.S. Army Criminal Investigation Command the responsibility for providing protective services to the Secretary and Deputy Secretary. After the publication of the instruction, the U.S. Army Criminal Investigation Command was re-designated as the Department of the Army Criminal Investigation Division (CID) in 2022.

<sup>10</sup> (U) The National Military Command Center (NMCC) is located within the Pentagon and is the single point of contact within the DoD to provide Presidential Critical Information Requirements to the White House Situation Room. In addition, the NMCC is the DoD's primary Nuclear Command and Control facility. It provides daily support to the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff for the monitoring of nuclear forces and ongoing conventional military operations. See Section V for a review of issues related to the NMCC.

## C. (U) Summary of Conclusions

(U) We determined that several factors impacted the decisions to transfer Secretary Austin's responsibilities and duties in connection with his hospitalizations in December 2023, January 2024, and February 2024. While the DoD's 30-Day Review established a number of procedures to regularize the transfer process, our detailed review of the facts and circumstances surrounding these events indicated that additional improvements are required.

(U) Our review of the facts and circumstances of Secretary Austin's hospitalizations inform and support our conclusions and recommendations about the DoD's implementation of policies and procedures. Our recommendations for improvement focus primarily on our assessment of the DoD's AFD policies contained in DoDD 3020.53, "Assumption of Functions and Duties of the Secretary of Defense," May 28, 2024.

(U) In total, we make 20 recommendations throughout this report related to the DoD's AFD policies and procedures to improve timely and appropriate notifications and the effective assumption of functions and duties by the Deputy Secretary or other senior DoD leadership in the chain of succession.

(U) On January 3, 2025, Secretary Austin provided a response to our recommendations in which he indicated that the Department concurred with all the recommendations in this report. The DoD's response is provided at Appendix E. Our analysis of the DoD's response is provided at Appendix F.

(U) We summarize our conclusions below and provide additional information throughout this report.

### ***(U) Conclusions on Processes, Procedures, and Actions Related to Secretary Austin's Hospitalizations in December 2023, January 2024, and February 2024***

(U) Secretary Austin had a prior condition for which he underwent regular monitoring, which in late 2023 identified prostate cancer that required treatment. Following evaluation by his treating physicians of the results of the monitoring and based on advice provided to him, Secretary Austin underwent a scheduled prostatectomy under general anesthesia on December 22, 2023, and he was discharged from WRNMMC on December 23, 2023.

(U) Secretary Austin's strong desire for privacy about his medical condition is a thread that runs through all the events that we reviewed, including in his public statements about his hospitalization. His desire for privacy was well known by his staff and affected many of the events at issue in various ways. For example, Secretary Austin

(U) kept information about his medical treatment on December 22, 2023, private from Deputy Secretary Hicks; Ms. Magsamen; Gen Brown; Lieutenant General (LTG) Ronald Clark, the Secretary's senior military assistant; and nearly all of his staff. Not only did Secretary Austin not tell Deputy Secretary Hicks or his senior staff about his medical condition or appointments, he specifically told one junior staff member "if anyone had any questions they're more than welcome to ask [me] directly," an admonition not likely to foster further inquiry. Secretary Austin only told his Personal Security Officer (PSO) and his Junior Military Assistant (JMA) that he was going to receive medical care at WRNMMC, and only his doctors knew that he was receiving treatment for prostate cancer and under general anesthesia.

(U) As we discuss in more detail in Section III, we determined that Secretary Austin did not meet the requirement to immediately notify the Comptroller General and Congress about the vacancy in his office resulting from his medical procedure under general anesthesia in December 2023. Similarly, we also determined that Secretary Austin did not meet the separate requirement for the DoD to report his incapacitation to the White House as a result of this medical procedure under general anesthesia.

(U) On January 1, 2024, Secretary Austin experienced "severe" pain in the afternoon and was transported by ambulance to WRNMMC, where he was admitted. While there was conflicting evidence about whether Secretary Austin requested the ambulance to not use lights and sirens and whether he directed his PSO not to notify anyone about his medical situation, the weight of the evidence, including the contemporaneous statements and actions of those involved, indicated that Secretary Austin requested that the ambulance not use lights and sirens and told his PSO "we're not notifying anybody."

(U) Secretary Austin indicated that when he arrived at WRNMMC on January 1, he believed that he would be released from the hospital within a "couple of hours" with medication. Secretary Austin did not take any steps to transfer his authorities to Deputy Secretary Hicks or to inform her, Ms. Magsamen, or LTG Clark of his hospitalization. Rather, Secretary Austin only directed his PSO to cancel his meetings for the next 48 hours. Of the members of Secretary Austin's staff, only his JMA and his protective security detail knew that he was at WRNMMC.

(U) No one on Secretary Austin's staff knew the seriousness of his condition, including when his condition became worse and he was transferred to the Surgical Intensive Care Unit (SICU) on January 2. Additionally, medical personnel, aware of limitations on sharing protected health information (PHI) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), provided his staff with very little information that it could use to assess the seriousness of his condition or when he might be released from the hospital.

(U) Shortly after his transfer to the SICU, Secretary Austin's staff initiated a transfer of his authorities to Deputy Secretary Hicks on the basis that Secretary Austin no longer had access to secure communications. Within an hour of the transfer, LTG Clark called Ms. Magsamen and Gen Brown and informed them about the transfer of authorities and that Secretary Austin was in the hospital.

(U) Secretary Austin's staff had limited ability to communicate with him directly while he was in the SICU. His staff attempted to obtain, but was not successful in getting additional information about his medical condition or guidance about informing the White House or Deputy Secretary Hicks. Ms. Magsamen, who herself was at home sick with a flu that later turned into pneumonia, nevertheless repeatedly sought information about Secretary Austin's status and expressed frustration to others on his staff about not having communications with him or more information about his condition.

(U) As detailed in Section III, we conclude that neither Secretary Austin nor Deputy Secretary Hicks met the requirement to immediately notify the Comptroller General and Congress of the vacancy in the Office of the Secretary of Defense from January 2 through 5, resulting from Secretary Austin's unplanned hospitalization and subsequent inability to perform the functions and duties of his office. While we acknowledge that Deputy Secretary Hicks had no knowledge of Secretary Austin's hospitalization on January 2 and did not realize at the time that she was serving as the Acting Secretary of Defense, there nonetheless was a requirement for her as the acting head of the DoD to make those immediate notifications. We were unable to find an applicable standard that required Ms. Magsamen, LTG Clark, or others below them to report Secretary Austin's hospitalization when they did not know the seriousness of his condition and the staff was not successful in obtaining additional information about his condition.

(U) In the afternoon on January 4, 2024, Ms. Magsamen notified the Deputy Secretary's Chief of Staff, Ms. Heather King, who in turn notified Deputy Secretary Hicks that Secretary Austin was hospitalized at WRNMMC. Ms. Magsamen also notified the Assistant to the President for National Security Affairs (APNSA) and the White House Chief of Staff that Secretary Austin was hospitalized, and they discussed notifications to Congress and the public.

(U) On January 5, 2024, Secretary Austin called Ms. Magsamen at 10:20 a.m. and discussed a draft DoD press release about his hospitalization, current DoD operations, and when he would take back his authorities. In the afternoon, Secretary Austin was moved into a private suite from which he could carry out his functions and duties, and he resumed his authorities at 7:00 p.m.

(U) As described in the DoD press releases, Secretary Austin was treated for a number of medical complications resulting from his December 22 prostatectomy. He also “underwent a series of medical tests and evaluations and received non-surgical care during his stay to address his medical needs ...” Secretary Austin told us that he repeatedly stated that he did not want medications that would affect his ability to perform his functions and duties.

(U) Secretary Austin required additional treatment, leading to his doctors performing medical procedures on him on January 6 and January 8 while he was under moderate sedation. Before each of these procedures, Secretary Austin signed consent forms acknowledging that he would be under moderate sedation and that conditions during the procedure could change and require general anesthesia. The forms also advised that he should not engage in activities requiring unimpaired physical and mental ability for 24 hours after completion of the procedure, and he received similar advice verbally from medical personnel before these procedures.

(U) Based on all of the forgoing, we conclude that further consideration of his condition and ability to carry out his responsibilities and duties during such procedures was warranted. In particular, Secretary Austin’s condition and treatment provided sufficient notice for consideration as to whether Secretary Austin’s authorities should have been transferred to Deputy Secretary Hicks during or in connection with the January 6 and 8 procedures. However, we found no evidence of any such consideration, or that Secretary Austin even informed Deputy Secretary Hicks or Ms. Magsamen of his procedures on January 6 or January 8. We consider this issue in Section IV when assessing and making recommendations to improve the DoD’s policies to address such events in the future.<sup>11</sup>

(U) We found that Secretary Austin had an exceptionally strong work ethic and wanted to continue to exercise his responsibilities and duties, continuing to work while recuperating in the hospital. During this period, his medical providers worked around his schedule in treating him, when possible. Secretary Austin remained in the hospital through January 15, 2024, receiving treatment while exercising his authorities.

(U) On the morning of February 11, Secretary Austin experienced significant medical complications, and had to return to WRNMMC. When he was unable to reach Ms. Magsamen, he called Ms. Caroline Zier, Deputy Chief of Staff to the Secretary of Defense, at 1:25 p.m. to inform her that he was going to WRNMMC.

(U) When we interviewed Secretary Austin in September 2024, he told us that during his phone call with Ms. Zier, he informed her that “we needed to transfer the authority.” However, other testimony and the contemporaneous conduct of individuals involved in

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<sup>11</sup> (U) Additionally, Secretary Austin had another procedure on January 9 that did not rise to the level that should have warranted consideration as to his ability to carry out the responsibilities and duties of his office.

(U) the transfer do not support his recollection as to the timing of this decision. Taking into account the potential impact of Secretary Austin's serious medical condition as well as the passage of time before his interview, the weight of the evidence supports the conclusion that he did not direct a transfer of his authorities until about 4:30 p.m.

(U) We believe that it would have been prudent to transfer his authorities when he decided to return to WRNMMC for further treatment, consistent with what he told us he believed he had instructed. We discuss the timing of the transfer of authorities when making our recommendations in Section IV.

### ***(U) Conclusions on Sufficiency of the DoD's Policies and Procedures***

(U) We examined the legal framework of the DoD's AFD policies, the DoD's initial actions and policies implemented as a result of events related to Secretary Austin's January 2024 hospitalization, and the policies contained in DoDD 3020.53.

(U) Pursuant to 10 U.S.C. § 113, Secretary Austin delegated to Deputy Secretary Hicks, through DoDD 5105.02, "Deputy Secretary of Defense," February 11, 2021, the full power and authority to act for the Secretary of Defense, with the exception of his non-delegable functions and duties. For those non-delegable functions and duties, 10 U.S.C. § 132(b) provides that the Deputy Secretary of Defense shall act for, and exercise the powers of, the Secretary of Defense when the Secretary "dies, resigns, *or is otherwise unable to perform the functions and duties of the office*" (emphasis added). In such circumstances, the Deputy Secretary of Defense serves as the Acting Secretary automatically by operation of law and without any requirement of a formal transfer of authorities.

(U) Taking into account this legal framework as it existed as of the time of the events surrounding Secretary Austin's hospitalizations during the period December 2023 through February 2024, we determined that the DoD did not have a comprehensive AFD plan; did not fully understand the AFD's significance; did not have a formal reporting requirement for the Secretary or Deputy Secretary to report issues potentially impacting their ability to carry out their duties; had an inadequate process for making required notifications to the President, Congress, and the Comptroller General; and did not have an AFD training plan. The DoD implemented process changes beginning on January 8 and continuing through the May 28, 2024 issuance of DoDD 3020.53, which is now the DoD standard for the AFD process.

(U) As a result of these changes, we find that the DoD has made significant improvements in the AFD process, particularly resulting from Secretary Austin's approval of the DoD 30-Day Review and the implementation of its recommendations, including the publication of DoDD 3020.53 and the associated Secretary of Defense Succession Training Plan. However, based on issues that arose particularly during the

(U) first part of January 2024, we determined that DoDD 3020.53 does not provide a sufficient framework to ensure that fully informed decisions are made in all circumstances that may warrant consideration as to whether the Secretary of Defense is unable to perform the functions and duties of the office. Ensuring that timely and appropriate decisions are made in the future will require additional improvements to the AFD processes, including those related to notifications, reporting requirements, and training. Significantly, DoDD 3020.53 does not provide sufficient guidance as to the role of medical personnel (such as physicians) who provide medical care to the Secretary of Defense and to those in the order of succession, in the AFD process.

(U) The DoD's AFD plan also does not fully address potential scenarios involving the inability of the Secretary of Defense to perform the functions and duties of the office. For example, the directive does not sufficiently define the term "medically incapacitated" or contain comprehensive guidance as to the types of medical scenarios that might result in an inability to perform functions and duties and, therefore, warrant an AFD.

(U) Additionally, DoDD 3020.53 does not address potential and actual effects of medications, including opioids, sedatives, and anesthesia other than general anesthesia. The directive also does not address the potential effects of medical procedures during which the patient might not be able to respond to events in a timely manner.

(U) DoDD 3020.53 provides guidance for the consideration and reporting of medical information. However, the directive does not provide authorization, nor cite an exception to HIPAA prohibitions against the disclosure of PHI, particularly in situations in which the Secretary of Defense is unable or unwilling to authorize disclosure. Also, the directive does not require medical personnel to report to appropriate officials any situation that results in the Secretary's inability to perform the functions and duties of the office.

(U) DoDD 3020.53 states that it intended to "minimize subjectivity"; however, we determined that the criteria for support personnel to report medical concerns that may result in medical incapacitation still allow for a significant degree of subjectivity. We believe that the DoD can further minimize subjectivity by including clear, objective criteria, potentially including specific events such as calling for emergency medical services, emergency room visits, ambulance transports, hospitalizations, and other emergent medical conditions when the origin and severity of the condition is unknown, as occurred in February 2024.

(U) Additionally, we found that DoDD 3020.53 does not require either a period of recuperation or a medical assessment to determine that the Secretary is able to resume their functions and duties after a medical incapacitation. Also, under the directive, it is primarily up to the Secretary to decide when to resume their functions and duties after



(U) a medical incapacitation. Secretary Austin told us that he made the decision to resume his authorities on January 5, 2024, without consulting with his doctors, because he felt he was “able to function” even though he was “still recovering.” Secretary Austin remained in the hospital for another 10 days after resuming his authorities and was receiving additional care planned around his work schedule. While we are not in a position to and do not opine as to whether a transfer was warranted based on those circumstances, we believe it should have been considered at the time by those who were.

(U) We believe that the DoD can make significant additional improvements to the AFD process and policies, and we provide recommendations to help it ensure that fully informed decisions are made in all circumstances as to whether the Secretary of Defense is unable to perform the functions and duties of the office.

### ***(U) Conclusions on DoD Continuity of Operations and Other Matters***

(U) This report also includes conclusions and recommendations resulting from our review of other matters related to the DoD’s AFD policies. Specifically, we make recommendations for improvement to the DoD Continuity of Operations (COOP) processes related to the notification requirements in the event the Secretary of Defense becomes incapacitated. The DoD COOP processes are of critical importance in ensuring that the functions of essential DoD Components remain uninterrupted in the event of unplanned, contingency, or crisis situations.

(U) Our review identified several discrepancies in COOP reporting requirements related to the events we reviewed. We also highlighted concerns and delays resulting from limitations on medical professionals’ access to Secretary Austin’s records.

(U) We believe that the DoD should examine these matters and we provide recommendations to address these issues.

(U) During the course of our work, we also identified two issues regarding movement notifications and home health care that were related to the scope of our review and provide a brief synopsis of each issue and recommendations to assist the DoD in addressing them.<sup>12</sup>

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<sup>12</sup> (U) During the course of our work, we also identified other issues unrelated to the scope of our review. We have referred those issues to the Department for separate consideration.

## **D. (U) Detailed Results of Our Review**

(U) The following sections of this report provide the detailed results of our review:

(U) In Section I, we provide an introduction and summary of conclusions.

(U) In Section II, we provide background information regarding Secretary Austin's and Deputy Secretary Hicks' duties and responsibilities, and their operational authorities related to the transfer of functions and duties.

(U) In Section III, we review the events of December 2023, January 2024, and February 2024, and provide our findings and conclusions concerning the events surrounding Secretary Austin's hospitalizations.

(U) In Section IV, we review and assess the current DoD policies and processes related to the assumptions of functions and duties of the Secretary of Defense.

(U) In Section V, we review and examine the DoD COOP processes related to the notification requirements in the event the Secretary of Defense becomes incapacitated.

(U) In Section VI, we present findings and recommendations on related topics that we identified during the course of our review.

(U) Finally, in Section VII, we provide a consolidated list of our recommendations.

(U) We present the applicable standards in Appendixes A and B. We provide Secretary Austin's prior testimony regarding his hospitalization in Appendix C and a list of acronyms and abbreviations in Appendix D. We provide the DoD's response to our recommendations at Appendix E and our analysis of the response at Appendix F.

## II. (U) Background

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### (U) The Secretary of Defense

(U) Secretary Austin began service as the 28th Secretary of Defense on January 22, 2021, following a 41-year career in the United States Army. Secretary Austin's Army career included serving as the Commanding General of the United States Forces–Iraq and Vice Chief of Staff of the United States Army. Secretary Austin concluded his uniformed service as the Commander of the United States Central Command, responsible for all U.S. military operations in the Middle East and Afghanistan. Secretary Austin retired from the Army in 2016 and was employed in the private sector until returning to the DoD as the Secretary of Defense.

(U) Pursuant to 10 U.S.C. § 113, the Secretary of Defense is “the head of the [DoD],” serves as the principal assistant to the President in all matters relating to the DoD, and, subject to the direction of the President, “has authority, direction, and control over the [DoD].” The statute also authorizes the Secretary of Defense to perform any of his functions and duties, or exercise his powers through persons and organizations within the DoD, unless specifically prohibited by law.<sup>13</sup> In addition, under 3 U.S.C. § 19, the Secretary of Defense is sixth in the order of succession for the President of the United States.

### (U) Deputy Secretary of Defense

(U) Deputy Secretary Hicks began service as the 35th Deputy Secretary of Defense on February 9, 2021. Before becoming Deputy Secretary of Defense, she held the position of senior vice president, Henry A. Kissinger Chair, and Director of the International Security Program at the Center for Strategic and International Studies. From 2009 to 2013, she served as a senior civilian official in the DoD, to include serving as the Principal Deputy Under Secretary of Defense for Policy, responsible for advising the Secretary of Defense on global and regional defense policy and strategy.

(U) Pursuant to 10 U.S.C. § 132(b), the Deputy Secretary performs duties and exercises powers as the Secretary of Defense may prescribe. In accordance with DoDD 5105.02, “Deputy Secretary of Defense,” dated February 11, 2021, Secretary Austin delegated to Deputy Secretary Hicks the full power and authority to act for the Secretary of Defense and to exercise the powers of the Secretary of Defense, except as expressly prohibited by law. The DoD Office of General Counsel maintains a list of non-delegable functions

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<sup>13</sup> (U) A “function or duty” of an executive office is defined under the Federal Vacancies Reform Act, 5 U.S.C. § 3348(a)(2), as one that “(A)(i) is established by statute; and (ii) is required by statute to be performed by the applicable officer (and only that officer); or (B)(i)(I) is established by regulation; and (II) is required by such regulation to be performed by the applicable officer (and only that officer); and (ii) includes a function or duty to which clause (i)(I) and (II) applies, and the applicable regulation is in effect at any time during the 180-day period preceding the date on which the vacancy occurs.” Under this definition, the “functions and duties” of an office are non-delegable.

(U) and duties. In general, these consist of chain of command functions; certain national security matters; certain military and civilian personnel matters; certain contracting, procurement, and funding limitations; and certain environmental matters.

## (U) The Acting Secretary of Defense

(U) Pursuant to 10 U.S.C. § 132(b), “the Deputy Secretary shall act for, and exercise the powers of, the Secretary when the Secretary of Defense dies, resigns, or is otherwise unable to perform the functions and duties of the office.” While serving as the Acting Secretary of Defense, the Deputy Secretary of Defense assumes all of the powers and authorities of the Secretary of Defense, including the non-delegable functions and duties of that office. Under the statute, this authority is self-executing, does not include a notice requirement, and only applies to an individual who is appointed by the President and confirmed by the Senate in the position of Deputy Secretary of Defense under 10 U.S.C. § 132(a). The assumption of the functions and duties of the Secretary of Defense by any other person is governed by the Federal Vacancies Reform Act (FVRA) of 1998, codified at 5 U.S.C. §§ 3345–3349d.<sup>14</sup>

## (U) The Federal Vacancies Reform Act

(U) The Secretary of Defense is a position requiring Presidential appointment with Senate confirmation (PAS) and is covered by the FVRA.<sup>15</sup>

### **(U) The FVRA Notification Requirement**

(U) The FVRA requires the head of the executive agency to notify the Comptroller General of the United States and both houses of Congress “immediately upon the occurrence of [a] vacancy” in a PAS position, including the name of any person serving in an acting capacity and the date such service began.<sup>16</sup> A vacancy occurs when the officer holding that position “dies, resigns, or is otherwise unable to perform the functions and duties of the office.”<sup>17</sup>

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<sup>14</sup> (U) One of the exceptions under 5 U.S.C. § 3347 to the FVRA, as the exclusive means for temporarily authorizing an acting official to perform the functions and duties of a PAS position, occurs when, as in the case of 10 U.S.C. § 132(b), an agency-specific statutory provision expressly designates an acting officer for a particular PAS position.

<sup>15</sup> (U) The FVRA also applies to the unavailability of the Deputy Secretary of Defense, the Service Secretaries, and other PAS officials in the DoD. However, for purposes of this review and given the clear provisions of the FVRA, we focus primarily on the Secretary of Defense’s inability to perform functions and duties, and the role of the Deputy Secretary of Defense as the Acting Secretary of Defense.

<sup>16</sup> (U) Notification to the Comptroller General may be accomplished by submitting a form to the Government Accountability Office website: <https://www.gao.gov/legal/federal-vacancies-reform-act/report-a-vacancy>.

<sup>17</sup> (U) 5 U.S.C. § 3345(a). The FVRA does not specify the full range of circumstances that may render a PAS official “otherwise unable to perform the functions and duties of the office.” However, certain provisions of the FVRA refer to examples of such circumstances. See 5 U.S.C. § 3345(c)(2) (“the expiration of a term of office is an inability to perform the functions and duties of such office”) and 5 U.S.C. § 3346(a) (specifying that the time limitations of that section do not apply “in the case of a vacancy caused by sickness”). “Sickness” is not further defined in the FVRA.

(U) The FVRA reporting requirement applies when the Deputy Secretary of Defense serves as Acting Secretary of Defense pursuant to 10 U.S.C. § 132(b).<sup>18</sup>

(U) The FVRA does not define “immediately,” nor does it specify any minimum duration for a vacancy to trigger the reporting requirement.<sup>19</sup>

### **(U) The FVRA Order of Succession**

(U) The FVRA authorizes the President to designate an order of succession for the Office of the Secretary of Defense.<sup>20</sup> Executive Order 13963 designates the Deputy Secretary of Defense to “act as and perform the functions and duties of the Office of the Secretary of Defense (Secretary) during any period in which the Secretary has died, resigned, or otherwise become unable to perform the functions and duties of the office of the Secretary, until such time as the Secretary is able to perform the functions and duties of that office.”<sup>21</sup>

(U) Following the Deputy Secretary of Defense in the order of succession, Executive Order 13963 lists the Secretaries of the Military Departments in the order in which they were appointed, followed by other PAS officers within the DoD and the Military Departments, provided they are not serving in the listed office in an acting capacity and are otherwise eligible to serve under the FVRA. Based on the order of appointment, the

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<sup>18</sup> (U) In response to our draft report, the DoD asserted, “Indeed, it is not clear that the FVRA’s notification provisions are applicable when the Deputy Secretary has assumed the functions and duties of the Secretary of Defense” pursuant to 10 U.S.C. § 132(b). While we agree that the FVRA is not entirely clear, we note that the notification provision in 5 U.S.C. § 3349(a)(1), by its own language, applies to “a vacancy to which this section and sections 3345, 3346, **3347**, 3348, 3349a, 3349b, 3349c, and 3349d apply...” (emphasis added). Section 3347 specifies several exceptions whereby Sections 3345 and 3346 of the FVRA are not the exclusive means for temporarily authorizing an acting official to perform the functions and duties of the vacant office, but does not state that these circumstances are exceptions to the FVRA in its entirety. One such exception under 5 U.S.C. § 3347(a)(1)(B) applies to statutory provisions expressly designating “an officer or employee to perform the functions and duties of a specified office temporarily in an acting capacity...” and 10 U.S.C. § 132(b) is such a provision. Accordingly, we believe that the FVRA notification provision applies when the Deputy Secretary has assumed the functions and duties of the Secretary of Defense.

<sup>19</sup> (U) Our review of the legislative history of the FVRA did not find any discussion of the application of the FVRA and its reporting requirements to a very short-duration (for example, less than 24-hours) inability by a PAS officer to perform their functions and duties. The DoD OGC told us in February 2024, “As far as DoD OGC has been able to determine, DoD’s practice has not been to consider situations in which [the Deputy Secretary of Defense] has previously acted for and exercised the powers of [the Secretary of Defense] by operation of 10 U.S.C. § 132(b) to require notification under the FVRA. [The] DoD has, however, notified consistent with the FVRA [the Deputy Secretary of Defense’s] acting for and exercising the powers of [the Secretary of Defense] between December 22–23, 2023 and January 2–5, 2024.”

<sup>20</sup> (U) The FVRA states in 5 U.S.C. § 3345(a)(1) that the “first assistant” shall perform the functions and duties of a vacant office temporarily in an acting capacity. However, 5 U.S.C. § 3345(a)(2) provides that the President may direct another PAS officer to fill the vacancy instead of the “first assistant.”

<sup>21</sup> (U) Executive Order 13963, “Providing an Order of Succession Within the Department of Defense,” December 10, 2020. The Office of the Under Secretary of Defense (Policy) maintains a roster (updated monthly) of current PAS officials within the DoD and their contact information, in rank order, for the purposes of succession to the Office of the Secretary of Defense.

(U) Secretary of the Army was next in the order of succession to Deputy Secretary Hicks for the time period this review covers.

(U) Appendix A provides additional information about the FVRA, and related standards.

## (U) National Security Presidential Memorandum–32

(U) National Security Presidential Memorandum–32 (NSPM-32), January 13, 2021, requires all Executive departments and agencies, including the DoD, to notify the Executive Office of the President (EOP), specifically the White House Situation Room (WHSR), of information that meets the Presidential Critical Information Requirements (PCIR).<sup>22</sup> The purpose of the PCIR reporting requirements under NSPM-32 is “to ensure the President, the Vice President, and appropriate advisors within the EOP have the information they require to effectively manage incidents and crises on a national level and to support national security decision-making.” One such PCIR requires notification to the WHSR by telephone “within several minutes” of the “incapacitation” of a Cabinet member “or credible indications that such an incident is imminent” followed by the PCIR notification within 3 hours. Secretary Austin signed and implemented the Secretary of Defense Memorandum, “Standardized Reporting Policy for [PCIR],” March 23, 2021, establishing DoD policy for reporting such an incapacitation to the WHSR. Neither document provides a definition of “incapacitation.”

(U) Section V provides additional information on NSPM-32 and related standards.

## (U) Operational Authorities

(U) Pursuant to his position in the chain of command between the President and the combatant commanders, the Secretary of Defense’s functions and duties include certain operational authorities that require continuous, timely access to secure communications under all conditions.<sup>23</sup> Those authorities include Operation Noble Eagle (ONE), Ballistic Missile Defense (BMD), and Nuclear Command, Control, and Communications (NC3).

(S) [REDACTED]

<sup>22</sup> (U) A PCIR is defined as any incident requiring notifications to the EOP according to procedures outlined in NSPM-32. Specific PCIRs are listed in the NSPM’s annex by the following categories: general, homeland, international, and defense.

<sup>23</sup> (U) Under 10 U.S.C. § 162(b), “Unless otherwise directed by the President, the chain of command to a unified or specified combatant command runs—(1) from the President to the Secretary of Defense; and (2) from the Secretary of Defense to the commander of the combatant command.”

(S) [REDACTED]  
[REDACTED]<sup>24</sup>

(U) **ONE** is the DoD homeland defense operation to deter, detect, and defeat air threats and attacks against the United States.

(S) [REDACTED]  
[REDACTED]<sup>25</sup> [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(U) **BMD** is designed to counter and destroy missiles and their warheads before they reach their targets.

(S) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>26</sup> [REDACTED]  
[REDACTED]  
[REDACTED]

(U) **NC3** are varied systems across the Services, U.S. Strategic Command and other combatant commands, and other DoD entities that enable execution of the command and control construct for forces conducting nuclear operations. The President bases the decision to authorize use of nuclear weapons on, among other things, recommendations

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<sup>24</sup> (U) In response to our draft report, the DoD stated that previous Secretaries of Defense also effectuated a “transfer of authorities” or “TOA” process when transferring certain operational authorities from the Secretary of Defense to the Deputy Secretary of Defense as part of the institutional regular practice. The DoD 30-Day Review referred to a sampling of “TOAs” dating back to Secretary of Defense Ashton Carter, who served from February 2015 to January 2017. The DoD also stated that this practice was employed as far back as 2006, when Secretary of Defense Donald Rumsfeld reportedly transferred his authorities to Deputy Secretary Gordon England in connection with a shoulder surgery Secretary Rumsfeld underwent at WRNMMC. This historical information was not within the scope of our review and we do not make any conclusions about these historical practices.

<sup>25</sup> (CU) [REDACTED]

<sup>26</sup> (S//REL-USA, FVEY) [REDACTED]  
[REDACTED]  
[REDACTED]

(U) of the Secretary of Defense, the Chairman of the Joint Chiefs of Staff (CJCS), the combatant commanders, other senior advisors, and allies.

## **(U) The DoD Security Environment**

(U) The DoD faced a variety of security challenges during the period of Secretary Austin's hospitalizations from December 2023 through February 2024. For example, Ukraine continued its defense against Russia's full-scale invasion. In addition, Israel was engaged in an ongoing military operation in Gaza following Hamas's terrorist attack on October 7, 2023. Furthermore, Secretary Austin announced Operation Prosperity Guardian on December 18, 2023, in response to Houthi attacks against vessels transiting the Red Sea.



### III. (U) Events Related to the Secretary of Defense’s Hospitalizations

(U) In this section, we discuss the events related to Secretary Austin’s medical condition, including his cancer diagnosis and his related hospitalizations in December 2023, January 2024, and February 2024. We also discuss other actions related to his hospitalizations and information related to the transfer of authorities to Deputy Secretary Hicks. Table 1 provides an overview of the significant events related to the Secretary of Defense’s hospitalizations. We discuss the key events with more detailed chronologies thereafter.

(U) Table 1. Overall Chronology of Events Related to Secretary Austin’s Hospitalizations

(U) Date	Medical and Non-Medical Events
Late 2023	Results of regular monitoring identified prostate cancer that required treatment.
Dec. 22, 2023	Secretary Austin transfers authorities to Deputy Secretary Hicks. Secretary Austin is admitted to WRNMMC and undergoes a prostatectomy under general anesthesia. <sup>1</sup>
Dec. 23, 2023	Secretary Austin is discharged from WRNMMC. Secretary Austin resumes his authorities.
Jan. 1, 2024	Secretary Austin experiences severe pain and is transported by ambulance to WRNMMC.
Jan. 2, 2024	Secretary Austin is transferred to the WRNMMC Surgical Intensive Care Unit (SICU) to receive critical care services. <sup>2</sup> Secretary Austin’s staff subsequently initiates the process of transferring authorities to Deputy Secretary Hicks.
Jan. 5, 2024	Secretary Austin resumes his authorities in the evening.
Jan. 6, 2024	Secretary Austin undergoes a medical procedure under moderate sedation.
Jan. 8, 2024	Secretary Austin undergoes a medical procedure under moderate sedation.
Jan. 9, 2024	Secretary Austin undergoes a medical procedure under epidural anesthesia.
Jan. 15, 2024	Secretary Austin is discharged from WRNMMC.
Feb. 11, 2024	Secretary Austin is admitted to WRNMMC, and he directs an Assumption of Functions and Duties by Deputy Secretary Hicks.
Feb. 13, 2024	Secretary Austin is discharged from WRNMMC and resumes his functions and duties as Secretary.

(U)

<sup>1</sup> (U) A prostatectomy involves a surgical procedure to remove the prostate and destroy the cancer. General anesthesia is a drug-induced loss of consciousness during which patients are not arousable even by painful stimulation.

<sup>2</sup> (U) The SICU is one of the specialty areas within the Critical Care Unit.

(U) Source: The DoD OIG.

### A. (U) Prior Condition

(U) Secretary Austin had a prior condition for which he received regular monitoring, which in late 2023 identified prostate cancer that required treatment. Following evaluation by his treating physicians of the ongoing monitoring, Secretary Austin was scheduled for a prostatectomy at WRNMMC on December 22.

(U) In response to a question during his February 29, 2024 testimony before the Committee on Armed Services, U.S. House of Representatives (HASC) as to when he first received his diagnosis, Secretary Austin stated, “It was early December.” One of his physicians told us that he did not consider Secretary Austin’s statement to the HASC to be “false” or “intentionally misleading” based on how he had explained to Secretary Austin at the time that it was a “different diagnosis,” and that “it’s no longer a surveillanceable [sic] [condition], it’s a surgery-required cancer.”

### B. (U) December 2023 Hospitalization

(U) In this section, we discuss the events that occurred in December 2023, including Secretary Austin’s transportation to WRNMMC for his prostatectomy, the transfer of certain authorities to Deputy Secretary Hicks, and Secretary Austin’s discharge from WRNMMC.

(U) Table 2. Chronology of Events Related to Secretary Austin’s Hospitalization in December 2023

(U) Date	Time	Medical and Non-Medical Events
Thursday Dec. 14	----	Secretary Austin notifies the JMA of his planned medical “procedure” and that he would transfer authorities to Deputy Secretary Hicks.
Thursday Dec. 21	----	Secretary Austin informs Deputy Secretary Hicks that he is taking off December 22.
Friday Dec. 22	5:00 a.m.	Secretary Austin transfers certain authorities to Deputy Secretary Hicks.
	~ 7:45 a.m.	Secretary Austin undergoes a prostatectomy under general anesthesia at WRNMMC.
Saturday Dec. 23	9:59 a.m.	Secretary Austin departs WRNMMC.
	5:00 p.m.	Secretary Austin resumes his authorities.

(U) ~ Approximate time.

(U) Source: The DoD OIG.

(U) The prostatectomy was scheduled to take place at WRNMMC on December 22. Secretary Austin did not disclose or authorize medical professionals to disclose his medical condition or the prostatectomy to his staff. In his February 7, 2024 letter to the

(U) HASC, discussing his decision to keep his prostate cancer diagnosis private, Secretary Austin stated:

(U) When I was diagnosed with prostate cancer in December, the news shook me, and my first instinct was to keep it private. But I did not handle this right. In retrospect, I should have told the President and my team about my cancer diagnosis sooner.<sup>27</sup>

~~(U)~~ Secretary Austin told us he did not talk to anyone on his staff about the prostatectomy. Secretary Austin also told us that he told the JMA and PSO 2 that he was having a “medical procedure” but did not specify what type of procedure. The JMA told us that Secretary Austin informed him on December 14 that Secretary Austin was undergoing an “elective procedure” that required “light anesthesia” and that he wanted to transfer ██████████ authorities to Deputy Secretary Hicks from December 22 through 23, “out of an abundance of caution.” The JMA also told us that Secretary Austin was very protective of his “medical matters” and asked the JMA to consider it a “personal event.” The JMA further told us, “[Secretary Austin] was deadly serious about that being kept -- kept personal” and that Secretary Austin told him “if anyone had any questions they’re more than welcome to ask [Secretary Austin] directly.”

(U) Secretary Austin told us that he knew he would go under general anesthesia, that he would be “incapacitated,” and that he therefore made the decision to transfer his authorities to Deputy Secretary Hicks.<sup>28</sup> Secretary Austin defined the term “incapacitated” as, “Not being able to function, unconscious, not being able to mentally function, not, not being able to do things on your own.”

(U) The JMA told us that Secretary Austin instructed him to work with the Primary Physician to determine the appropriate timeline for the transfer of authorities. The JMA told us that the Primary Physician suggested, “out of an abundance of caution” and to allow Secretary Austin time to rest, that the transfer of authorities should take place from December 22 at 5:00 a.m. through December 23 at 5:00 p.m.

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<sup>27</sup> (U) At the time of Secretary Austin’s statement, the President was Joseph R. Biden, Jr.

<sup>28</sup> (U) As discussed below, the FVRA of 1998 requires the head of the executive agency to notify the Comptroller General of the United States and both Houses of Congress immediately upon the occurrence of a vacancy (see Appendix A). The DoD did not report a vacancy of the Office of the Secretary of Defense from December 22 through 23, 2023, until January 10, 2024.

(U) NSPM-32, January 13, 2021, requires agencies to report the incapacitation of a Cabinet member to the Executive Office of the President (EOP) in a consistent, standardized manner (See Section V).

(U) The Secretary of Defense’s memorandum, “Standardized Reporting Policy for PCIR,” dated March 23, 2021, establishes DoD policy for reporting PCIRs to the White House Situation Room (WHSR) within the times and standards specified by NSPM-32.

(U) The Deputy Secretary of Defense Principal Military Assistant (PMA) informed Deputy Secretary Hicks on December 21 of the planned transfer of authorities.<sup>29</sup> Deputy Secretary Hicks told us that during a regularly scheduled meeting with Secretary Austin on December 21, Secretary Austin told her that he was taking the next day off; however, she did not ask him the reason for his absence. She told us that it was not unusual not to know the reason for the transfer of authorities and such transfers are “typically about being in and out of [communications].”

(U) LTG Clark told us that the JMA informed him on December 21 that Secretary Austin “required, uhm, a transfer of authority to the Deputy Secretary of Defense, uh, due to a personal event or personal matter.” LTG Clark also told us that he did not find out about the prostatectomy until “a few minutes before it was disclosed publicly” in January 2024. Gen Brown told us he could not remember when he became aware of Secretary Austin’s December prostatectomy. Ms. Magsamen told us that Secretary Austin did not inform her in advance of his December prostatectomy or hospitalization.

~~(U)~~ Secretary Austin was transported to WRNMMC for the prostatectomy in the early morning on December 22 and an email notification was sent indicating that [REDACTED] [REDACTED] authorities were transferred to Deputy Secretary Hicks effective at 5:00 a.m.<sup>30</sup>

~~(U)~~ The JMA told us that “the way I understood it was transfer [of Secretary Austin’s] authorities of uh [REDACTED] to the Deputy Secretary.” LTG Clark similarly told us that he understood that only [REDACTED] were transferred to Deputy Secretary Hicks. Additionally, LTG Clark told us that he was not aware of the fact that Deputy Secretary Hicks was in the role of Acting Secretary of Defense.

~~(U)~~ Deputy Secretary Hicks told us that because of the “long standing practice” of transferring [REDACTED] authorities, “no one had really put [it] together” that she was serving as the Acting Secretary. Ms. Magsamen and Ms. King told us that they did not know at the time that Deputy Secretary Hicks was serving as the Acting Secretary. Ms. Zier told us, “I don’t think anyone understood” that the transfer meant that Deputy Secretary Hicks “effectively becomes the Acting Secretary of Defense.”

(U) At the start of the medical procedure, Secretary Austin was placed under general anesthesia and underwent the prostatectomy.

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<sup>29</sup> (U) It was not clear why a week transpired before Deputy Secretary Hicks was notified of the transfer of authorities that was planned for the next day.

<sup>30</sup> (U) The Cables ESO is a 24-hour communications center that facilitates the secure communications for the Secretary of Defense, Deputy Secretary of Defense, and other staff members.

(U) Secretary Austin was discharged the morning of December 23 and resumed his authorities at 5:00 p.m.<sup>31</sup>

### C. (U) January 1 Through 4, 2024

(U) In this section, we discuss the events that occurred from January 1 through 4, including Secretary Austin’s transportation to WRNMMC, the transfer of certain authorities to Deputy Secretary Hicks, and the initial notifications made to DoD officials.

*(U) Table 3. Chronology of Events Related to Secretary Austin’s Hospitalization from January 1 Through 4, 2024*

(U)	Date	Time	Medical and Non-Medical Events
<b>Monday Jan. 1</b>		<b>Early afternoon</b>	Secretary Austin experiences pain while at his home.
		<b>7:05 p.m.</b>	Secretary Austin calls PSO 1 requesting an ambulance to take Secretary Austin to WRNMMC.
		<b>7:11 – 7:15 p.m.</b>	PSO 1 calls Fairfax County 911 requesting an ambulance.
		<b>7:22 p.m.</b>	Fairfax County Fire and Rescue ambulance arrives at Secretary Austin’s home.
		<b>7:42 p.m.</b>	A movement email notification is sent stating that Secretary Austin is en route to [code word for WRNMMC].
		<b>7:45 p.m.</b>	A movement email notification is sent stating that Secretary Austin is en route to an unscheduled event.
		<b>8:09 p.m.</b>	The 7:42 p.m. movement email notification is recalled.
		<b>~8:20 p.m.</b>	Secretary Austin arrives at WRNMMC Emergency Department.
		<b>8:37 p.m.</b>	A movement email notification is sent stating that Secretary Austin arrived at an unscheduled event.
		<b>~10:00 p.m.</b>	Secretary Austin is admitted to the Emergency Department at WRNMMC.
<b>Tuesday Jan. 2</b>		<b>5:48 a.m.</b>	Secretary Austin is moved from the Emergency Department at WRNMMC to a room in the VIP suite.
		<b>early afternoon</b>	Secretary Austin has to be transferred to the SICU.
		<b>~2:00 – 2:15 p.m.</b>	Secretary Austin’s staff initiates the process of transferring certain authorities to Deputy Secretary Hicks after consultation with the Primary Physician.
		<b>2:38 p.m.</b>	The Cables ESO sends an email notification of the transfer of authorities to Deputy Secretary Hicks.

(U)

<sup>31</sup> (U) In a text message between PSO 1 and the JMA, PSO 1 told the JMA that Secretary Austin said “do not text anyone” about his medical appointment at WRNMMC.

Events Related to the Secretary of Defense's Hospitalizations

(U) Date	Time	Medical and Non-Medical Events
Thursday, Jan. 4	1:56 p.m.	Ms. Magsamen informs Deputy Secretary Hicks through Ms. Heather King, Chief of Staff to Deputy Secretary Hicks, that Secretary Austin is in the hospital.  (U)

(U) ~ Approximate time.

(U) Source: The DoD OIG.

**(U) January 1, 2024**

(U) Secretary Austin worked from home the morning of January 1. According to Secretary Austin, in the early afternoon, he began experiencing nausea and pain in his abdomen and leg. As the pain increased in severity throughout the day, he laid on the sofa and took medications for the pain. Secretary Austin told us that based upon the “severe” pain that he was experiencing it was not possible for him to travel to the hospital in his vehicle.

(U) PSO 1 received a phone call from Secretary Austin at 7:05 p.m. In his initial interview, PSO 1 told us that Secretary Austin called him to request medical assistance and said, “No lights and sirens present when they enter the cul-de-sac.” PSO 1 told us that protesters had been in the area recently, and he did not want to alert anyone about the “medical emergency.” In a follow up interview, PSO 1 said that if Secretary Austin had not requested no lights and sirens, PSO 1 probably would have asked for no lights and sirens due to “security concerns.” According to PSO 1, lights and sirens “would be a big flag” and could pose a “security concern.”

(U) Additionally, PSO 1 told us that Secretary Austin also stated, “We’re not notifying anybody... .” PSO 1 told us that because Secretary Austin told him not to “tell anybody,” he kept the medical event as “private[] as possible,” and that he otherwise would have notified the JMA, LTG Clark, or Ms. Magsamen.

(U) Secretary Austin testified on February 29, 2024, to the HASC, "I never intended to keep my hospitalization from the White House or from anybody else. [...] I never told anyone not to inform the President, the White House, or anyone else about my hospitalization." Secretary Austin further stated, "As I've said earlier, I never directed anyone to keep my hospitalization from the White House." In response to a question during the HASC hearing about whether he directed the "aide" to ask the ambulance "not [to] show up with lights and sirens," Secretary Austin said, "[...] What I -- what I told my -- my assistant to do was call an ambulance, and that's all that I told them to do."<sup>32</sup>

(U) Secretary Austin told us that he did not remember whether he called PSO 1 or whether he told his wife to call on his behalf. He also said that he did not tell PSO 1 not to notify anyone and for the ambulance to avoid using lights and sirens. Secretary Austin stated, "I directed through my wife or either [I] talked to him," and asked that "we call an ambulance. No direction to -- to be silent."<sup>33</sup>

(U) When asked about the differences in recollection about Secretary Austin's direction in the 7:05 p.m. call, PSO 1 told us:

(U) ... in my mind I think that there's a potential [Secretary Austin] was in a lot of pain ... he told me to do that [ask for no lights or sirens and not to notify anybody] but there's a possibility that you know maybe he didn't think that he did due to his pain, but I don't know. I know what he told me though. I know he told me not to -- not to have lights and sirens and that we're not notifying anybody.<sup>34</sup> Because as -- again as soon as I got off the phone with him I'm texting PSO 2 and I'm calling the ambulance. So I -- I at least got that bit of information from him, and that specifically sticks in my mind.

(U) PSO 1 first called two non-emergency numbers and then called Fairfax County 911 at 7:11 p.m. and requested an ambulance. According to the 911 Operator call transcript, PSO 1 asked the 911 operator, "Can the ambulance not show up with lights and sirens."

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<sup>32</sup> (U) In a press conference on February 1, 2024, Secretary Austin stated, "I asked my assistant to call the ambulance. I—that did not direct him to do anything further than just call the ambulance." During his testimony to the HASC on February 29, 2024, Secretary Austin also stated, "... I don't think I've created a culture of secrecy. I think there will be security officers, there will be other staff members who — who may perceive that they're doing things in my best interest, and, you know, I can't — I can't predict or — or determine or ascertain what those things may be."

<sup>33</sup> (U) In response to our draft report, Secretary Austin submitted a memorandum, which indicated in part: "As I have previously stated, I did not direct anyone to tell the ambulance not to use lights and sirens. I sought to corroborate my recollection of this conversation with the PSO after the fact, and he said that I did not instruct him to tell the ambulance not to use lights and sirens."

<sup>34</sup> (U) During his follow-up interview, PSO 1 also told us that Secretary Austin stated, "we're not going to notify anybody at this time."

(CU) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(U) Both PSO 1 and Secretary Austin indicated that when PSO 1 entered the home, Secretary Austin was on the couch, and in severe pain. PSO 1 told us that he asked Secretary Austin if there was anything that he can do to help and that Secretary Austin responded, “no” and “we’ll wait for the ambulance.”

(U) The Fairfax County Fire and Rescue Department ambulance arrived at Secretary Austin’s home at 7:22 p.m. and, according to PSO 1, the ambulance arrived without sirens but had lights on while in the cul-de-sac.

(U) PSO 1 also told us that when the paramedics arrived, he and Mrs. Austin helped Secretary Austin prepare to depart to WRNMMC by ambulance.

(U) Secretary Austin told us, “... what I was most concerned with is getting to the hospital to have the doctors treat my illness. [I was] fully able to function, and to think, uh and to speak, uh and so -- transferring authority ... was not a concern at that point.”

***(U) Transportation to WRNMMC***

(U) The ambulance departed Secretary Austin’s home en route to WRNMMC at approximately 7:42 p.m. Secretary Austin and PSO 1 rode in the ambulance while the rest of the team and Mrs. Austin followed in two separate vehicles. PSO 1 told us that Secretary Austin was “conscious and speaking the whole time” in the ambulance and once they arrived at WRNMMC.

(U) According to witnesses, the secure communication device was not in the ambulance during the drive to WRNMMC. PC 1 told us that he was concerned that the ambulance would not pull over if Secretary Austin had to make or receive a classified call. PSO 1, who rode in the ambulance with Secretary Austin, told us that he “had direct communication with [PC 1] via text message” and that if something were to happen they could stop the ambulance and get the device to Secretary Austin. PSO 2 also stated to us that in case of an emergency, “we would just have the ambulance stop, and [the device] would be brought up, if it needed to be at the [classified] level.” However, PSO 1 told us that they did not have any agreements in place with local emergency services regarding their ability to stop an ambulance transporting the Secretary of Defense.

(U) Secretary Austin told us that the PSO always has a classified phone “whether it’s ... in the ambulance, or whether it’s in my car ...” Secretary Austin stated that if he



(U) needed to answer a classified call during the ambulance ride, the PSO would give him the phone. He also stated that if there was a concern about others in the ambulance listening to the phone call “that we would have them stop the ambulance and have those people get out, but no, I was not concerned about that.”

***(U) Notifications about Secretary Austin's Medical Condition***

(U) A movement email notification was sent at 7:42 p.m. stating that Secretary Austin was en route to [code word for WRNMMC]. The sender was advised in substance by another staff member that if he wanted to keep the movement of Secretary Austin “low key” the sender might want to send the notification out again without the code word for WRNMMC. At 7:45 p.m., a movement email notification was sent stating that Secretary Austin was en route to an “Unscheduled Event.” At 8:09 p.m. the 7:42 p.m. movement email notification was recalled. The OIG was told that this occurred because “[Secretary Austin] didn't want anybody notified” that he was going to WRNMMC. Additional details about these events are presented in the paragraphs below.

(CU) [REDACTED]

(CU) [REDACTED]

(CU) [REDACTED]

(CU) [REDACTED]

(CU) [REDACTED]

(CU) [REDACTED]

***(U) Secretary Austin Arrives at WRNMMC***

(U) The ambulance arrived at WRNMMC Emergency Department at approximately 8:20 p.m. Secretary Austin told us that he was in “severe pain.” After initial tests and assessments were conducted, Secretary Austin was admitted to the Emergency Department at WRNMMC.

(U) Secretary Austin told us that once he arrived at WRNMMC, the doctors acted very quickly to assess and admit him to the hospital. Secretary Austin stated that he believed that initially the doctors would be able to figure out what was going on, treat him, and release him within a “couple of hours” with medication. Secretary Austin told us that he did not recall conversations with doctors regarding medications. However, Secretary Austin stated that he “was adamant” to the doctors about not being sedated and being able to function “throughout the entire stay in the hospital.” He also stated that if he were to be intubated or unconscious, “that puts us in another category there.”

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<sup>35</sup> (CU) [REDACTED]

(U) Secretary Austin defined sedation as “intubated,” “unconscious,” or “not able to mentally function.”

(U) PSO 2 told us he advised PSO 1 to have a conversation with Secretary Austin about whether he wanted to transfer his authorities and inform Secretary Austin that they were keeping everything “close hold as we would any personal move.” PSO 1 told us that he spoke with Secretary Austin and asked, “... is there anybody you would like me to notify, or uh would you like to transfer authorities at any time?” According to PSO 1, Secretary Austin stated, “No. We’re not transferring authorities. ... Please notify [the Scheduler] that we are going to cancel all meetings for the next 48 hours.” PSO 2 also told us that PSO 1 confirmed with Secretary Austin that he wanted to keep things close hold and keep his authorities.

(U) Secretary Austin told us that, other than notifying the Scheduler to cancel his appointments, he did not “recall anything beyond that” and “I did not tell [PSO 1] to notify anyone. I also did not tell him not to notify anyone.” Secretary Austin also told us that he did not recall a conversation with PSO 1 about transferring his authorities.

(U) PSO 1 said that he notified the Scheduler of Secretary Austin’s request to clear his schedule for the next 2 days. The Scheduler told us that PSO 1 called her and stated that Secretary Austin requested that she “pull down the schedule for the next 2 days.” The Scheduler told us that she had read the initial Cables ESO movement email referencing that Secretary Austin was en route to a specific “[code word for WRNMMC]” and she told us she knew that the code word meant WRNMMC. The Scheduler told us that she asked PSO 1 if Secretary Austin was in the hospital and PSO 1 told her, “No.”

(U) PSO 1 told us that the Scheduler asked him, “Is everything okay?” and he told her that Secretary Austin wanted him to tell her to cancel the meetings and “that’s all I’m going to talk about right now.” PSO 1 also told us that the Scheduler did not ask if he was at the hospital. According to PSO 1, the Scheduler “just asked me if everything was okay.”

### ***(U) January 2, 2024***

(U) The JMA texted PSO 1 at 12:52 a.m. asking, “Is everything ok? I am not sure what [code word for WRNMMC] is but I got a note from [the Scheduler] that the boss wants his calendar clear for the next [2] days ... .” PSO 1 told us that he called the JMA to inform the JMA that Secretary Austin was conscious, fine, speaking, and “just has a lot of back pain.” The JMA told us that he asked PSO 1 if Secretary Austin wanted to transfer his authorities, and PSO 1 responded that Secretary Austin said he wanted to retain his authorities. The JMA further told us that PSO 1 told him, “The boss wants to keep this as a personal event.” The JMA stated, “[T]hat’s the way we’ve run these plays when it comes to the hospital ... and since this was just leg pain and I’m hearing that he’s resting comfortably and getting out, I thought we were good to keep it as personal event.”

(U) According to text messages between PSO 1 and the JMA, the JMA texted PSO 1 at 1:24 a.m., "I canceled all of the [drops delivered over a tablet device] for this morning and the PMA will still send his paper drops so if the boss wants it later he can get it. Let me know if you get any updates I [am] still waiting for [the Primary Physician] to call me back ..."

(U) The JMA told us that a drop is an intelligence or operations update that Secretary Austin would need from the last time he was in the office or had contact with his staff or "whenever he's working from home." He also said that they typically provide Secretary Austin a drop every Saturday. The JMA also told us that a drop included everything from "unclassified clips which is just what's going on in the newspaper to highly classified information covering events throughout the globe and different combatant commanders' areas of operations." He further told us "at that point in time" canceling the drop for that morning was "definitely not a big deal."<sup>36</sup>

(U) Secretary Austin was moved from the Emergency Department to a room in the VIP suite.

(U) PSO 1 responded to the JMA's 1:24 a.m. text at 7:13 a.m., "Copy, nothing yet. I can hear [Secretary Austin] in the other room. I think the prediction of staying here has a high chance still." The JMA texted PSO 1 that he would hold off on canceling any drops for the next day and, if it looked like Secretary Austin would be staying the night, the JMA would "collect the info and do a physical drop for him." PSO 1 responded, "Copy, like I said. [Secretary Austin] told me no drops today or tomorrow. I'll speak to him at some point today."

(U) According to Secretary Austin, his staff was "close by" and if they needed him they could have passed him a note through the doctor stating they "needed access right away" and enter his hospital room with the doctor's permission. Secretary Austin also told us that he felt confident that his doctors, including the Primary Physician, would keep his staff updated on "significant issues or changes."

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<sup>36</sup> (U) Evidence reviewed showed that drops were canceled on other occasions. For example, Ms. Magsamen texted the JMA on December 18, 2023, "Don't think [Secretary Austin] read the drop this morning. May have to recycle tonight/tomorrow."

(~~CU~~) The PMA texted the JMA at 7:18 a.m., "Is the boss [Secretary Austin] fighting a cold? Asking since there are possibly [REDACTED] we may need from him today."<sup>37</sup> The JMA texted the PMA stating:

(~~CU~~) I [do not] have much facts here so I am making some assumptions. I still haven't talked to [Secretary Austin] yet, he is really not feeling well and just wanted to maximize as much time as he could that's why he cleared the schedule. I am not sure we will be able to [REDACTED].

(U) At 7:54 a.m., PSO 1 texted the JMA that the nurse gave me the "precursor" that Secretary Austin was going to stay the night at WRNMMC. PSO 1 added that nothing was "confirmed with doc[tor]," but that they were starting to get Secretary Austin's pain under control. The JMA responded that once they received the final coordination from the hospital that he would "turn off all the drops for tomorrow."

### ***(U) Medication Effects***

(U) Secretary Austin received several different medications during the morning of January 2 that had the potential to affect cognitive functions. Secretary Austin may not have been told the potential specific effects of any medication he was administered or the limitations to daily activities, including work, resulting from them. Secretary Austin told us that it was important to him to make sure that he remained coherent, did not undergo general anesthesia, or be intubated. He told us that he was "very adamant and clear about that from the very beginning." Secretary Austin told us that he communicated this to the Primary Physician and the Specialty Physician.

### ***(U) Secretary Austin's Move to SICU, Transfer of Authorities, and Notifications of the Transfer***

(U) According to text messages, a driver picked up Mrs. Austin from her residence at 11:53 a.m. and arrived with her at WRNMMC at 12:27 p.m.

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<sup>37</sup> (~~CU~~) Deputy Secretary Hicks [REDACTED] later that day, which we discuss later in this section of the report. Evidence we reviewed showed [REDACTED] was still in the staffing process and was not ready for Secretary Austin's or Deputy Secretary Hicks' review on January 2, 2024.

(U) PSO 1 told us that while sitting in the hallway he noticed many medical staff moving in and out of Secretary Austin's room. PSO 1 told us that this concerned him, so he went and looked inside Secretary Austin's room and saw 8 to 10 medical personnel and Mrs. Austin in the room. PSO 1 told us that he asked a medical staff member what was happening and they told him they could not "divulge any medical information at this time, but ... we're probably going to move [Secretary Austin] down to [the SICU]."<sup>38</sup> Due to Secretary Austin's worsened condition, he was moved to the SICU. Secretary Austin told us that he experienced chills and fever and the doctors made the decision to move him to the SICU. PSO 1 texted the JMA at 1:54 p.m. that Secretary Austin was moved to the SICU.

(U) The Primary Physician told us that he documented phone conversations with the Specialty Physician and the JMA as "something told me ... I may need to talk about this later."<sup>39</sup> According to the Primary Physician's memorandum, which he drafted within the hour of those conversations, the JMA called the Primary Physician at 1:55 p.m. to inform him that Secretary Austin was being moved to the SICU and requested that the Primary Physician discuss with the Specialty Physician whether the authorities should be transferred and call the JMA back. The Primary Physician wrote that he called the JMA back and informed him, "... in my opinion authorities should be transferred as the patient was experiencing [complications] and was unlikely to be able to devote full attention to any military contingencies that might arise today."<sup>40</sup> The Primary Physician's memorandum stated that the JMA said he "was going to recommend that authorities be transferred for a period of 24 hours with an option to extend for a second 24 hours if needed."

(U) The Primary Physician told us that he had never been asked for advice on transferring authorities before, although he had provided care for previous Secretaries, because "those decisions" were made between the "Secretaries' staff ... and the attending medical staff." The Specialty Physician and the Trauma Physician both told us that they had no role or knowledge that Secretary Austin transferred his authorities because their focus was patient care.

(U) The JMA told us that he called the Primary Physician to ask about Secretary Austin's condition and about a transfer of authorities. According to the JMA, the

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<sup>38</sup> (U) The Surgical Intensive Care Unit (SICU) is one of the specialty areas within the Critical Care Unit. According to a WRNMMC standard operating procedure, "The Intensive Care Unit emphasis is on observation of the total patient, expert assessment of the clinical status, detection of the earliest signs of complications and initiation of a program of treatment." "The environment includes instrumentation and equipment which is immediately available for detection of changes in patient condition." Patients who do not meet the "Admission Criteria for [S]ICU level of care may still be admitted with the consent of the [Critical Care Unit] Admitting Physician or the Medical Director."

<sup>39</sup> (U) The Primary Physician's memorandum was dated January 2, 2024, and digitally signed at 2:43 p.m.

<sup>40</sup> (U) Secretary Austin told us that he felt confident that his doctors, including the Primary Physician, would keep his staff updated on "significant issues or changes." However, the JMA told us that the Primary Physician was "very good about HIPAA" and would not release any specific information about Secretary Austin's medical condition.

(U) Primary Physician recommended a transfer of authorities “due to the current medical situation.” The JMA told us that he was concerned about the “ability to get a secure phone” in Secretary Austin’s hands, get Secretary Austin in a “secure place,” and “put pause on whatever [Secretary Austin] was doing so that he could have a secure conversation.”

(U) Secretary Austin told us he did not have communications with his staff on January 2 because the staff could not get into his SICU room and “that’s why they transferred authorities.” He told us that Mrs. Austin relayed the message to him that the transfer of authorities had occurred after PSO 1 told her. According to Secretary Austin, the transfer of authorities was the “right thing to do,” because his staff could not get to him with secure communications.

(S) The JMA called LTG Clark and the PMA at approximately 2:00 p.m. and told them that Secretary Austin was in the SICU at WRNMMC.<sup>41</sup> They discussed the transfer of authorities to Deputy Secretary Hicks. According to LTG Clark, the JMA told them that “the doctor recommended that ... authorities be transferred because [they] could not get the secure comm[unications] to the Secretary [REDACTED].” In his initial interview, LTG Clark told us that based on the JMA’s assessment of Secretary Austin’s unavailability, “I made the decision to transfer authorities to [Deputy Secretary Hicks].” In a follow up interview, LTG Clark told us, “I did not make a decision to transfer [authorities] ... .” He said, “I wouldn’t describe it as a decision. I’d describe it as a trigger ... based on the fact that we could not provide secure communications to the Secretary.” LTG Clark also stated:

(S) The [JMA] shared with us information from the doctor ... that the Secretary was not available. He could not take a secure call [REDACTED] based on his location in the [SICU within the] Critical Care Unit. So that being the case, because we could not contact the Secretary [REDACTED] that triggered the transfer of authorities’ discussion, but again we couldn’t transfer authorities if we didn’t have communications with the Deputy and her team, and she was in a position where she could receive authorities. So, it’s not just a, ‘Hey, you got it.’ It’s a you know, ‘Can you receive the authorities, assume the duties?’ If the answer is yes, then the authorities are transferred. ... it was a collective discussion where we all had the same understanding about the requirement. That being the case it’s -- it’s not really a decision it’s -- it’s more this has to happen because ... obviously we’re in a situation now where -- where the authorities to execute these missions can’t be performed. So it’s not so

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<sup>41</sup> (U) According to LTG Clark and the PMA, this was the first time they were made aware that Secretary Austin was in the hospital.

~~(S)~~ much a decision that, 'Hey, I declare we should do this.' It's ... more the roles and missions, and functions of the office right now are we -- we can't perform them to standard. So, we have to contact the Deputy who is the person that would -- the authorities would go to -- delegated it to in that situation.

(U) Secretary Austin testified to the HASC on February 29, 2024, "The issue was, number one, they could not get to me. But number two, it was access to secure communications. Had nothing to do with my physical condition at the time."

(U) PSO 1 texted the JMA that someone "notified the White House Medical Unit [WHMU]. So W[hite] H[ouse] is tracking." PSO 1 told us that after Secretary Austin was moved to the SICU, someone from the Medical Evaluation and Treatment Team told him that they were going to notify the Commander of the WHMU.<sup>42</sup> The JMA told us that he "was led to believe" that the WHMU knew that Secretary Austin was at WRNMMC. The JMA also told us that from a Continuity of Government perspective, he thought there would be an immediate report from the WHMU to the White House since Secretary Austin is a Senior Cabinet Level Official and a "top-five official." He told us, "I didn't come to realize that until much later that [notification to the WHMU] was not reporting to the White House."

(U) According to LTG Clark, the PMA, and the JMA began informing Deputy Secretary Hicks' military assistants, Gen Brown, Ms. Magsamen, and the DoD Press Secretary, Major General (Maj Gen) Patrick Ryder, about the transfer of Secretary Austin's authorities to Deputy Secretary Hicks. Based on our review of the call logs, the notifications to Deputy Secretary Hicks' military assistants began at 2:08 p.m., and the others followed shortly thereafter.

(U) Gen Brown told us that LTG Clark told him that Secretary Austin was at WRNMMC in the SICU but did not tell him there was a transfer of authorities. Gen Brown said that if he needed to talk to Secretary Austin and he was not available that he would have contacted Deputy Secretary Hicks who had access to "full communication[s]," even though he was aware that she was on leave.<sup>43</sup>

~~(CUI)~~ Secretary Austin's and Deputy Secretary Hicks' military assistants coordinated the transfer of authorities to Deputy Secretary Hicks. The JMA told us that he called the Deputy Secretary of Defense Junior Military Assistant and did not provide a reason for the transfer, except that it was a "medical situation." The Deputy Secretary of Defense Junior Military Assistant notified Deputy Secretary Hicks at 2:16 p.m. through a text

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<sup>42</sup> (U) According to the WRNMMC Director, the Medical Evaluation and Treatment Team is compiled of a team of staff detailed to provide care to the President of the United States and the President's immediate family at WRNMMC. The President may authorize others to receive care with the Medical Evaluation and Treatment Team.

<sup>43</sup> (U) Deputy Secretary Hicks was in Puerto Rico from December 30, 2023 through January 6, 2024.



(CU) message that a transfer of [REDACTED] authorities would occur for [REDACTED]. Deputy Secretary Hicks responded at 2:18 p.m., "Ok. If I need to change plans please just let me know. Otherwise, we'll just keep going as planned." Ms. Magsamen told us that LTG Clark notified her around 2:30 p.m. that Secretary Austin was in the hospital and a transfer of authorities had occurred.<sup>44</sup>

(U) The SAC told us that he notified [REDACTED], CID Assistant Director, that Secretary Austin was at WRNMMC. The SAC said he told [REDACTED] to verbally pass that information to Mr. Ford and that he did not want to send a written notification because he "was worried about ... [operations security]." [REDACTED] emailed Mr. Ford and his Deputy at 2:35 p.m., stating that Secretary Austin had been moved to the "[S]ICU" and Deputy Secretary Hicks "assumed authorities."<sup>45</sup> Mr. Ford told us he called [REDACTED] to ensure the team was resourced adequately to provide the necessary protection level at WRNMMC.<sup>46</sup>

(U) The Cables ESO sent an email notification at 2:38 p.m. of the transfer of authorities to Deputy Secretary Hicks effective as of 2:22 p.m. until further notice.<sup>47</sup>

(U) The Cables ESO Official recorded in the Cables log that [the JMA and] the Cables ESO "were directed to not send an [Automated Message Handling System] message out."<sup>48</sup> A Cables ESO Official told us that it was not unusual not to send an Automated Message Handling System message when a transfer of authorities occurred as they are for a short duration, although he could not define "short duration." He also said that the JMA facilitated the transfer of authorities, through phone and email to the Cables ESO, and

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<sup>44</sup> (U) Ms. Magsamen told us that on December 31, 2023, she started to feel sick and was diagnosed with the flu on January 2, 2024. Ms. Magsamen also said that her condition worsened, and she was diagnosed with pneumonia on or about January 8, 2024.

<sup>45</sup> (U) [REDACTED] stated in his email to Mr. Ford that the White House Executive Office of the President had been notified about Secretary Austin's hospitalization. However, we determined that [REDACTED] had been misinformed when he was told that the White House had been notified. Secretary Austin told us that, according to the DoD 30-Day Review, his staff mistakenly believed that the White House was aware of his hospitalization because "White House Medical Unit" personnel were at WRNMMC. We discuss the notifications to the White House, which occurred on January 4, later in this section of the report.

<sup>46</sup> (U) The Trauma Physician stated in an After Action Report that Secretary Austin's security detail was not initially in contact with the WRNMMC's Operations Office. The report recommended that WRNMMC Operations should immediately connect with Distinguished Visitors security details to ensure appropriate communication and coordination.

<sup>47</sup> (S) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

<sup>48</sup> (U) The Automated Message Handling System provides a user-friendly means to send and receive messages through the Automated Digital Network. It provides connectivity to and interoperability with Government agencies, allies, tactical users, defense contractors and other approved activities external to the Defense Message System community. It also provides guaranteed delivery to the intended recipients and maintains writer to reader accountability.

(U) told him that the “people who needed to know” about the transfer of authorities “were aware.”

### ***(U) Authorities with Deputy Secretary Hicks***

(U) Deputy Secretary Hicks told us that she had the same communication capabilities in Puerto Rico that she would have anywhere else. She explained, “There really was not a problem at all in the timely transfer, [or my] ability to act.” According to witnesses who traveled with Deputy Secretary Hicks, she had communication capabilities up to the Top Secret level, similar to Secretary Austin’s.

(U) Deputy Secretary Hicks also told us that she really does not “get to go on leave” and that she held a classified call with her staff that morning before the transfer of authorities, which “was very in stride and normal.”<sup>49</sup>

~~(S)~~ The Deputy Secretary of Defense’s PMA emailed Deputy Secretary Hicks at 3:15 p.m. requesting she review an action [REDACTED], and at 3:20 p.m., Deputy Secretary Hicks [REDACTED]. Deputy Secretary Hicks told us that the [REDACTED] but that the timing gave “a sense of how fast [they were] able to do that even though [she] was walking down the street in San Juan, [Puerto Rico].”

(U) At 3:30 p.m., the JMA texted PSO 1:

(U) Everything is set on this side. We have [Public Affairs] postured to respond should anything come up and all appropriate personnel are informed. I don’t think [Secretary Austin] will, but if he asks about authorities let him know that the team has transferred it for 24 hours ... be prepared to cover for 48 [hours].<sup>50</sup>

### ***(U) January 3, 2024***

(U) Secretary Austin remained in the SICU throughout January 3 and continued receiving medical care.

(U) Secretary Austin’s staff, which included LTG Clark, Ms. Magsamen, the JMA, and PSOs, exchanged text messages throughout the day regarding the duration of the

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<sup>49</sup> (U) We reviewed information indicating that, while Deputy Secretary Hicks was in Puerto Rico, her staff set up a secured communications tent that included laptops, printers, and headphones, and worked to ensure that she had printed material available for her review during her trip.

<sup>50</sup> (U) During a press briefing on January 8, 2024, Maj Gen Ryder confirmed that information he learned on January 2 about Secretary Austin’s hospitalization was “not going to be releas[ed] publicly.” He stated that he had “very little information” at the time and was standing by for updates because “it was an evolving situation.” He also stated that one of his top lessons learned from this incident was that “in the future, [Maj Gen Ryder] will ask those hard questions, [and he] will push back.” When asked who or if anyone specifically asked not to publicly disclose details, he did not provide a clear response.

(U) transfer of authorities and when Secretary Austin would start receiving drops again. The JMA texted the PMA at 2:18 p.m., "The hospital asked that we limit people moving in and out to see [Secretary Austin] and [the Primary Physician] recommended delegation for another 24 [hours]."

(U) Ms. Magsamen texted LTG Clark and the JMA at 6:50 p.m., "[Deputy Secretary Hicks] is asking when [Secretary Austin] plans to take authorities back." The JMA responded to the text that according to the information that he received from the Primary Physician, Secretary Austin had "undergone a full battery of testing," would remain in the SICU, and would be moved to a different floor the next morning where he could take back his authorities. The JMA also texted them that the duration of Secretary Austin's hospital stay was still unknown and depended on the "results of his test today." Ms. Magsamen replied at 6:55 p.m. thanking the JMA for the update as that was helpful to keep Deputy Secretary Hicks informed. She texted again stating:

(U) I wish [Secretary Austin] were a normal person but he's the [Secretary of Defense]. We have a big institutional responsibility. He can't just go totally dark on his staff. ... Please pass to him that we can't keep his hospitalization a secret forever. It's kind of big deal for him to be in the [SICU]. And I'm worried sick[.]

(U) At 7:12 p.m., the JMA responded, "[The Primary Physician] said he is more resigned to the situation now but was not wanting to pass any info[rmation] at all at first." At 7:21 p.m. she responded, "I get it. Stubborn man." and "I just hope he is ok." Ms. Magsamen also texted the Scheduler at 7:56 p.m. stating, "He's not allowed to ghost us!" Ms. Magsamen told the Scheduler that she worried about Secretary Austin and it was "frustrating to not be in communication."

(U) At 10:45 p.m., PSO 2 texted the JMA, "... visits have been limited. I plan to channel through the nurse in the [morning of January 4]. He seems to be requesting his privacy." The JMA texted back, "I haven't talked to [Secretary Austin] at all."

(U) PSO 2 stated that Secretary Austin "did not want us in his room. So we did not go into his room and have face-to-face conversations. We channeled very deliberately through the nurse directly."

**(U) January 4, 2024**

(U) Secretary Austin stayed in his current room in the SICU due to logistical concerns.

**(U) Discussions Within Secretary Austin's Staff About His Medical Condition**

(U) Ms. Magsamen texted LTG Clark and the JMA at 7:53 a.m. that she needed to inform Gen Brown and Deputy Secretary Hicks "what is going on" with Secretary Austin. Additionally, from 7:53 a.m. until 1:56 p.m., there were several text messages among Secretary Austin's staff about his medical status at WRNMMC and resuming authorities.

(U) The JMA texted the Primary Physician that he spoke to Ms. Magsamen and that they were at the point where they needed to tell Gen Brown and Deputy Secretary Hicks about Secretary Austin's "situation." The JMA also told him, "A lot happening and decisions are starting to pile up so may have to open the aperture on the [sic] who knows what." The JMA texted Ms. Magsamen and LTG Clark that Secretary Austin was doing much better and would likely move to a different room in the afternoon and possibly "start to receive intel[ligence] drops."

(U) PSO 2 texted the JMA that the doctors were saying rest would expedite recovery and work would delay it. PSO 2 also texted:

(U) I am channeling through nurses and have not made entry to the room. I have advised [the] nurse to relay [to Secretary Austin that] I am here but will only go in at his request. If there is stuff that is pressing, I can use that as an excuse to "force" my way in but I am trying to avoid unwanted [contact].

(U) The JMA texted PSO 2 of the need to establish communications between Secretary Austin and either the JMA or Ms. Magsamen and asked for PSO 2's assessment of "how he [Secretary Austin] is doing." The JMA also highlighted in the message that in order for Secretary Austin to resume his authorities he would need to be able to receive classified information, and that Secretary Austin's current room did not meet the requirements for conducting classified communications.

(U) PSO 2 texted the JMA that a nurse told him that Secretary Austin wanted “zero contact right now unless it’s [the President of the United States].” The JMA texted Ms. Magsamen and LTG Clark that Secretary Austin wanted no contact unless it was the President and that the Primary Physician was on his way to WRNMMC to visit Secretary Austin. Ms. Magsamen texted LTG Clark and the JMA, “At some point, I do need to notify the President that [Secretary Austin] is out of commission.”<sup>51</sup> The JMA responded that when Secretary Austin was moved to the SICU that the WHMU was notified. Ms. Magsamen replied to LTG Clark and the JMA:

(U) Yeah[,] no one at the W[hite] H[ouse] is tracking[,] Med[ical] Unit is not notification. The [National Security Council] keeps asking me where he is. ... I just think if he remains in the [S]ICU and unavailable, we have to be sure the appropriate leadership is tracking. I’m very uncomfortable with where we are right now.<sup>52</sup>

(~~CU~~) Ms. Magsamen texted the JMA and LTG Clark that they had to make a [REDACTED] and she needed to know if Deputy Secretary Hicks had to be in “the seat” for that decision. She added, “I know it’s a balance between his privacy and recovery and national security but it’s hitting the breaking point soon.”

(U) Ms. Magsamen texted the JMA and asked if there was a notification procedure for the White House when transferring authorities and if the WHSR gets notified. The JMA responded to Ms. Magsamen that there was “... no actual procedure. We notify [Deputy Secretary Hicks, the Cables ESO], and all appropriate personnel. [The Cables ESO] will manage the calls after that.” Ms. Magsamen then replied, “Ok, [White House] is pretty pissed so I’m just managing. I’m taking ownership.” The JMA responded to Ms. Magsamen that this situation was “a nonstandard event[.] I think we can create a good procedure/ [Standard Operating Procedure] from this.” He also responded:

(U) Overall [m]a’am this highlights a requirement for clearly defined notification criteria that doesn’t exist or is not communicated. In the building we have a system in place for notification but throughout the interagency we need criteria that is directive not descriptive as to when notification is required. I understand everyone is mad Ma’am, but if there is no process there is no process foul ... .

(U) While in Puerto Rico, Deputy Secretary Hicks had a morning staff meeting with Ms. King, the Deputy Secretary of Defense Principal Military Assistant, and the Deputy Secretary of Defense Junior Military Assistant. During the meeting, Deputy

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<sup>51</sup> (U) No procedure was in place at this time to notify the White House.

<sup>52</sup> (U) Ms. Magsamen told us that “in [her] view” having the hospital notifying the WHMU did not constitute sufficient notification of the White House of the Secretary Austin’s condition.

(U) Secretary Hicks asked her staff to get “clarity” on Secretary Austin’s situation. According to Deputy Secretary Hicks, Secretary Austin’s staff told her staff that he was receiving morning drops and reading the Presidential Daily Brief (PDB).

(U) Ms. Magsamen texted Ms. King at 1:56 p.m. that Secretary Austin was in the hospital and she asked Ms. King to relay the message to Deputy Secretary Hicks, which Deputy Secretary Hicks confirmed to us was how and when she found out about Secretary Austin’s hospitalization. Ms. Magsamen also told us that she informed the Assistant to the President for National Security Affairs (APNSA) and the White House Chief of Staff that Secretary Austin was in the hospital. Ms. Magsamen told us that she discussed with the APNSA and the White House Chief of Staff “how to handle the situation, uhm in particular the notification of the public and putting out a statement as well as doing Congressional notifications ... .”<sup>53</sup> Ms. Magsamen also told us that she had no information at the time she notified the White House about Secretary Austin’s medical condition or when he would be able to resume his authorities.

### ***(U) Draft Press Release on Secretary Austin’s Hospitalization***

(U) Ms. Magsamen emailed Ms. King a draft public statement on January 4 at 6:31 p.m. about Secretary Austin’s hospitalization. The proposed draft statement read:

(U) On the evening of January 1, Secretary of Defense was admitted to Walter Reed Hospital for complications following a January [sic] 22 medical procedure. He was then transferred to the intensive care unit on Tuesday, January 2 for further monitoring, testing and evaluation. At that time and on the recommendation of medical advice, the Secretary’s operational authorities were transferred to the Deputy Secretary in accordance with standard DoD practice and medical advice. The Secretary is recovering well and is expected to resume his full authorities today.

(U) Ms. Magsamen sent an updated version including the sentence, “At no point was the Secretary’s life in danger.” At the request of Deputy Secretary Hicks, Ms. King emailed Ms. Magsamen and told her to send the draft statement to the Primary Physician to ensure the White House Doctor agreed with the Primary Physician on the characterization of Secretary Austin’s medical condition. The Primary Physician proposed they “refrain from issuing any public details unless absolutely required” and from making reference to the SICU as that “might trigger unnecessary press and public attention. That detail is of course part of his protected medical privacy.” The Primary Physician also provided a revised draft statement that excluded the sentence,

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<sup>53</sup> (U) Deputy Secretary Hicks’ testimony supports Ms. Magsamen’s testimony that Ms. Magsamen notified the APNSA and the White House on the afternoon of January 4, 2024.

(U) “At no point was the Secretary’s life in danger.” We describe the final version of the press release in the discussion of January 5 immediately below.

### D. (U) January 5 Through 15, 2024

(U) In this section, we discuss the events that occurred from January 5 through 15, including Secretary Austin’s resumption of functions and duties, medical procedures on January 6, 8, and 9, and discharge from WRNMMC.

*(U) Table 4. Chronology of Events Related to Secretary Austin’s Hospitalization from January 5 Through 15, 2024*

(U)	Date	Time	Medical and Non-Medical Events
	<b>Friday</b> Jan. 5	<b>7:00 p.m.</b>	Secretary Austin resumes his authorities.
	<b>Saturday</b> Jan. 6		Secretary Austin undergoes a medical procedure under moderate sedation for approximately 1 hour.
	<b>Monday</b> Jan. 8		Secretary Austin undergoes a medical procedure under moderate sedation for approximately half an hour.
	<b>Tuesday</b> Jan. 9		Secretary Austin arrives in the procedure room for a medical procedure.
		~ 4:12 p.m.	The room is cleared for Secretary Austin to take a call with the APNSA.
		4:13 - 4:16 p.m.	Secretary Austin takes a call with the APNSA.
			Approximately half an hour prior to the procedure, Secretary Austin receives an epidural.
			Secretary Austin undergoes a medical procedure for approximately 1 hour.
	<b>Monday</b> Jan. 15	<b>10:25 a.m.</b>	Secretary Austin departs from WRNMMC. <span style="float: right;">(U)</span>

(U) ~ Approximate time.

(U) Source: The DoD OIG.

### **(U) January 5, 2024**

(U) Secretary Austin required critical care services again on January 5. Doctors and medical staff continued to monitor and provide care to Secretary Austin throughout the day.

(U) Ms. Magsamen told us that she had not spoken with Secretary Austin since his arrival at WRNMMC. Ms. Magsamen told us, and our review of text messages confirmed, that she communicated with the Primary Physician and Mrs. Austin regarding Secretary Austin's medical status and whether or not Secretary Austin would be able to resume his authorities. Ms. Magsamen told us that the Primary Physician provided her only with "vague information" about Secretary Austin's health and told her that Secretary Austin had "a procedure," he was "improving," and "he's going to be fine."

(U) Ms. Magsamen contacted the Primary Physician, PSO 2, and Mrs. Austin separately, telling them that she needed to speak with Secretary Austin about the draft DoD press release regarding his hospitalization. Ms. Magsamen told us that it was important that Secretary Austin knew about the draft DoD press release because she did not want him to be surprised. Secretary Austin called Ms. Magsamen at 10:20 a.m., and they discussed the draft DoD press release, current DoD operations, and when he would resume his authorities.<sup>54</sup>

(U) Ms. Magsamen texted PSO 2 at 12:29 p.m. that the President wanted to speak with Secretary Austin and if it was not possible, she would "wave off" the White House. PSO 2 asked if it was regarding work or a cordial conversation. Ms. Magsamen responded that the President wanted to check on Secretary Austin. PSO 2 told us that he relayed the request to Secretary Austin through a folded note he gave the nurse. The nurse gave the note to Secretary Austin and returned the note to PSO 2 with Secretary Austin's response. PSO 2 texted Ms. Magsamen with Secretary Austin's response that he agreed to the call, but requested it to occur the next day. Secretary Austin told us that he did not recall the President wanting to speak with him that day and "if the President wants to speak with me, he will speak to me." Secretary Austin also told us, "The President can contact me any time he wants to contact me and he does so."

(U) Secretary Austin was moved into a private suite in the SICU around 4:00 p.m. This area included three rooms, providing a space for Secretary Austin's PSOs and PCs. According to PSO 2, this move was best for Secretary Austin from a logistical and security standpoint. Witnesses told us that this area provided Secretary Austin privacy and an ability to fully execute his functions and duties when he resumed his authorities.

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<sup>54</sup> (U) In response to our draft report, Secretary Austin submitted a memorandum, indicating in part: "To clarify, Ms. Magsamen had been trying to reach me prior to that point. When we connected, she asked me if I wanted to take back my authorities, and I agreed. If you ask Ms. Magsamen about this conversation, I believe she would concur that I agreed to take back my authorities after she asked me about doing so." We decided it was not necessary to re-interview Ms. Magsamen to clarify who first raised the issue about Secretary Austin taking back his authorities because there is no dispute that he made the decision to take back his authorities.



### ***(U) Notification About Secretary Austin's Hospitalization***

(U) Ms. Zier emailed Ms. Magsamen and others, including Ms. Rheanne Wirkkala, the Assistant Secretary of Defense for Legislative Affairs, a timeline that included the “[Office of the Secretary of Defense/Legislative Affairs] notifies appropriate congressional committees” at 4:45 p.m. Ms. Wirkkala responded, “I plan to call the [Committee on Armed Services, U.S. House of Representatives] and [United States Senate, Committee on Armed Services] [Staff Directors] as well as the House and Senate [National Security Advisors].”<sup>55</sup> Ms. Magsamen emailed the Under Secretaries of Defense and Service Secretaries at 4:51 p.m. to notify them about Secretary Austin's hospitalization. The email stated:

(U) Hope everyone had a wonderful holiday. I want to let you know that on the evening of January 1, the Secretary was admitted to Walter Reed National Military Medical Center for complications following a recent elective medical procedure. He is recovering well and is expecting to resume his full duties later today. At all times, the Deputy Secretary of Defense was prepared to act for and exercise the powers of the Secretary, if required.

(U) The Secretary thanks you all for your continued professionalism and focus during this busy period and he looks forward to seeing you in person soon. I would ask that you respect [his] and his family's privacy at this time.

(U) If you have any questions, please don't hesitate to reach out to me or to the Deputy Secretary.

(U) Ms. Zier met with Secretary Austin's immediate staff at about 5:00 p.m. and informed them that Secretary Austin was in the hospital and that a press release would be issued.

### ***(U) DoD January 5 Press Release***

(U) The DoD issued the following press release in collaboration with and approval from Secretary Austin, titled “Statement from Pentagon Press Secretary Maj Gen Pat Ryder on Secretary of Defense Austin.”<sup>56</sup>

(U) On the evening of January 1, Secretary of Defense Lloyd J. Austin III was admitted to Walter Reed National Military Medical Center for complications following a recent elective medical procedure. He is

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<sup>55</sup> (U) We found no record of congressional notifications made on January 5, 2024. However, based on the email and Ms. Zier's testimony we believe it was more likely than not that congressional notifications were made by phone.

<sup>56</sup> (U) DoD public statements did not include a timestamp of their release.

(U) recovering well and is expecting to resume his full duties today. At all times, the Deputy Secretary of Defense was prepared to act for and exercise the powers of the Secretary, if required.

### ***(U) Secretary Austin's Resumption of Authorities***

(U) The Cables ESO sent an email notification at 7:02 p.m. that Secretary Austin had resumed authorities.

(U) Ms. Magsamen told us that Secretary Austin decided to resume his authorities in consultation with his doctors. However, Secretary Austin told us that doctors were not involved in his decision to resume his authorities. Secretary Austin told us that in his assessment, he "was able to function," by which he indicated he meant that, "I could think. I could talk. I could make decisions," though he also told us he was "still recovering." He also told us that he was able to make decisions, provide recommendations, and provide guidance to his staff. Secretary Austin told us that having been the Secretary of Defense "for some 3 years," he felt he "was fully capable" of resuming his authorities. Ms. Magsamen told us that Secretary Austin "... doesn't like to give up his authorities ... ." and that she thought "... he was happy to have them back."

### ***(U) January 6, 2024***

(U) PSO 2 told us that the "Communications Team" established robust communications in a room next to Secretary Austin. PSO 2 stated that he told the nurse that because Secretary Austin was now working, he would go directly to Secretary Austin as necessary when Secretary Austin received a call that required immediate attention.

(U) The PMA and other witnesses told us that they combined Secretary Austin's drops for January 2 through 6. PC 1 told us the drop was "probably around [300] to 500 pages worth of stuff." PSO 2 told us that consistent with the prior procedure he handed the locked courier bag to the nurse, who he watched put on the "bed table" in Secretary Austin's room. Once Secretary Austin completed his review, the nurse returned the courier bag to PC 1.

(U) Ms. Magsamen told us that she spoke with Secretary Austin by phone on January 6 and updated him on recent events, discussed current operations, and talked about "where things were in terms of statements" and engagements with Congress. Ms. Magsamen told us that Secretary Austin was doing "... okay, and you know wanted to get updates." Additionally, Ms. Magsamen told us that President Biden wanted to check on Secretary Austin and they were trying to find a window for that call. Ms. Magsamen told us that due to Secretary Austin's medical condition she thought that Secretary Austin preferred to move the call to the "right."

(U) Ms. Magsamen emailed President Biden's scheduler to coordinate a call between President Biden and Secretary Austin and stated that Secretary Austin was "having

(U) some more tests and procedures this afternoon and would prefer to talk to the President in a day or two when he is more comfortable." We asked Secretary Austin about postponing the call with President Biden and he told us that if that happened then someone decided "... to make that decision. Nobody asked me. I -- I did not direct to my knowledge anybody to postpone a call with the President ... ."

(U) As Ms. Magsamen's email to the President's scheduler noted, Secretary Austin underwent a medical procedure on the afternoon of January 6 that lasted approximately 1 hour, including the insertion of drain tubes to reduce fluid buildup in his body. Secretary Austin told us he informed his doctors that he did not want to undergo general anesthesia or be intubated and that he did not want to be sedated to the extent that he would not be able to communicate or otherwise become incapacitated. Secretary Austin also told us that if he required general anesthesia, he would have transferred his authorities.

(U) Per standard practice, Secretary Austin received and acknowledged a consent form, which indicated that he would be undergoing the procedure with moderate sedation.<sup>57</sup> The form contained advice on a number of topics, including that he should not engage in activities requiring unimpaired physical and mental ability (e.g., driving) for 24 hours after the completion of the procedure, and he received similar advice verbally from medical personnel before the procedure as well. The form also indicated that conditions could arise that would call for a change in the sedation plan, up to and including a general anesthetic.

(U) We were told that Secretary Austin was initially reluctant to be sedated, but that he then understood the need to be sedated and consented. Secretary Austin did not receive general anesthesia during this procedure. He told us that he did not discuss with the doctors any contingencies in the event that the procedure required general anesthesia, as he had told them he did not want to receive sedation that would render him incapacitated or unable to communicate. Secretary Austin also told us that during and after the procedure he "could still function because I was functioning, so." Additionally, Secretary Austin told us that the doctors were talking to him throughout the procedure and he believed the doctors would attest that he was "fully functional."

(U) Later that evening, President Biden called Secretary Austin at 7:12 p.m. Secretary Austin told us that he spoke to the President, who "wanted to see how I was doing." Secretary Austin also spoke with Deputy Secretary Hicks at 7:38 p.m.

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<sup>57</sup> (U) According to the American Society of Anesthesiologists, "moderate sedation," also referred to as "conscious sedation," is "a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by tactile stimulation," such as physical touch.  
Source: American Society of Anesthesiologists, "Statement on Continuum of Depth of Sedation: Definition of General Anesthesia and Levels of Sedation/Analgesia," amended October 23, 2019.

***(U) DoD January 6 Press Release***

(U) The DoD issued the following press release, titled "Statement by Secretary of Defense Lloyd J. Austin III on Medical Care."

(U) I want to thank the amazing doctors and nursing staff at Walter Reed for the exceptional care they have delivered to me and for the personal warmth they have shown my family. I also appreciate all the outreach and well wishes from colleagues and friends. Charlene and I are very grateful for your support.

(U) I am very glad to be on the mend and look forward to returning to the Pentagon soon.

(U) I also understand the media concerns about transparency and I recognize I could have done a better job ensuring the public was appropriately informed. I commit to doing better.

(U) But this is important to say: this was my medical procedure, and I take full responsibility for my decisions about disclosure.<sup>58</sup>

***(U) January 7, 2024***

(U) On January 7, Secretary Austin spoke with Deputy Secretary Hicks and reviewed a drop while in his VIP suite in the SICU. He remained in the SICU for the remainder of his stay at WRNMMC for logistical reasons.

(U) Secretary Austin told us that he was having pain in his leg and issues with his abdomen on January 7, but was "okay" and "still functional."

***(U) DoD January 7 Press Release***

(U) The DoD issued the following press release, titled "Statement from Pentagon Press Secretary Maj Gen Pat Ryder on Secretary Austin's Health Status."

(U) Secretary of Defense Lloyd J. Austin III remains hospitalized at Walter Reed National Military Medical Center but is recovering well and in good spirits.

(U) Since resuming his duties on Friday evening [January 5], the Secretary has received operational updates and has provided necessary guidance to his team. He has full access to required secure

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<sup>58</sup> (U) Secretary Austin told us the phrase, "decisions about disclosure," referred to his prostatectomy.

(U) communications capabilities and continues to monitor DoD's day-to-day operations worldwide.

(U) The Secretary spoke to President Biden yesterday. He has also been in contact with Deputy Secretary of Defense Kathleen Hicks, Chairman of the Joint Chiefs of Staff Gen CQ Brown, Jr. and his senior staff.<sup>59</sup>

(U) While we do not have a specific date for his release at this time, we will continue to provide updates on the Secretary's status as they become available.

(U) Gen Brown told us that he did not recall what day he spoke to Secretary Austin while he was hospitalized but Gen Brown described Secretary Austin's demeanor as "probably a bit frustrated with everything that was going on because there was a lot of you know buzz in the news." Gen Brown told us that Secretary Austin was "fine" and "conversive" and that he did not sense that there were any issues with Secretary Austin "making decisions."

### ***(U) January 8, 2024***

(U) Secretary Austin texted Ms. Magsamen at 5:27 a.m. asking how she was feeling since she was home sick. They texted back and forth about how they were feeling, and Secretary Austin texted that his health was "trending in the right direction" but that he had some complications. Ms. Magsamen texted Secretary Austin at 6:23 a.m., "I think we need to have [WRNMMC] put out a statement today on your condition and prognosis." Secretary Austin responded, "I don't want my health to be a media circus. I agree that we need to provide an update. We need to sync up the various stakeholders."

(U) Secretary Austin underwent a medical procedure on January 8 that lasted approximately half an hour.<sup>60</sup> Per standard practice, Secretary Austin received and acknowledged a consent form, which indicated that he would be undergoing the procedure with moderate sedation. The form contained advice on a number of topics, including that he should not engage in activities requiring unimpaired physical and mental ability (e.g., driving) for 24 hours after the completion of the procedure, and he received similar advice verbally before the procedure as well. The form also indicated that conditions could arise that would call for a change in the sedation plan, up to and

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<sup>59</sup> (U) The Cables call log does not show any direct contact between Secretary Austin and Gen Brown from January 1 through 7, 2024.

<sup>60</sup> (U) As a result of Secretary Austin's condition, he had been unable to eat for a significant amount of time. Based on our review of available medical literature, including the October 2021 edition of the Journal of Psychosocial Nursing and Mental Health Services, one of the potential consequences of not eating for an extended period of time can be decreased cognitive abilities.

(U) including a general anesthetic. As with the January 6 procedure, Secretary Austin was not placed under general anesthesia.

(U) When we asked Secretary Austin about the January 8 procedure, Secretary Austin told us that he needed to remain functional as “that was the mandate ... and I’m confident that that happened ... .” Secretary Austin also told us that his doctors met his “requirement to remain ... functional.”

### ***(U) DoD January 8 Press Release***

(U) The DoD issued the following press release, titled “Statement from Pentagon Press Secretary Maj Gen Pat Ryder on Secretary Austin’s Health Status.”

(U) Secretary Austin currently remains hospitalized at Walter Reed National Military Medical Center and is in good condition. He is recovering well and in good spirits. He is no longer in the Intensive Care Unit and is recovering in a more private area of the hospital. He continues to experience discomfort but his prognosis is good.<sup>61</sup>

(U) Since resuming his duties on Friday evening, Secretary Austin has received operational updates and has provided necessary guidance. He remains in contact with his senior staff. He has full access to required secure communications capabilities and continues to monitor DoD’s day-to-day operations.

(U) Today, Secretary Austin spoke with Deputy Secretary of Defense Hicks and National Security Advisor Jake Sullivan during separate phone calls. He also took an operational update from the U.S. Central Command commander Gen. Erik Kurilla along with Deputy Secretary Hicks and the Chairman of the Joint Chiefs of Staff Gen CQ Brown, Jr.

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<sup>61</sup> (U) Secretary Austin actually remained in the SICU until January 15 due to logistical and privacy concerns.

### ***(U) Secretary Austin Working at WRNMMC***

(U) The JMA told us that he worked daily at WRNMMC from January 8, until Secretary Austin's release on January 15.<sup>62</sup> The JMA told us that Secretary Austin was "not good physically," but "good mentally" and that Secretary Austin was not happy about not being able to do his job from the office. The JMA also stated:

(U) ... he was ready to work. I don't remember a time where he was pushing work away. He was always asking for more uhm yeah. He's -- he's -- he's a machine when it comes to work and he -- he still would want more, and whatever drops I could provide or whatever information I could provide I did at the time you know when he was asking. So there -- I don't remember a time where he was saying, "No. Let's not do that now." Or, "Don't do that call." It was -- he was up for it all.

(U) Secretary Austin spoke with Deputy Secretary Hicks, Gen Brown, GEN Kurilla, LTG Clark, and Ms. Zier by phone at 2:01 p.m. for a U.S. Central Command update. Secretary Austin also had phone calls with the APNSA at 4:34 p.m., and the White House Chief of Staff at 6:44 p.m.

(U) We asked Secretary Austin if at any point in time he considered transferring his authorities on January 8 or 9. Secretary Austin told us, "If I thought I needed to do that, I -- I would have, but uh, I didn't ... need to do that so."

### ***(U) Request from the Government Accountability Office on Secretary of Defense Position Vacancy***

(U) A Government Accountability Office (GAO) representative sent an email on January 8 requesting the DoD submit information regarding the "recent temporary vacancy in the position of Secretary, Department of Defense" to the GAO no later than January 12.

### ***(U) January 9, 2024***

(U) Secretary Austin underwent another medical procedure on January 9. Secretary Austin told a treating medical provider that he wanted the procedure done without any kind of impairment to his "mental clarity" and did not want to have any medications that would "impact his judgment." Secretary Austin told us that his "requirement was that I remain functional ... I would not undergo general anesthesia ... ." He did not, in fact, undergo general anesthesia.

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<sup>62</sup> (U) The JMA told us that starting on January 8, 2024, he worked out of a "desktop [Sensitive Compartmented Information Facility]" located next to Secretary Austin's hospital room. PC 1 told us that they were able provide the necessary secure communication capabilities to Secretary Austin at WRNMMC. PC 1 explained to us that the main purpose of the PC is to provide secure communications for the Secretary of Defense anywhere in the world.

(U) According to the Anesthesiologist, Secretary Austin's procedure could be performed using an epidural, so that Secretary Austin could "stay cognitive" and "work through [his] schedule." Secretary Austin requested that his treating physicians inform him in advance if general anesthesia was necessary. Secretary Austin said that he would have to "make a notification to ... his superiors" if he required general anesthesia for the procedure.

(U) Secretary Austin received and signed an Informed Consent form consistent with WRNMMC policy prior to the procedure, which included information on the planned epidural anesthesia for the procedure. The form indicated in substance that the procedure was to be conducted using an epidural, though conditions might arise that would require a modification.

(U) The procedure was delayed and Secretary Austin resumed work, including participating in a PDB later that afternoon. Thereafter, Secretary Austin successfully underwent the procedure that lasted approximately 1 hour. Secretary Austin told us that he did not consider transferring authorities because he felt he could fully function.

### ***(U) Notification to the GAO***

(U) On January 9, the Washington Headquarters Services (WHS) notified the GAO of the January 2 through 5, 2024, vacancy in the Office of the Secretary of Defense and of Deputy Secretary Hicks' service as Acting Secretary of Defense.<sup>63</sup>

### ***(U) DoD January 9 Press Release***

(U) The DoD issued the following press release, titled "Statement from Walter Reed National Military Medical Center Officials on Secretary of Defense Lloyd J. Austin III's Medical Care."

(U) As part of Secretary Austin's routinely recommended health screening, he has undergone regular prostate-specific antigen (PSA) surveillance. Changes in his laboratory evaluation in early December 2023 identified prostate cancer which required treatment. On December 22, 2023, after consultation with his medical team, he was admitted to Walter Reed National Military Medical Center and underwent a minimally invasive surgical procedure called a prostatectomy to treat and cure prostate cancer. He was under general anesthesia during this procedure. Secretary Austin recovered

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<sup>63</sup> (U) DoDD 5105.76, "Planning for Presidential Transitions and the Transition of Political Appointees and Other Officials," Change 1 February 3, 2023, states that WHS is responsible for submitting required FVRA reports to the GAO.



(U) uneventfully from his surgery and returned home the next morning. His prostate cancer was detected early, and his prognosis is excellent.

(U) On January 1st, 2024, Secretary Austin was admitted to Walter Reed National Military Medical Center with complications from the December 22 procedure, including nausea with severe abdominal, hip, and leg pain. Initial evaluation revealed a urinary tract infection. On January 2, the decision was made to transfer him to the [S]ICU for close monitoring and a higher level of care. Further evaluation revealed abdominal fluid collections impairing the function of his small intestines. This resulted in the back up of his intestinal contents which was treated by placing a tube through his nose to drain his stomach. The abdominal fluid collections were drained by non-surgical drain placement. He has progressed steadily throughout his stay. His infection has cleared. He continues to make progress and we anticipate a full recovery although this can be a slow process. During this stay, Secretary Austin never lost consciousness and never underwent general anesthesia.

### ***(U) Letters from Congress***

(U) Leadership from the United States Senate, Committee on Armed Services and the Committee on Armed Services, U.S. House of Representatives wrote letters during the period of January 9 through 11 to Secretary Austin, Deputy Secretary Hicks, and Ms. Magsamen conveying their concerns about the failure to promptly notify appropriate officials in the DoD, White House, and Congress about Secretary Austin's absence and hospitalization.<sup>64</sup>

### ***(U) January 10 Through 15, 2024***

(U) Secretary Austin remained hospitalized at WRNMMC, continued to receive medical care, and continued to perform his functions and duties until his discharge from the hospital on January 15, 2024.

### ***(U) Secretary Austin's Work Schedule***

(U) Secretary Austin's staff continued to provide Secretary Austin direct support, prepare and deliver drops, provide operational updates, and coordinate his work schedule around his medical care. The Trauma Physician told us that medical staff worked with the JMA and the PSOs "so that our routine care did not interrupt any of his planned phone calls." Additionally, Secretary Austin maintained communications by

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<sup>64</sup> (U) The Chairman of the Committee on Armed Services, U.S. House of Representatives, sent Secretary Austin a follow-up letter on January 17, 2024, that stated many of his original questions remain unanswered and included new questions for the Secretary.

(U) phone with the President, Vice President, Chairman of the Joint Chiefs of Staff, APNSA, Members of Congress, and various other DoD and Military leaders. For example, on January 11 Secretary Austin monitored the Houthi strike, made several phone calls, and participated in a PDB.<sup>65</sup>

(U) Secretary Austin also received visits during this time. The White House National Security Communications Advisor visited Secretary Austin on January 11 and LTG Clark visited Secretary Austin on January 12.

***(U) Notification to the GAO and Congress***

(U) On January 10 the WHS notified the GAO of the December 22 through December 23 vacancy in the Office of the Secretary of Defense and of Deputy Secretary Hicks’ service as Acting Secretary of Defense.<sup>66</sup> Additionally, on January 11 Ms. Wirkkala provided FVRA notifications for the December 2023 and the January 2024 vacancies to both Houses of Congress.

***(U) DoD January 10 Through 14 Press Releases***

(U) The DoD issued the following press releases about Secretary Austin’s health status. Table 5 outlines the press releases, titled “Statement from Pentagon Press Secretary Maj Gen Pat Ryder on Secretary of Defense Lloyd J. Austin III’s Health Status,” issued from January 10 through 14.

*(U) Table 5. DoD Press Releases on Secretary Austin’s Status from January 10 Through 14, 2024*

<b>(U)</b> Date	Press Release
<b>Jan. 10</b>	Secretary Austin currently remains hospitalized at Walter Reed National Military Medical Center and is in good condition.  He’s in contact with his senior staff and has full access to required secure communications capabilities and continues to monitor DOD’s day-to-day operations worldwide.  The Secretary also took an operational update today from the U.S. Central Command commander [GEN Kurilla] and [Gen Brown].  We do not have a specific date for his release from the hospital at this time but will continue to provide daily updates until then.
<b>Jan. 12</b>	Secretary Austin continues to be hospitalized at Walter Reed National Military Medical Center and remains in good condition.

**(U)**

<sup>65</sup> (U) Secretary Austin released a statement on January 11, 2024, stating, “... the United States and the United Kingdom, with support from Australia, Bahrain, Canada, and Netherlands, conducted strikes against military targets in Houthi-controlled areas of Yemen” in response to Houthi attacks against U.S. and international vessels and commercial vessels transiting the Red Sea.

<sup>66</sup> (U) It is not clear why the notification to the GAO for the December 2023 vacancy occurred the day after the GAO notification for the January 2024 vacancy.

Events Related to the Secretary of Defense's Hospitalizations

<b>(U)</b> Date	Press Release
	<p>He's in contact with his senior staff and has full access to required secure communications capabilities and continues to monitor DOD's day-to-day operations worldwide.</p> <p>Secretary Austin was actively engaged this week in overseeing and directing the U.S. military's participation in last night's multinational strikes against military targets in Houthi-controlled areas of Yemen. At the President's direction, he gave the order yesterday to U.S. Central Command to execute the strikes and monitored the operation real-time with a full suite of secure communication capabilities. The Secretary's post-strike statement can be found here [at the link in the announcement].</p> <p>Today, Secretary Austin conducted phone calls with House Armed Services Committee Chairman Representative Mike Rogers, Senate Armed Services Committee Ranking Member Senator Roger Wicker, and House Armed Services Committee Ranking Member Representative Adam Smith.</p> <p>We do not have a specific date for Secretary Austin's release from the hospital at this time but will continue to provide daily updates until then.</p>
<b>Jan. 13</b>	<p>Secretary Austin remains hospitalized at Walter Reed National Military Medical Center and is in good condition.</p> <p>He's in contact with his senior staff and has full access to required secure communications capabilities and continues to monitor DOD's day-to-day operations worldwide.</p> <p>We do not have a specific date for Secretary Austin's release from the hospital at this time but will continue to provide daily updates until then.</p>
<b>Jan. 14</b>	<p>Secretary Austin remains hospitalized at Walter Reed National Military Medical Center and is in good condition.</p> <p>We have no updates to provide at this time regarding his release from the hospital but will continue to provide daily updates until then.</p>

(U)

(U) Source: Defense Media Activity - DoD Press Releases.

### ***(U) Secretary Austin's Discharge from WRNMMC***

(U) Secretary Austin was discharged from WRNMMC on January 15 at about 10:00 a.m. The DoD issued the following press release, titled "Secretary of Defense Lloyd J. Austin III Released from Hospital."

(U) Following consultation with medical staff, Secretary Austin was released from Walter Reed National Military Medical Center today.

(U) The Secretary continues to recover well and, on the advice of doctors, will recuperate and perform his duties remotely for a period of time before returning full-time to the Pentagon. He has full access to required secure communications capabilities.

(U) Dr. John Maddox, Trauma Medical Director, and Dr. Gregory Chesnut, Director of the Center for Prostate Disease Research at the Murtha Cancer Center, of Walter Reed National Military Medical Center, Bethesda, Maryland, provided the following statement regarding

(U) Secretary of Defense Lloyd J. Austin III's medical condition and treatment:

(U) Secretary Austin progressed well throughout his stay and his strength is rebounding. He underwent a series of medical tests and evaluations and received non-surgical care during his stay to address his medical needs, to include resolving some lingering leg pains. He was discharged home with planned physical therapy and regular follow up. The Secretary is expected to make a full recovery.

(U) Secretary Austin's prostate cancer was treated early and effectively, and his prognosis is excellent. He has no planned further treatment for his cancer other than regular post-prostatectomy surveillance.

(U) Prostate cancer is the most common cause of cancer among American men, and it impacts 1 in every 8 men – and 1 in every 6 African American men – during their lifetime. Early detection and treatment can result in an expected near-100% survival rate when treated with appropriate individualized care plans. Early screening is important for detection and treatment of prostate cancer and people should talk to their doctors to see what screening is appropriate for them.

(U) In addition, the DoD issued the following press release, titled “Statement From Secretary of Defense Lloyd J. Austin III on Hospital Release.”

(U) I'm grateful for the excellent care I received at Walter Reed National Military Medical Center and want to thank the outstanding doctors and nursing staff for their professionalism and superb support. I also am thankful and appreciative for all the well wishes I received for a speedy recovery.

(U) Now, as I continue to recuperate and perform my duties from home, I'm eager to fully recover and return as quickly as possible to the Pentagon.

(U) Secretary Austin continued to receive medical care at home after his discharge. However, we found that care was not documented in his Electronic Health Record (EHR).<sup>67</sup> Our review of Secretary Austin's medical records did not indicate that Secretary Austin received any medications from January 16 through February 10 that

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<sup>67</sup> (U) The EHR is further discussed in Section VI.

(U) would have impacted his cognitive state or otherwise impaired his ability to carry out his responsibilities and duties.

### E. (U) February 11 Through 13, 2024

(U) In this section, we discuss Secretary Austin’s hospitalization from February 11 through 13 and his transfer of functions and duties to Deputy Secretary Hicks during that period.

*(U) Table 6. Chronology of Events Related to Secretary Austin’s Hospitalization from February 11 Through 13, 2024*

(CUI)	Date	Time	Medical and Non-Medical Events
<b>Sunday Feb. 11</b>		~12:00 p.m.	PSO 1 arrives at Secretary Austin’s home [REDACTED].
		1:22 p.m.	Secretary Austin attempts to call Ms. Magsamen. Ms. Magsamen does not answer. At 1:25 p.m., Secretary Austin then calls Ms. Zier who answers the call.
		~1:31 p.m.	Secretary Austin notifies PSO 1 that he needs to go to WRNMMC.
		~2:30 p.m.	Secretary Austin departs his home for WRNMMC.
		2:55 p.m.	Secretary Austin arrives at WRNMMC.
		5:03 p.m.	The Cables ESO sends an email notification of a transfer of functions and duties to Deputy Secretary Hicks.
		5:51 p.m.	The Cables ESO sends an updated email notification of the transfer of functions and duties to Deputy Secretary Hicks.
		6:45 p.m.	Secretary Austin is transferred to the SICU.
<b>Monday Feb. 12</b>		9:17 a.m.	Secretary Austin undergoes procedures at WRNMMC and transfer of authorities remained in effect.
<b>Tuesday Feb. 13</b>		3:27 p.m.	Secretary Austin departs WRNMMC to return home.
		5:24 p.m.	The Cables ESO sends an email notification that Secretary Austin will resume his functions and duties at 5:00 p.m.

(CUI)

(U) ~ Approximate time.

(U) Source: The DoD OIG.

#### **(U) February 11, 2024**

(U) On the morning of February 11, Secretary Austin experienced symptoms that required a return to WRNMMC for medical care and treatment.

(U) Government cell phone records and the Cables call logs indicate that Secretary Austin attempted to call Ms. Magsamen at 1:22 p.m.; however, when Ms. Magsamen did not answer the call, Secretary Austin then requested the Cables ESO to connect him with Ms. Zier. The Cables ESO connected Secretary Austin to Ms. Zier at 1:25 p.m. Secretary Austin told us that when he spoke to Ms. Zier, he told her that “we needed to transfer the authority.”<sup>68</sup> Secretary Austin then stated, “there’s only one person I needed to talk to and that was the Deputy Chief of Staff. And once I did that ... she put everything in motion that needed to be put in motion.” Ms. Zier told us:

(U) [Secretary Austin] conveyed to me that he uh was in some pain and would be heading to the hospital. He wanted to advise me of that. He had tried to reach the Chief at that time still [Ms.] Magsamen and had not gotten through. ... What I recall him saying is that -- that, I know at that time he was not transferring his functions and duties but he wanted ... to be proactive about notifying that he was going to the hospital for, for the pain he was in.

(U) Ms. Zier told us that she interpreted Secretary Austin’s direction to mean that she needed to advise Deputy Secretary Hicks through her senior staff, Secretary Austin’s immediate staff, the White House, Public Affairs, and Legislative Affairs that Secretary Austin was going to WRNMMC. Ms. Zier told us that she began to implement Secretary Austin’s direction.

### ***(U) PSO 1 Arrival at Secretary Austin’s Home and Secretary Austin’s Condition***

(~~CU~~) PSO 1 told us that he arrived at Secretary Austin’s home around noon [REDACTED]. PSO 1 rang the doorbell but nobody answered, so he stood outside Secretary Austin’s home thinking that Secretary Austin needed a couple more minutes to come to the door. PSO 1 told us, “We sat outside his residence for maybe 35, 40 minutes until I received another phone call from the Secretary who said, ‘Hey [PSO 1], we’re going to go to [WRNMMC], uhm but we’re not going to need an ambulance. We’re going to uh take the motorcade over to [WRNMMC].’” According to the CID Case Activity Summary and PSO 1, Secretary Austin called PSO 1 at approximately 1:31 p.m.

(U) PSO 1 told us, “... I called the other team -- the other team members and said, ‘Hey, we’re going to go to [WRNMMC]. I need you guys to come to the residence now.’ So the chase and follow team came to the residence. The advanced team started moving to [WRNMMC] ...” PSO 1 told us that he entered Secretary Austin’s home and met Secretary Austin and one of his physicians in the basement. According to PSO 1, he and

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<sup>68</sup> (U) According to government cell phone records and the Cables call log, the 1:25 p.m. phone call is the only phone call Ms. Zier and Secretary Austin had on February 11, 2024.

(U) the physician had to assist Secretary Austin out of the basement. PSO 1 told us he asked Secretary Austin, "Do you want an ambulance at this time, sir?" and Secretary Austin replied "No." The physician told us that he contacted personnel at WRNMMC, and told them that Secretary Austin was going to WRNMMC.

(U) PSO 1 told us that he and the physician then assisted Secretary Austin out of the house and into the government vehicle. PC 2 sent a movement email notification stating, "[Code word for Secretary Austin] departed [Code word for Secretary Austin's home] en route Unscheduled event at [Code word for WRNMMC]" at 2:18 p.m. However, the CID Case Activity Summary shows that the departure to WRNMMC was delayed until approximately 2:30 p.m.

### ***(U) Notifications on Secretary Austin's Hospitalization***

(U) Secretary Austin's and Deputy Secretary Hicks' staffs were in communication regarding Secretary Austin's return to WRNMMC. Deputy Secretary Hicks told us that Ms. King relayed to her that Ms. Zier called and said that Secretary Austin's protective security detail, not an ambulance, was going to take Secretary Austin to WRNMMC.

(U) Government cell phone logs indicated that at 1:27 p.m. and 1:32 p.m., Secretary Austin continued to try to reach Ms. Magsamen after speaking with Ms. Zier. Ms. Magsamen told us that Secretary Austin called to tell her that he was going to the WRNMMC, after which she called the APNSA.<sup>69</sup> Additionally, Ms. Magsamen told us she notified Deputy Secretary Hicks' staff and the White House Chief of Staff. According to the Cables call log, Ms. Magsamen spoke with the APNSA at 1:46 p.m. Additionally, Ms. Magsamen sent a 1:44 p.m. email with the subject line "[Secretary of Defense] to Hospital" to Ms. Caroline Krass, General Counsel of the Department of Defense; Mr. Christopher Meagher, Assistant to the Secretary of Defense for Public Affairs; Maj Gen Ryder; Ms. Wirkkala; and others, including Secretary Austin's and Deputy Secretary Hicks' staffs. Ms. Magsamen wrote:

(U) Team: Secretary Austin is headed to the emergency room to deal with a bladder issue. Not clear yet whether we will need to effectuate a transfer of authorities but our team will be in touch. In meantime, we need to prepare appropriate [Public Affairs] and [Legislative Affairs] notifications.

(U) I've flagged for the White House.

(U) Ms. Wirkkala replied to Ms. Magsamen's email at 1:50 p.m. and provided draft congressional notification language. Ms. Zier replied at 2:09 p.m. reminding Ms. Wirkkala that Secretary Austin had not transferred his functions and duties at

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<sup>69</sup> (U) Secretary Austin told us that he did not speak to anyone else on his staff after talking to Ms. Zier.

(U) this time, but they were putting into motion all pre-notifications to prepare for such a transfer.

(U) At 2:35 p.m. Maj Gen Ryder requested that Secretary Austin's front office, Deputy Secretary Hicks' front office, and the DoD Offices of General Counsel and Legislative Affairs review and provide feedback to a draft Public Affairs statement and anticipated questions and answers. The draft statement said that Secretary Austin was taken to the "Emergency Room" at WRNMMC at approximately 2:20 p.m. by his protective security detail for an emergent bladder issue. Ms. Zier replied to the email exchange at 2:53 p.m. and provided initial edits to the draft statement and questions and answers. She additionally updated the questions and answers with, "[Deputy Secretary Hicks] and [Chairman of the Joint Chiefs of Staff] were informed before Secretary Austin departed for the hospital."

### ***(U) Secretary Austin Arrives at WRNMMC***

(U) Secretary Austin arrived at WRNMMC at 2:55 p.m. The JMA told us he met Secretary Austin at WRNMMC as Secretary Austin got out of the vehicle.<sup>70</sup> Secretary Austin acknowledged to us that he was in "a very, very serious condition." He indicated that, while at WRNMMC, he "contacted the, initially the Chief of Staff, couldn't get through to her. I contacted the Deputy Chief of Staff and told them that we should -- we should uhm transfer authorities."<sup>71</sup>

### ***(U) DoD February 11 Press Release on Secretary Austin's Transportation to WRNMMC***

(U) Maj Gen Ryder replied to the earlier email exchange and provided an updated press release statement at 3:10 p.m. Ms. King emailed at 3:54 p.m. and wrote that Deputy Secretary Hicks was "good with the statement." Ms. Wirkkala emailed at 3:56 p.m. and wrote that she and her deputy were "standing by for [Secretary of Defense Front Office] to give" her the "go ahead to call the Hill." Ms. Zier replied to the email exchange at 4:00 p.m. and told Ms. Wirkkala and Maj Gen Ryder that they have the "green light." Ms. Zier added that they would "move out on the press release" at 4:15 p.m.

(U) The DoD issued the following press release, titled "Statement from Pentagon Press Secretary Maj Gen Pat Ryder on Secretary of Defense Lloyd J. Austin III's Health Status."

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<sup>70</sup> (U) Ms. Zier told us that she attempted to call the JMA to inform him that Secretary Austin was going to WRNMMC. Additionally, Ms. Zier told us that the PMA was attempting to get in contact with the JMA. According to government cell phone records, the PMA and JMA spoke by phone at 1:38 p.m.

<sup>71</sup> (U) According to the Cables call log, Secretary Austin called Ms. Zier at 1:25 p.m. There is no evidence to indicate that he made a call to Ms. Zier after he arrived at WRNMMC.



(U) Today, at approximately 2:20 [p.m.], Secretary of Defense Lloyd J. Austin III was transported by his security detail to Walter Reed National Military Medical Center to be seen for symptoms suggesting an emergent bladder issue. The Deputy Secretary of Defense and the Chairman of the Joint Chiefs of Staff have been notified. Additionally, White House and Congressional notifications have occurred.

(U) At this time, the Secretary is retaining the functions and duties of his office. The Deputy Secretary is prepared to assume the functions and duties of the Secretary of Defense, if required. Secretary Austin traveled to the hospital with the unclassified and classified communications systems necessary to perform his duties.

(U) We will provide an update on Secretary Austin's condition as soon as possible.

(U) Maj Gen Ryder replied to the earlier email exchange at 4:26 p.m., stating, "We've sent out the press release to media, and it will be posted to Defense.gov soon." Maj Gen Ryder also recommended that they post another statement later that evening.

### ***(U) Notifications of AFD***

(U) According to the Cables call log, at 4:16 p.m. the JMA requested a conference call with Ms. Zier, the PMA, LTG Clark, and Ms. Magsamen that lasted to 4:30 p.m. The Cables call log indicated the call ended at 4:30 p.m. Ms. Zier added, "... it appear[ed] by this point that the Secretary will need to transfer his functions and duties." Ms. Zier stated that DoDD 3020.53 was still under development, and "what [they] were operating under were improved templates for notification" and using "a patchwork of documents" to ensure they were doing the appropriate notifications. Concerning the call, Ms. Zier told us:

~~(U)~~ ... so part of this [call] was a discussion of what the procedures needed to be in -- in a -- in a transfer of authorities and duties, which at that time was also not fully the term we had landed on, just to be clear about where we were in this story. There was still among the -- the others on this call a misunderstanding of how the authorities worked. They were still discussing it as transferring the authorities for [REDACTED], but among the group there was still not a full appreciation that when there's a transfer it is of all the functions and duties, and the Deputy or whomever the recipient is becomes the Acting Secretary of Defense. So the -- my clearest memory of this call was me or -- me sharing that with this group so that they were very clear on what the transfer which I -- I -- I recall we were still calling a TOA, a

(~~CU~~) transfer of authorities. We hadn't fully adopted or landed on the new terminology. So, that's what this call was about. It was not about whether the Secretary should do it. That wouldn't have been our call ... . That would be the Secretary with -- under consultation with his doctors.

(~~CU~~) Ms. Zier told us that shortly after the call she was informed through a text message that there would be a transfer of functions and duties to the Deputy Secretary. The JMA told us that he asked Secretary Austin, "Sir, do you want to transfer your authorities? Sir, understand, ... it's not just [REDACTED]. This will be in totality as per the changes set forth uh from the Chief of Staff." The JMA stated that Secretary Austin thought about it for a "couple of minutes and knowing that he was going into a [medical] procedure" again, and Secretary Austin said, "Yes, transfer the authorities."

(U) Ms. Zier replied to the earlier email exchange informing recipients at 4:46 p.m. that Secretary Austin transferred his functions and duties effective immediately to Deputy Secretary Hicks for the next 24 hours. Additionally, she recommended an interim update in public affairs and legislative affairs channels. Furthermore, according to the Cables call log, the APNSA called and spoke with Deputy Secretary Hicks at 4:54 p.m.

(U) The Cables ESO sent two emails to a list of individuals on February 11, notifying the email recipients of the AFD.

(U) The Cables ESO sent the first email at 5:03 p.m. that stated that Secretary Austin had transferred the functions and duties of the office to the Deputy Secretary of Defense due to the Secretary's need to undergo medical treatment. Specifically, the email stated:

(S) [REDACTED]

(S) [REDACTED]  
[REDACTED]  
[REDACTED]

(S) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>72</sup>

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<sup>72</sup> (S) [REDACTED]  
[REDACTED]  
[REDACTED].

(U) The Cables ESO sent the second email at 5:51 p.m. which indicated that, consistent with 10 U.S.C. § 132, the Deputy Secretary of Defense assumed the functions and duties as the Acting Secretary of Defense because Secretary Austin had determined that he would be unable to perform his function and duties. Specifically, the email stated:

(S) [REDACTED]  
[REDACTED]

(S) [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].<sup>73</sup>

(S) [REDACTED]

- (S) [REDACTED]
- (S) [REDACTED]
- (S) [REDACTED],
- (S) [REDACTED]
- (S) [REDACTED]
- (S) [REDACTED]
- (S) [REDACTED]
- (S) [REDACTED]

(U) Ms. Zier told us:

(CUI) [there] were glitches in our templates, but also people were using parts of their templates from before. As you probably recall from January -- from December and early-January notifications, the terminology around notification of [REDACTED] authority related to the misunderstanding, that I should be clear, was common across the

<sup>73</sup> (U) The PMA told us that the DoD General Counsel requested an update to the first AFD email notification using the template from the January 12, 2024 memorandum. Therefore, a second email was sent out reflecting the updates.

~~(CUI)~~ Department. It was a widespread misunderstanding of how the authorities work.

(U) Secretary Austin told us that by February 11, 2024, the DoD had adjusted the notification process to ensure that proper notifications were made to the appropriate personnel. Secretary Austin told us that the notification on February 11, "happened exactly like it should have."

(U) Secretary Austin was transferred to the SICU at 6:45 p.m. Secretary Austin spoke with Deputy Secretary Hicks at 7:41 p.m., and Deputy Secretary Hicks told us that Secretary Austin said, "I'm feeling good, ... I have someone right outside the door," and that "we're going to [transfer authorities] to be you know super -- super cautious."

### ***(U) Other DoD February 11 Press Releases***

(U) The DoD issued two additional press releases on February 11 regarding Secretary Austin's health status. The DoD issued the following press release, titled "Statement from Pentagon Press Secretary Maj Gen Pat Ryder on Secretary of Defense Lloyd J. Austin III's Health Status."

(U) Earlier today, Secretary of Defense Lloyd J. Austin III was transported by his security detail to Walter Reed National Military Medical Center to be seen for symptoms suggesting an emergent bladder issue. He is still at the hospital and receiving treatment. At approximately 4:55 [p.m.] today, Secretary Austin transferred the functions and duties of the office of the Secretary of Defense to Deputy Secretary of Defense Kathleen Hicks. The Deputy Secretary of Defense has assumed the functions and duties. The Chairman of the Joint Chiefs of Staff, the White House, and Congress have been notified.

(U) We will provide additional updates on Secretary Austin's condition as soon as possible.

(U) Additionally, the DoD issued the following press release, titled "Statement from Walter Reed Military Medical Center Officials on Secretary of Defense Lloyd J. Austin III's Health Status."

(U) Dr. John Maddox, Trauma Medical Director, and Dr. Gregory Chesnut, Center for Prostate Disease Research of the Murtha Cancer Center Director, at Walter Reed National Military Medical Center, Bethesda, Maryland, provided the following statement regarding Secretary of Defense Lloyd J. Austin III's health status:

(U) Earlier today, Secretary of Defense Lloyd J. Austin III was transported by his security detail to Walter Reed National Military Medical Center to be seen for symptoms suggesting an emergent bladder issue. Tonight, after a series of tests and evaluations, the Secretary was admitted into the critical care unit at Walter Reed National Military Medical Center for supportive care and close monitoring.

(U) At this time, it is not clear how long Secretary Austin will remain hospitalized. The current bladder issue is not expected to change his anticipated full recovery. His cancer prognosis remains excellent. Updates on the Secretary's condition will be provided as soon as possible.

### ***(U) February 12, 2024***

(U) Secretary Austin underwent multiple medical procedures. He was under general anesthesia for these procedures on February 12.

(U) In addition, on February 12, the WHS notified the GAO of the February 11 vacancy in the Office of the Secretary of Defense and of Deputy Secretary Hicks' serving as the Acting Secretary of Defense.<sup>74</sup> Additionally, Ms. Wirkkala provided FVRA notification for the February 11 vacancy to both houses of Congress on February 12.

### ***(U) February 13, 2024***

#### ***(U) Secretary Austin's Discharge from WRNMMC***

(U) Secretary Austin was discharged from WRNMMC on February 13. According to the Cables ESO movement log, Secretary Austin departed WRNMMC at 3:27 p.m. on February 13.

(U) On February 13, at 5:24 p.m., the Cables ESO sent an email notification that Secretary Austin resumed his functions and duties at 5:00 p.m.

#### ***(U) DoD February 13 Press Release***

(U) The DoD issued the following press release, titled "Secretary of Defense Lloyd J. Austin III Released from Hospital."

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<sup>74</sup> (U) On March 11, 2024, the WHS submitted the GAO form reporting that the vacancy in the Office of the Secretary of Defense and of Deputy Secretary Hicks' service as Acting Secretary of Defense beginning February 11, and ending on February 13, 2024.

(U) Following consultation with medical staff, Secretary Austin was released from Walter Reed National Military Medical Center today at approximately 3:30 p.m.

(U) He is recovering well and resumed his full functions and duties today at 5 p.m. The Deputy Secretary of Defense, Chairman of the Joint Chiefs of Staff, the White House, and Congress have been notified.

(U) On the advice of his doctors, Secretary Austin will recuperate and perform his duties remotely from home for a period before returning to work at the Pentagon later this week. He has full access to the unclassified and classified communications systems necessary to perform his duties.

(U) Dr. John Maddox, Trauma Medical Director, and Dr. Gregory Chesnut, Director of the Center for Prostate Disease Research at the Murtha Cancer Center, of Walter Reed National Military Medical Center, Bethesda, Maryland, provided the following statement regarding Secretary Austin's medical condition and treatment:

(U) Secretary Austin was admitted to Walter Reed National Military Medical Center on Feb. 11 with discomfort and concern from a bladder issue related to his December 2023 prostate cancer surgery. His condition indicated a need for close monitoring by the critical care team and supportive care. His diagnostic evaluation identified the cause for his bladder issue and it was corrected with non-surgical procedures on Feb. 12.

(U) He remained in good condition throughout and no longer needed critical care monitoring on the morning of Feb. 13. He progressed well and was discharged to his home today. He is anticipated to continue his full recovery.

(U) The bladder issue was not related to his cancer diagnosis and will have no effect on his excellent cancer prognosis.

## **F. (U) Findings and Conclusions Regarding the Secretary of Defense's Hospitalizations**

(U) We found that a number of factors came together to impact the timing and execution of decisions to transfer the responsibilities and duties of the Secretary of Defense in connection with Secretary Austin's hospitalizations in December 2023 and January and February 2024. While the DoD made significant progress as a result of its

(U) 30-Day Review following the initial January hospitalizations and it put in place procedures to regularize the transfer process, our detailed review of the facts and circumstances surrounding these events indicates that additional improvements are required, which forms the basis for our recommendations in Section IV.

(U) As an initial matter, Secretary Austin's strong desire for privacy about his medical conditions is a thread that runs through all the events that we reviewed, including in his public statements about his hospitalization. For example, in a press conference on February 1, 2024, Secretary Austin stated, "... my first instinct was to keep [my prostate cancer] private. I don't think it's news that I'm a pretty private guy."

(U) Secretary Austin's desire for privacy regarding personal matters was well known within his staff and affected many of the events at issue in various ways.

Secretary Austin kept information about his medical treatment on December 22, private from Deputy Secretary Hicks, Ms. Magsamen, Gen Brown, LTG Clark, and nearly all of his staff. Secretary Austin told only PSO 2 and the JMA that he was going to receive medical care at WRNMMC, and only the doctors knew that he was receiving treatment for prostate cancer and under general anesthesia.

(U) A staff member described Secretary Austin as "deadly serious" about keeping his medical matters private. Not only did Secretary Austin not tell Deputy Secretary Hicks or his senior staff about his medical condition or appointments, he specifically told one junior staff member "if anyone had any questions they're more than welcome to ask [me] directly," an admonition not likely to foster further inquiry. Additionally, in a text message between PSO 1 and the JMA about a medical appointment at WRNMMC scheduled for December 28, it was clear that Secretary Austin limited information about his medical appointments and told PSO 1 not to text anyone about going to WRNMMC.

(U) Of the members of Secretary Austin's staff, only his JMA and his protective security detail knew that he was at WRNMMC on January 1. Even after Ms. Magsamen and LTG Clark were informed of the need to transfer Secretary Austin's authorities on January 2 and that he was in the hospital, no one on his staff knew the seriousness of his condition. This lack of information was exacerbated when Secretary Austin's condition became worse and he was transferred to the SICU, because his staff had no effective means to communicate with him directly. Ms. Magsamen and other members of his staff attempted to contact him indirectly through his medical providers to seek information about his condition and guidance about notifying the White House and the Deputy Secretary, but Secretary Austin provided no guidance and wanted "zero contact" unless it was the President.

(U) After news of Secretary Austin's hospitalization became known, the DoD issued a brief press release on January 5, followed by another on January 6, in which Secretary Austin stated:

(U) I recognize I could have done a better job ensuring the public was appropriately informed. I commit to doing better. But this is important to say: this was my medical procedure, and I take full responsibility for my decisions about disclosure.

(U) We found that Secretary Austin's insistence on privacy regarding his medical condition was coupled with his desire to avoid publicity about his condition. Specifically, in a January 8 text message to Ms. Magsamen, Secretary Austin wrote, "I don't want my health to be a media circus." However, it also appears that Secretary Austin came to terms with the need for greater transparency regarding his hospitalizations. For example, in his February 1, 2024 press conference, Secretary Austin stated, "Taking this kind of job means losing some of the privacy that most of us expect."

(U) Additionally, and not surprisingly given his more than 4 decades of Military Service, Secretary Austin was very reluctant to give up his authorities and continued working while receiving treatment in the hospital. He repeatedly told his doctors that he did not want to receive any treatment that would impact his ability to carry out his responsibilities and duties. Several witnesses testified to this effect, as did Secretary Austin himself. For example, the Anesthesiologist told us that for the January 9 procedure, Secretary Austin told him he wanted the procedure done without any kind of impairment to his "mental clarity" and did not want to have any medications that would "impact his judgment."

(U) Overall, we found no clear evidence that Secretary Austin experienced severe cognitive impairments during the time at WRNMMC when he exercised his authorities as Secretary of Defense. Secretary Austin told us that his "requirement was that [he] remain functional ... [he] would not undergo general anesthesia ... ." Secretary Austin gave instructions to the effect that he did not wish to receive treatment that would impair his abilities to carry out his responsibilities and duties. However, we believe that the combined impact of his condition and the complications from the December 22 procedure, and the effects of his illness and treatment, particularly including his procedures on January 6 and 8, should at least have prompted consideration by Secretary Austin and others as to whether his authorities should have been transferred to Deputy Secretary Hicks during periods of his hospitalization when he retained or resumed his authorities.

(U) In conclusion, we neither make nor suggest a medical judgment as to whether the Secretary was, in fact, "medically incapacitated" or otherwise unable to carry out the duties and responsibilities of his position during those periods; however, it would have been prudent to have considered the issue at the time in question.



(U) By contrast, when Secretary Austin was hospitalized again on February 11, 2024, he transferred his authorities to Deputy Secretary Hicks based on his medical condition, even though he did not undergo general anesthesia until the following day. Additionally, while outside the period of our review, Secretary Austin again transferred his authorities to Deputy Secretary Hicks when he underwent an outpatient procedure in May 2024.

(U) We believe that some of the issues highlighted by the events of January 6 and 8 have been addressed through the evolution of the process demonstrated by the February 11 transfer of authorities and through updated guidance following the recommendations of the DoD 30-Day Review and the publishing of DoDD 3020.53. However, we believe that these DoD processes require additional improvement, and we present our recommendations in that regard in Section IV.

(U) In the following paragraphs, we provide additional information about our findings and conclusions regarding Secretary Austin's hospitalizations in December 2023, January 2024, and February 2024.

### ***(U) Prior Condition***

(U) Before December 2023, Secretary Austin had a prior condition for which he received regular monitoring. Based on our analysis of witness statements, medical records, and electronic messages related to Secretary Austin's cancer diagnosis, we make the following findings and conclusions.

- (U) In late 2023, following evaluation by his treating physicians of the results of the ongoing monitoring of his condition and based on advice provided to him, Secretary Austin decided in early December to have the prostatectomy.
- (U) On December 22, 2023, Secretary Austin underwent a prostatectomy at WRNMMC.
- (U) During testimony before the HASC, Secretary Austin was asked when he "first received [his] diagnosis" and he responded "early December." We found that this response is consistent with the explanations from Secretary Austin's medical providers and Secretary Austin himself.

### ***(U) December 2023 Hospitalization***

(U) Secretary Austin's desire for privacy ensured that only his doctors knew about his medical diagnosis and prostatectomy. He told only his PSOs and his JMA that he was having a medical procedure at WRNMMC on December 22, 2023, and did not inform them that he was having a prostatectomy.

(U) Based on our analysis of witness statements, medical records, and electronic messages related to the events in December 2023, we make the following findings and conclusions.

- (U) Secretary Austin directed the JMA on December 14, to schedule a transfer of his authorities to Deputy Secretary Hicks for December 22 and December 23.
- (U) In coordination with the Primary Physician, the JMA scheduled the transfer to begin at 5:00 a.m. on December 22 (the day of the medical procedure) and last until 5:00 p.m. on December 23, so that the transfer would include a period of recuperation.
- (U) Secretary Austin instructed the JMA to keep the knowledge of his “medical matters” private.
- (U) Secretary Austin did not inform Deputy Secretary Hicks, Ms. Magsamen, Gen Brown, LTG Clark, or anyone else on his staff that he was having a medical procedure under general anesthesia.
- ~~(CUI)~~ The message announcing the transfer of ██████████ authorities indicated that this was an unscheduled event, stated that Secretary Austin was out of communication, and did not identify Deputy Secretary Hicks as the Acting Secretary.<sup>75</sup>

### ***(U) January 1 Through 4, 2024 Hospitalization***

(U) Secretary Austin experienced “severe” pain on the afternoon of January 1 and was transported by ambulance to WRNMMC, where he was admitted. Secretary Austin told us that he was not concerned about transferring his authorities on January 1, and that he was “fully able to function.” According to Secretary Austin, being “able to function” meant that, “[He] could think. [He] could talk. [He] could make decisions.”

(U) Due to Secretary Austin’s condition, he was transferred to the SICU on January 2. Shortly thereafter, LTG Clark, the PMA, and the JMA initiated a transfer of authorities to Deputy Secretary Hicks based on the inability to provide secure communications to Secretary Austin. Secretary Austin remained in the SICU through January 15, 2024.

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<sup>75</sup> (U) We discuss notification requirements regarding the FVRA and NSPM-32 later in Section IV and in Section V.

(U) Our analysis of witness statements, medical records, and near-contemporaneous texts sent from January 1 through 4 lead us to the following findings and conclusions.

- (U) Although Secretary Austin told us that he was “fully able to function” when an ambulance was called to take him to WRNMMC, he was in severe pain and required an ambulance for transportation to WRNMMC.
- (U) The accounts provided by Secretary Austin and PSO 1 were inconsistent as to whether Secretary Austin requested the ambulance not use lights and sirens and whether Secretary Austin directed PSO 1 not to notify anyone about his medical situation. In light of PSO 1’s near-contemporaneous statements and texts to others about what Secretary Austin told him, as well as the potential impact of Secretary Austin’s condition on his own perception and recollection of the events in question, we believe the weight of the evidence supports the conclusion that Secretary Austin requested that the ambulance not use lights and sirens and that PSO 1 not notify anyone about his medical situation.
- (U) PSO 1 said that if Secretary Austin had not requested no lights and no sirens, PSO 1 probably would have asked for no lights and sirens due to “security concerns.” PSO 1 told us that he would have notified the JMA, LTG Clark, or Ms. Magsamen; however, because Secretary Austin told him not to “tell anybody,” he kept the medical event as “private[] as possible.”
- (U) When Secretary Austin arrived at WRNMMC on January 1, Secretary Austin believed that he would be released from the hospital within a “couple of hours” with medication.
- (U) Secretary Austin did not direct a transfer of his authorities to Deputy Secretary Hicks on January 1, 2024. PSO 1 told us that he asked Secretary Austin whether he wanted anyone notified and whether he wanted to transfer his authorities. According to PSO 1, Secretary Austin responded that he was not transferring authorities and asked PSO 1 to notify the Scheduler to cancel his meetings for the next 48 hours.
- (U) We found no evidence to indicate that Secretary Austin directed PSO 1 or anyone else to notify Deputy Secretary Hicks, Ms. Magsamen, LTG Clark, or anyone else about his January 1 hospitalization.
- (U) According to a contemporaneous memorandum prepared by the Primary Physician, Secretary Austin was experiencing complications at about 2:00 p.m. on January 2, 2024 “and was unlikely to be able to devote full attention to any military contingencies that might arise today.”

- ~~(CUI)~~ Shortly thereafter, Secretary Austin's MAs initiated a transfer of his authorities to Deputy Secretary Hicks on January 2, at 2:22 p.m., when Secretary Austin was transferred to the SICU on the basis that he no longer had access to secure communications. According to Secretary Austin, Mrs. Austin informed him of the transfer later that day. The transfer of authority email stated that Secretary Austin was out of communications, and that Deputy Secretary Hicks was the primary for [REDACTED], but it did not state that Deputy Secretary Hicks was serving as the Acting Secretary or given any indication that Secretary Austin was hospitalized. When informed of the transfer, Deputy Secretary Hicks was also informed by her staff that this transfer would last [REDACTED].
- (U) Shortly after the transfer of authorities to Deputy Secretary Hicks on January 2, LTG Clark called Ms. Magsamen and Gen Brown and informed them about the transfer of authorities and that Secretary Austin was in the hospital.
- (U) Secretary Austin told us that his staff could have communicated with him by passing him a note through the doctor stating that they needed to see him and could have entered his hospital room with the doctor's permission. However, Secretary Austin's staff repeatedly sought information and details about his condition. Medical personnel, aware of limitations on sharing PHI under HIPAA, provided his staff with very little information that they could use to assess his situation and when he might be released.
- (U) Secretary Austin's staff attempted to obtain, but were not successful in getting additional information about his medical condition or guidance about informing the White House or Deputy Secretary Hicks. Ms. Magsamen, who herself was at home sick with a flu that later turned into pneumonia, nevertheless repeatedly sought information about Secretary Austin's status and expressed frustration to others on his staff about not having communications with him or more information about his condition. She shared her frustrations in messages with LTG Clark and the JMA, including the following statement.

(U) I wish [Secretary Austin] were a normal person but he's the [Secretary of Defense]. We have a big institutional responsibility. He can't just go totally dark on his staff. ... Please pass to him that we can't keep his hospitalization a secret forever. It's kind of big deal for him to be in the [SICU]. ... And I'm worried sick[.]

(U) The JMA texted a response, "[The Primary Physician] said he is more resigned to the situation now but was not wanting to pass any info[r]mation] at all at first."

- (U) On January 4, the PSO 2 texted the JMA stating that a nurse said Secretary Austin wanted “zero contact right now unless it’s POTUS [President of the United States].”
- (U) Given the delays in obtaining any substantive information about Secretary Austin’s medical condition, notifications that Secretary Austin was in the hospital were not made to Deputy Secretary Hicks, the APNSA, and the White House Chief of Staff about Secretary Austin’s hospitalization until January 4.<sup>76</sup>
- (U) We were unable to find an applicable standard that required Ms. Magsamen, LTG Clark, or others below them, to report Secretary Austin’s hospitalization when neither knew the seriousness of his condition and the staff was not successful in obtaining additional information about his condition.
- (U) In the afternoon of January 4, Ms. Magsamen notified Ms. King, who in turn notified Deputy Secretary Hicks that Secretary Austin was hospitalized at WRNMMC. Ms. Magsamen also notified the APNSA and the White House Chief of Staff that Secretary Austin was hospitalized, and they discussed notifications to Congress and the public.

### ***(U) January 5 Through 15, 2024 Hospitalization***

(U) Secretary Austin continued to require critical care services on January 5, and remained in the SICU. Ms. Magsamen had not spoken to Secretary Austin since his arrival at WRNMMC and finally received a call from him at 10:20 a.m. on January 5. They discussed a draft DoD press release about his hospitalization, current DoD operations, and when he would resume his authorities.

(U) On the afternoon of January 5, Secretary Austin was moved into a private suite in the SICU where he could carry out his functions and duties. Ms. Wirkkala planned to notify Congress by phone about Secretary Austin’s hospitalization at 4:45 p.m., shortly before the press release. Secretary Austin resumed his authorities at 7:00 p.m.

(U) Secretary Austin told us that he “was adamant” to the doctors about not being sedated and being able to function “throughout the entire stay in the hospital.” However, as discussed below, we believe that Secretary Austin’s condition and treatment provided sufficient notice to warrant consideration as to whether Secretary Austin’s authorities should have been transferred to Deputy Secretary Hicks during or in connection with the January 6 and 8 procedures.

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<sup>76</sup> (U) We discuss notification requirements regarding the FVRA and NSPM-32 later in this section and in Section IV.

(U) Our analysis of witness statements, medical records, and electronic messages sent from January 5 through 15 led us to the following findings and conclusions.

- (U) Secretary Austin told us that he “remained able to function” and that if he were to be intubated or unconscious “that puts us in another category there.” Additionally, he defined “incapacitation” as “not being able to function, unconscious, not being able to mentally function.”
- (U) Secretary Austin told his medical providers that he did not want to have medications that would affect his ability to perform his duties.
- (U) On January 6, Secretary Austin underwent a medical procedure under moderate sedation for about an hour.
- (U) As a result of Secretary Austin’s condition, he had been unable to eat for a significant amount of time, one of the potential consequences of which can be decreased cognitive abilities. On January 8, Secretary Austin underwent an additional medical procedure under moderate sedation for approximately half an hour.
- (U) Before each procedure on January 6 and 8, per standard practice, Secretary Austin received and acknowledged a consent form, which indicated that he would be undergoing the procedure with moderate sedation. The form contained advice on a number of topics, including that he should not engage in activities requiring unimpaired physical and mental ability (e.g., driving) for 24 hours after the completion of the procedure, and he received similar advice verbally from medical personnel before the procedure as well.
- (U) Secretary Austin’s condition and treatment were sufficient notice for there to have been consideration as to whether his authorities should have been transferred to Deputy Secretary Hicks during or in connection with the January 6 and 8 procedures. However, we found no evidence of any such consideration. In reaching this conclusion, we acknowledge Gen Brown’s testimony that any requests to Secretary Austin for a decision or action while he was unable to perform his duties would be routed to Deputy Secretary Hicks for action. We also acknowledge that if Secretary Austin was in fact unable to perform his duties, Deputy Secretary Hicks would have the authority to take action as the Acting Secretary by operation of law.<sup>77</sup> We are unaware of any matters presented for decision during this period that would have demonstrated

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<sup>77</sup> (U) We discuss Deputy Secretary Hicks’ authorities to carry out the functions and duties of the Secretary by operation of law in Section IV.

(U) whether this actually would have occurred and, if so, whether it would have been accomplished in a timely manner.

- (U) Additionally, we found that Secretary Austin sent a text message to Ms. Magsamen that he did not want his medical condition to become a “media circus.”
- (U) On January 9, Secretary Austin underwent a medical procedure for which he was under epidural anesthesia, which would have enabled him to continue working as needed. Secretary Austin directed his treating physicians that if he had to have general anesthesia for the procedure, he would notify “his superiors” before continuing the procedure.
- (U) Secretary Austin did not undergo general anesthesia for any of the procedures on January 6, 8, or 9.
- (U) We found no evidence that Secretary Austin informed Deputy Secretary Hicks or Ms. Magsamen regarding his medical procedures on January 6, 8, or 9.
- (U) We found that Secretary Austin had an exceptionally strong work ethic and wanted to continue to exercise his responsibilities and duties, continuing to work while recuperating in the hospital from January 5 through 15, and that medical providers worked around his schedule in treating him, when possible. Secretary Austin repeatedly told his physicians that he did not want medications that would affect his ability to perform his functions and duties. Ms. Magsamen stated that “[Secretary Austin] doesn’t like to give up his authorities ... .”
- (U) Secretary Austin’s staff continued to provide him with direct support from January 5 through 15. They prepared and delivered drops, provided operational updates, and coordinated his work schedule around his medical care. Additionally, Secretary Austin maintained communications by phone with the President, Vice President, Chairman of the Joint Chiefs of Staff, the APNSA, Members of Congress, and various other DoD and military leaders.
- (U) Even accepting that Secretary Austin instructed his doctors in substance that he needed to remain able to function, these sort of incidents, and particularly the course of events of January 6 and 8, lead us to conclude that further consideration of his condition and ability to carry out his responsibilities and duties was warranted. We considered this issue in Section IV when assessing and making recommendations to improve the DoD’s policies.

### **(U) February 2024 Hospitalization**

(U) Secretary Austin experienced significant medical complications on February 11, 2024, and had to return to WRNMMC for treatment. Secretary Austin called Ms. Zier at 1:25 p.m. to inform her that he was going to WRNMMC.

(U) Secretary Austin arrived at WRNMMC at 2:55 p.m., at which time he was admitted for treatment.

(U) At some point between 4:31 p.m. and 4:46 p.m., the JMA asked Secretary Austin whether he wanted to transfer his authorities and he responded, "yes, transfer the authorities." The DoD sent an email notification of the transfer of authorities at 5:03 p.m.

(U) Our analysis of witness statements and documentary evidence lead us to the following findings and conclusions.

- (U) Secretary Austin spoke with Ms. Zier at 1:25 p.m. to advise her that he was going to the hospital. Secretary Austin told us that he "contacted [Ms. Zier] and told her that we needed to transfer the authority." However, Ms. Zier's recollection is different. Ms. Zier told us that she recalled, "I know at that time he was not transferring his functions and duties but he wanted ... to be proactive about notifying [us] that he was going to the hospital" for his pain.
- (U) Secretary Austin's statement that he directed Ms. Zier to transfer his authorities is not supported by Ms. Zier's testimony, the JMA's testimony that he directed a transfer after he arrived at the hospital, or the contemporaneous evidence and documentation that Deputy Secretary Hicks and others were considering what steps to take should Secretary Austin decide to transfer his authorities. We considered Secretary Austin's serious medical condition, the passage of time before his interview, and the potential negative effects of his medical condition and treatment on his ability to recall details of the events under review, and we determined that the weight of the evidence supports Ms. Zier's assertion that Secretary Austin told Ms. Zier that he was not transferring his functions and duties when he called her at 1:25 p.m.
- (U) After receiving Secretary Austin's phone call with Ms. Zier, a series of phone calls and emails notified Deputy Secretary Hicks and other senior DoD officials, as well as the APNSA, about Secretary Austin's transportation to WRNMMC.
- (U) Ms. Zier and other officials began drafting notifications and press release statements to make additional notifications if required.



- (U) At 4:16 p.m., the JMA initiated a conference call with Ms. Magsamen, Ms. Zier, LTG Clark, and the PMA. According to Ms. Zier, it appeared by this time that Secretary Austin would need to transfer his functions and duties to Deputy Secretary Hicks.
- (U) The JMA told us that he asked Secretary Austin about 1 or 2 hours after his arrival at WRNMMC whether he wanted to transfer his authorities, and Secretary Austin responded yes. Based on the time and content of the phone call at 4:16 p.m., which ended at 4:31 p.m., and an email sent by Ms. Zier announcing the transfer of authorities, we believe Secretary Austin's decision to transfer his authorities occurred between 4:31 p.m. and 4:46 p.m.
- (U) Given Secretary Austin's medical condition, we believe that it would have been prudent to transfer his authorities when he decided to return to WRNMMC for further treatment, consistent with what he told us he believed had occurred. We discuss the timing of the transfer of authorities when making our recommendations in Section IV.

### ***(U) Notifications Pertaining to Secretary Austin's Hospitalizations***

(U) Pursuant to 10 U.S.C. § 132(b), when the Secretary is unable to perform the functions and duties of the office, the Deputy Secretary becomes the Acting Secretary automatically by operation of law. If the Deputy Secretary is unable to perform the functions and duties of the office, then the next official in the order of succession in Executive Order 13963 becomes the Acting Secretary of Defense.

(U) There was no requirement at the time of Secretary Austin's hospitalizations to provide advance notice of such an occurrence, either internally to the DoD or externally, in order for the Deputy Secretary to begin exercising authority as Acting Secretary of Defense. The FVRA requires the head of the agency to notify Congress and the Comptroller General "immediately upon the occurrence of the vacancy" in the Office of the Secretary.

(U) Relatedly, NSPM-32 requires all Executive Departments and agencies to report information that meets the PCIRs within specified times. One such PCIR includes the "[d]eath, incapacitation, kidnapping, or attempted assassination" of a Cabinet member "or credible indications that such an incident is imminent." Accordingly, the DoD was required under NSPM-32 to inform the WHSR, by telephone "within several minutes" of the "incapacitation" of the Secretary of Defense, followed by the PCIR notification within 3 hours. Secretary Austin signed an implementing memorandum (Subject: Standardized Reporting Policy for Presidential Critical Information Requirements) on March 23, 2021, stating that the "National Military Command Center [NMCC] is the single point of contact within DoD to provide PCIRs to the WHSR." We believe that

(U) knowledge of who is performing the functions and duties of the Secretary of Defense at any given time is important information for the President and his advisors to effectively make decisions regarding national security.

(U) As discussed below, the DoD did not meet these notice requirements for Secretary Austin's December 2023 and January 2024 hospitalizations.

(U) In contrast, there was no existing DoD requirement to provide notice of Secretary Austin's December 2023 and January 2024 hospitalizations to DoD officials. Similarly, there was no DoD notice requirement at the time of those hospitalizations to inform DoD officials that Deputy Secretary Hicks was carrying out the functions and duties of the Acting Secretary of Defense.

(U) In Section IV, we discuss how the DoD updated its notification processes following the DoD 30-Day Review with the publication of memorandums and a new directive. For the purposes of our conclusions below concerning notifications pertaining to Secretary Austin's February 2024 hospitalization, we briefly discuss some of the interim procedures the DoD established as a result of Secretary Austin's January 2024 hospitalization.

(U) Our review did not identify any adverse impacts on operational command and control or DoD functions during, or as a result of, Secretary Austin's hospitalizations in December 2023, January 2024, and February 2024. However, we believe that there was a potential for adverse effects. Specifically, we believe that the lack of timely notice regarding Secretary Austin's condition and the transfer of the duties and functions of his office could have led to potential adverse effects if DoD officials or even the White House had needed urgent advice or a timely decision from the Secretary when he was not in a position to provide it.

(U) In the following paragraphs, we provide findings and our conclusions about the DoD's compliance with notification requirements under the FVRA and then NSPM-32 for Secretary Austin's hospitalizations in December 2023, January 2024, and February 2024.

***(U) December 2023***

(U) We conclude that Secretary Austin did not meet the requirement under the FVRA to immediately notify the Comptroller General and Congress of the vacancy in the office of the Secretary of Defense from December 22 to December 23, resulting from his pre-planned medical procedure under general anesthesia.<sup>78</sup>

- (U) In December 2023, Secretary Austin underwent a pre-scheduled prostatectomy under general anesthesia and was therefore unable to perform his functions and duties from December 22 through December 23. Secretary Austin testified to the HASC, “I knew I was going to be incapacitated” during the December 2023 medical procedure. Similarly, Secretary Austin told us that he knew he would go under general anesthesia and would therefore be “incapacitated” and made a decision to transfer his authorities to Deputy Secretary Hicks.
- (U) Although neither Secretary Austin nor his staff understood at the time of his December 2023 medical procedure that what they referred to as a “transfer of authorities” meant that Deputy Secretary Hicks became the Acting Secretary of Defense, his inability to perform the functions and duties of the office while undergoing and recovering from his medical procedure resulted in a vacancy under the FVRA that lasted a period of approximately 36 hours.
- (U) While the FVRA does not require advance notice of a vacancy, we find that because the medical procedure that caused the vacancy in the office of the Secretary of Defense was pre-planned, Secretary Austin was responsible as the head of the agency to make the required notifications immediately upon the occurrence of the vacancy. However, Secretary Austin did not notify the Comptroller General or Congress of this vacancy.
- (U) An official from the Comptroller General’s office sent the DoD a request on January 8 for a FVRA notification for the “recent temporary vacancy in the position of Secretary, Department of Defense.” On January 10, the WHS notified the GAO of the December 2023 vacancy in the office of the Secretary of Defense

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<sup>78</sup> (U) In response to our draft report, the DoD stated its position that while “it is not clear that the FVRA’s notification provisions are applicable when the Deputy Secretary has assumed the functions and duties of the Secretary of Defense” pursuant to 10 U.S.C. § 132(b), the Department submitted reports to the Comptroller General and to Congress for Secretary Austin’s December, January, and February hospitalizations “consistent with” the FVRA, “thereby not taking a position regarding whether FVRA reports were required.” In addition the DoD stated that given the “lack of statutory definition [of the FVRA’s term ‘immediately’], and without prejudice to whether any FVRA reports were required in the instances referenced above, [the DoD] believes that these reports—submitted within three weeks of the AFDs—were consistent with the FVRA’s notification provisions.”

(U) and of Deputy Secretary Hicks' service as Acting Secretary of Defense from December 22 through December 23.

- (U) Ms. Wirkkala provided FVRA notifications for the December 2023 vacancy to both houses of Congress on January 11, 2024.<sup>79</sup>
- (U) While "immediate" is not defined in the FVRA, we do not consider these notifications, which occurred more than 2 weeks after the December 2023 vacancy began, to be immediate for purposes of complying with the statute. As the head of the DoD, Secretary Austin was responsible for compliance with the FVRA notification requirements.

(U) Additionally, we conclude that Secretary Austin did not meet the requirement under NSPM-32 for the DoD to report his "incapacitation" as a result of his December 2023 medical procedure as a PCIR to the WHSR.

- (U) Although neither NSPM-32 nor Secretary Austin's March 23, 2021 memorandum implementing NSPM-32 defines "incapacitation" for the purposes of the PCIR, we believe, at a minimum, that medical incapacitation caused by undergoing a medical procedure under general anesthesia would trigger the PCIR reporting requirement.
- (U) As indicated above, Secretary Austin told us that he knew he would go under general anesthesia during his prostatectomy procedure and would therefore be "incapacitated." The JMA knew only that Secretary Austin would be undergoing an "elective procedure" involving "light anesthesia" and that Secretary Austin wanted to transfer authorities "out of an abundance of caution." The verbiage the JMA attributed to Secretary Austin does not convey that Secretary Austin was undergoing surgery, that he was going to be unconscious due to general anesthesia, or that a transfer of authorities was definitely required as opposed to precautionary. Although we did not ask the JMA about the PCIR reporting requirement, even if the JMA had been aware of the PCIR reporting requirement triggered by the "incapacitation" of the Secretary of Defense, we find that he had insufficient information to conclude that Secretary Austin was incapacitated.
- (U) Similarly, we find that due to the transfer of authorities email stating only that Secretary Austin would be "out of communications," the NMCC had

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<sup>79</sup> (U) Although Ms. Wirkkala and her staff planned to notify both houses of Congress by phone of Secretary Austin's January hospitalization shortly before the DoD press release on January 5, 2024, we found no evidence to indicate these notifications included information that Deputy Secretary Hicks was serving as the Acting Secretary of Defense from December 22 through December 23, 2023. Regardless, notification on January 5, 2024, would not have met the FVRA requirement to notify the GAO and both houses of Congress "immediately" upon the occurrence of the December 22 to December 23, 2023 vacancy.

(U) insufficient information to determine that Secretary Austin was in fact “incapacitated” from December 22 through 23, 2023.

- (U) While the NMCC normally has the responsibility for reporting PCIRs to the WHSR, Secretary Austin was the only person within the DoD besides medical providers who had full knowledge that he would be incapacitated as a result of this medical procedure. As the head of the DoD, Secretary Austin was ultimately responsible for ensuring that the DoD reported the PCIR triggered by his “incapacitation,” particularly because he did not communicate sufficient information to his staff about the circumstances necessitating the transfer of authorities due to his strong desire for privacy about his medical condition.
- (U) In his testimony to the HASC on February 29, Secretary Austin acknowledged, “And back in December, I should have promptly informed the President, my team, and Congress and the American people of my -- of my cancer diagnosis and subsequent treatment.”

### *(U) January 2024*

(U) We conclude that neither Secretary Austin nor Deputy Secretary Hicks met the requirement under the FVRA to immediately notify the Comptroller General and Congress of the vacancy in the office of the Secretary of Defense from January 2 through 5, resulting from Secretary Austin’s unplanned hospitalization and subsequent inability to perform the functions and duties of his office.<sup>80</sup> While we acknowledge that Deputy Secretary Hicks had no knowledge of Secretary Austin’s hospitalization on January 2 and did not realize at the time that she was serving as the Acting Secretary of Defense, there nonetheless was a requirement for her as the acting head of the DoD to make those immediate notifications. Specifically, we reached the following findings and conclusions.

- (U) The FVRA does not specify whether the requirement for the “head of each Executive agency” to notify the Comptroller General and Congress immediately of a vacancy in a PAS office within their agency means the actual head of the agency, or the acting head of the agency, for instances in which the vacancy is the head of the agency itself. Notwithstanding Secretary Austin’s view that he was “able to function” throughout his hospitalization, we find that when, as in the case of Secretary Austin’s movement to the SICU on January 2, a vacancy results from an unplanned inability to perform the functions and duties of the office, the acting head of the agency has a responsibility to make the required notifications under the FVRA.

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<sup>80</sup> (U) See footnote 78.

- (U) Consistent with the FVRA, a “vacancy” in the office of the Secretary of Defense began on January 2 when Secretary Austin’s authorities were transferred to Deputy Secretary Hicks at 2:22 p.m. due to his MAs’ assessment that Secretary Austin was unable to access secure communications in a timely manner following his movement to the SICU. While the MAs were focused on secure communications, the Primary Physician also recommended the transfer based on his assessment that Secretary Austin “was unlikely to be able to devote full attention” to his duties due to the complications he was experiencing. As a result of his medical condition that necessitated transfer to the SICU for several days, which in turn limited his ability to access secure communications, Secretary Austin was unable to perform the functions and duties of his office for an indefinite period of time.
- (U) Secretary Austin told us that Mrs. Austin informed him of the transfer of authorities on January 2. Deputy Secretary Hicks was informed of the impending transfer of authorities shortly before it occurred and received confirmation of the transfer shortly thereafter, although she did not know that Secretary Austin was in the hospital until 2 days later, on January 4. Neither Secretary Austin nor Deputy Secretary Hicks understood at the time of Secretary Austin’s January hospitalization that what they referred to as a “transfer of authorities” meant that Deputy Secretary Hicks became the Acting Secretary of Defense or that the situation resulted in a “vacancy” under the FVRA. However, this did not negate the requirement under the FVRA to notify the Comptroller General and Congress that Deputy Secretary Hicks was serving as the Acting Secretary of Defense beginning on January 2.
- (U) Once Deputy Secretary Hicks became aware of Secretary Austin’s hospitalization on the afternoon of January 4, she determined that there needed to be formal notification to the White House. Additionally, Deputy Secretary Hicks directed Ms. King to get with Ms. Magsamen to determine who made the decision to transfer authorities and to begin developing a plan for external communication regarding Secretary Austin’s hospitalization. On January 5, Deputy Secretary Hicks convened a meeting of senior staff members to discuss the draft press release and notifications to Congress regarding Secretary Austin’s hospitalizations. In response to our draft report, the DoD provided copies of emails occurring around the same time indicating that the DoD OGC was considering the potential applicability of the FVRA. However, these emails did not indicate that they had yet determined that the FVRA notification requirement applied to the situation.
- (U) An official from the Comptroller General’s office sent the DoD a request on January 8 for a FVRA notification for “a recent temporary vacancy in the

(U) position of Secretary, Department of Defense.” The WHS notified the GAO on January 9 of the vacancy in the office of the Secretary of Defense and of Deputy Secretary Hicks’ servicing as the Acting Secretary of Defense from January 2 through 5. Although we do not have direct evidence that Congress was notified, we found that Ms. Wirkkala planned to notify Congress of Secretary Austin’s hospitalization shortly before the press release on January 5. Additionally Ms. Wirkkala made a notification of the vacancy on January 11, for the purposes of the FVRA. Because none of these notifications were made immediately upon the occurrence of the vacancy on January 2, we find that they did not comply with the FVRA requirement.

(U) Similarly, we conclude that the DoD did not meet the intent of the NSPM-32 reporting requirements with regard to Secretary Austin’s January hospitalization and subsequent transfer of authorities to Deputy Secretary Hicks from January 2 through 5. The purpose of the PCIR reporting requirements under NSPM-32 is “to ensure the President, the Vice President, and appropriate advisors within the Executive Office of the President (EOP) have the information they require to effectively manage incidents and crises on a national level and to support national security decision-making.”

- (U) In his statements after his January hospitalization became public, Secretary Austin acknowledged that he should have notified the President about it. He testified to the HASC on February 29, “In terms of the hospitalization January 1st ... my expectation is that the organization inform the right agencies,” and that the latter included, “the Chief of Staff of the White House, National Security Advisor, I think they would immediately inform the President.”
- (U) Although, as we note above, neither NSPM-32 nor Secretary Austin’s implementation memorandum define “incapacitation,” we believe that the circumstances warranted a notification to the WHSR within minutes of the transfer of authorities that occurred at 2:22 p.m. on January 2 with the PCIR following within 3 hours of the transfer, consistent with the timelines in NSPM-32. The transfer of authorities indicated that Secretary Austin was unable to perform his functions and duties due to a lack of access to secure communications, which was in turn driven by his medical condition, which warranted transfer to the SICU.
- (U) While Secretary Austin’s staff had limited information about his medical condition, they were aware that he was transferred to the SICU and that he would not have access to secure communications for an indeterminate time period. Whether or not Ms. Magsamen was specifically aware of the PCIR reporting requirement, she recognized an institutional responsibility to inform the White House of the hospitalization of the Secretary of Defense and the fact that his authorities had been transferred. However, we found that due to

(U) Secretary Austin's desire to keep his medical information private, Ms. Magsamen and other senior members of Secretary Austin's staff did not have sufficient information to determine whether he was "incapacitated." (There was no indication that they considered the lack of ability to get secure communications to Secretary Austin in a timely manner in terms of "incapacitation"—an issue we need not decide for purposes of this review.)

- (U) Ms. Magsamen's repeated attempts to obtain any information about Secretary Austin's medical condition were not successful and she therefore did not inform Deputy Secretary Hicks and the APNSA until January 4.
- (U) While we believe that the notification to the APNSA was the functional equivalent of a notification to the WHSR, we conclude that Ms. Magsamen's notification of Secretary Austin's hospitalization to the APNSA on January 4, more than 48 hours after the transfer of authorities on January 2, did not meet the PCIR time standards under NSPM-32. The primary factor that caused the delay in reporting Secretary Austin's hospitalization to the White House was the lack of information his staff had regarding his medical condition. As with his December 2023 medical procedure, Secretary Austin was the only person among his or Deputy Secretary Hicks' support staffs that had full knowledge of his medical condition.

(U) As we discuss in detail in Section IV, as a result of Secretary Austin's hospitalization, his staff developed a better understanding of the significance of an AFD and established interim procedures for notifications of an AFD, which included notifications to Congress and the Comptroller General consistent with the FVRA and notifications to the White House consistent with NSPM-32. We discuss these types of notifications when making our recommendations in Sections IV and V.

### ***(U) February 2024***

(U) We conclude that the DoD's notification to the Comptroller General and Congress of Secretary Austin's February 11 hospitalization and the resultant vacancy substantially complied with the requirements of the FVRA.

- (U) Secretary Austin's staff began planning for the appropriate notifications regarding his hospitalization upon learning that Secretary Austin was en route to the hospital at 1:44 p.m. As a result of his hospitalization on February 11, Secretary Austin directed an AFD effective 4:55 p.m. Following the AFD, Ms. Zier notified Ms. Wirkkala at 6:41 p.m. that she was cleared to make Congressional notifications.
- (U) The DoD made notifications consistent with the FVRA the following day. WHS notified the GAO at approximately 5:26 p.m. on February 12.



- (U) Ms. Wirkkala sent a notification consistent with the FVRA to both houses of Congress at 7:25 p.m. on February 12.
- (U) While they were made on the following day, we find that these notifications were sufficient under the circumstances to substantially comply with the requirement under the FVRA to notify the Comptroller General and Congress “immediately.”
- (U) Although the FVRA does not require notification of the termination of a vacancy, the WHS provided notice to the GAO on March 11 that the vacancy in the office of the Secretary of Defense and Deputy Secretary Hicks’ service as the Acting Secretary of Defense ended on February 13.

(U) We conclude that the DoD made timely notifications of Secretary Austin’s hospitalization and the associated AFD on February 11, as required by the DoD’s interim procedures. We also conclude that these notifications substantially complied with the PCIR reporting requirement for “incapacitation” under NSPM-32.

- (U) According to the Cables call log, Ms. Magsamen spoke to the APNSA at 1:46 p.m. on February 11. Ms. Magsamen told us she notified the APNSA that Secretary Austin was returning to WRNMMC.
- (U) The Cables ESO sent an email addressed to various officials, including the WHSR, at 5:03 p.m. and a second email at 5:51 p.m. with the notification that Deputy Secretary Hicks had assumed the functions and duties of the Acting Secretary.
- (U) Ms. Magsamen emailed the EOP at 5:19 p.m. on February 11 that Secretary Austin was in the hospital and transferred his functions and duties to Deputy Secretary Hicks.

### ***(U) Notifications to DoD Officials***

(U) We conclude that the Cables ESO notification emails sent on December 22, 2023, and January 2, 2024, to notify DoD officials of the transfers of authority to Deputy Secretary Hicks lacked sufficient information to fully inform key DoD officials of all of the relevant information, including the reason for the transfers. We further conclude that while the two Cables ESO notification emails for the February 11, 2024 AFD did not individually comply with the interim policies the DoD put in place following the January hospitalization, they collectively communicated the required information.

- (U) The Cables ESO email notifications for December 2023 and January 2 were sent to various internal DoD officials—primarily the Secretary and Deputy Secretary Chiefs of Staff, their respective MAs, and some Joint Staff

(U) officials.<sup>81</sup> Notably, the Service Secretaries, combatant commanders, White House, and Congress were not included on those email notifications.

- (U) The DoD published separate memorandums on January 8 and 12, which addressed this deficiency and directed that email notification distribution lists include the DoD General Counsel, Chairman and Vice Chairman of the Joint Chiefs of Staff, combatant commanders, Service Secretaries, Service Chiefs of Staff, WHSR, senior staff of the Secretary and Deputy Secretary of Defense, White House Offices of Cabinet Affairs, and White House Chief of Staff.
- (U) However, we reviewed two February 11 email notifications and determined that those notifications were inconsistent with these revised guidelines and contained the following deficiencies.<sup>82</sup>
  - (U) The 5:03 p.m. initial notification stated that the Secretary of Defense had transferred the functions and duties of the office to the Deputy Secretary of Defense due to the Secretary's need to undergo medical treatment; however, the email did not include the specific language that the Deputy Secretary of Defense was the Acting Secretary of Defense.<sup>83</sup>
  - (U) The 5:51 p.m. notification included the previously omitted language that the Deputy Secretary of Defense assumed the functions and duties as the Acting Secretary of Defense, but did not include a reason for the AFD.
  - (U) Although the two notifications on February 11 did not fully comply with the standards in place at the time, they collectively communicated the required information.
  - (U) Separately, the Cables ESO sent notification emails on February 11 to the following inactive email addresses:  
JS.pentagon.j3.list.ddos@mail.smil.mil, and  
JS.pentagon.je.list.addo@mail.smil.mil. These email addresses remained inactive on May 24 and June 21, when the Cables ESO sent other notification emails.

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<sup>81</sup> (U) The Chairman of the Joint Chiefs of Staff was not listed in the email notification addresses.

<sup>82</sup> (U) We were unable to confirm whether the White House Offices of Cabinet Affairs and the White House Chief of Staff were included in the email recipients. The Cables ESO Official told us that the recipients on the distribution list to the WHSR are controlled by the WHSR. The Cables ESO Official also told us that Secretary of Defense Communications does not have visibility as to whom is on the distribution list.

<sup>83</sup> (U) Deputy Secretary Hicks told us that it was clear that in February when she assumed the functions and duties of the Secretary of Defense, she was the Acting Secretary of Defense rather than only having [REDACTED] authorities.

(U) We noted that the first notification was sent to a list of recipients including two former combatant commanders instead of their replacements. This error was corrected in the second notification.

(U) Taken together, we find that while the notifications in February were substantially better than in December and January, there still is room for improvement regarding the AFD processes, which we discuss in Section IV.

## IV. (U) Assessment of DoD Policies on the Assumption of Functions and Duties of the Secretary of Defense

(U) This section provides a summarized description of the legal framework related to the AFD, an overview of the DoD's initial actions and policies implemented as a result of events related to Secretary Austin's January 2024 hospitalization, and an assessment of the DoD's AFD policies contained in DoDD 3020.53, "Assumption of Functions and Duties of the Secretary of Defense," on May 28, 2024.

### A. (U) Legal Framework

(U) As we discuss in greater detail in Appendix A, the FVRA and 10 U.S.C. § 132(b) both provide authorities for the temporary authorization for an acting official to perform the functions and duties of the Secretary of Defense when the Secretary "dies, resigns ... or is otherwise unable to perform the functions and duties of the office." Consistent with the FVRA, the "functions and duties" of the Secretary of Defense are the non-delegable authorities that are established by statute or regulation and required by such statute or regulation to be performed only by the Secretary.

(U) Pursuant to 10 U.S.C. § 113, Secretary Austin delegated to Deputy Secretary Hicks, through DoDD 5105.02, "Deputy Secretary of Defense," February 11, 2021, the full power and authority to act for the Secretary of Defense, with the exception of his non-delegable functions and duties.

(U) For those non-delegable functions and duties of the Secretary of Defense, 10 U.S.C. § 132(b) provides that the Deputy Secretary of Defense shall act for, and exercise the powers of, the Secretary of Defense when the Secretary "dies, resigns, or is otherwise unable to perform the functions and duties of the office" (emphasis added). In such circumstances, the Deputy Secretary of Defense serves as the Acting Secretary automatically by operation of law and, without any requirement of a formal transfer of authorities, assumes all of the powers and authorities of the Secretary, including the non-delegable functions and duties of that office.

(U) However, 10 U.S.C. § 132(b) empowers only the Deputy Secretary to serve as the Acting Secretary and not any other official who may become authorized to serve as the Acting Secretary pursuant to the FVRA, executive order, or presidential designation. Regardless of the means by which an acting official is temporarily authorized to perform the functions and duties of the Secretary of Defense, section 3349 of the FVRA requires immediate notifications to the Comptroller General and Congress of each instance that a Presidential Appointment with Senate Confirmation (PAS) position such as the Secretary of Defense is vacant, as well as who is serving in an acting capacity and

(U) the date such service began. The position of the Secretary of Defense is considered vacant under the FVRA when the Secretary “dies, resigns, or is otherwise unable to perform the functions and duties of the office” (emphasis added). The FVRA does not specify any minimum duration for a vacancy to trigger the reporting requirement, nor does it define the timing of the notification beyond “immediately.”

(U) Accordingly, for each instance for which the Secretary of Defense is unable to perform their functions and duties, the FVRA requires an immediate notification to the Comptroller General and Congress.

(U) Taking into account the legal framework and the events surrounding Secretary Austin’s hospitalizations during the period December 2023 through February 2024 as described in Section III, we identified the following concerns.

1. (U) *No comprehensive AFD plan.* While there are references to some AFD processes in the DoD Continuity of Operations (COOP) Plan, detailed in Section V of this report, and other documents, the DoD did not have a comprehensive written policy that provided guidance, established requirements, and assigned responsibility within the DoD for the AFD process at the time of Secretary Austin’s December 2023 and January 2024 hospitalizations. While a process was established as a result of those events and the subsequent DoD 30-Day Review, opportunities for improvement exist, such as establishing objective criteria, clarifying roles of medical personnel, and establishing a process to address a lack of access to medical information. This information is detailed below.
2. (U) *No understanding of the AFD’s significance.* Deputy Secretary Hicks and other senior officials and their staffs were not aware that upon execution of an AFD, the Deputy Secretary becomes the Acting Secretary and assumes all functions and duties of the Secretary, rather than only limited operational authorities. Additionally, Secretary Wormuth, who was third in the order of succession, was not informed of the AFD or that Deputy Secretary Hicks was serving as the Acting Secretary from December 22 through December 23, 2023, and from January 2 through 5, 2024. Therefore, Secretary Wormuth was unaware she was next in the order of succession if Deputy Secretary Hicks had been unable to perform the functions and duties of the office.
3. (U) *No formal reporting requirement.* No formal requirement existed for personnel providing direct support to the Secretary or Deputy Secretary, such as PSOs, PCs, and MAs, to report situations that potentially required an AFD, such as medical emergencies, hospitalization, or any other situation resulting in the Secretary’s inability to perform their functions and duties.

4. (U) *Inadequate notification process.* The AFD notification process was inadequate, both internally to the DoD and externally to the President, Congress, and the Comptroller General.
5. (U) *No AFD training plan.* No corresponding AFD training plan was established to educate and train those in the order of succession or their staffs as to their potential functions and duties should they be called on to serve as the Acting Secretary of Defense. Secretary Wormuth, who was next in line after Deputy Secretary Hicks, told us that she had not received training on her role in the AFD process.

## B. (U) The DoD's Actions in Response to Secretary Austin's Hospitalization

(U) This section provides a summary of the DoD process changes and reviews implemented from January 8 through May 28, 2024 issuance of DoDD 3020.53, which is now the DoD standard for the AFD process. We then discuss DoDD 3020.53 in detail. Additional details about the changes and reviews are presented in Appendix B.

- (U) Ms. Magsamen issued memorandum, "Review of Notification Process for Assumption of Functions and Duties of the Secretary of Defense," January 8, 2024, directing the Director of Administration and Management (DA&M) to conduct a DoD 30-Day Review of the circumstances regarding Secretary Austin's hospitalization. The memorandum also issued new instructions for AFD notifications, including that they be issued to several individuals within the DoD, as well as the WHSR, and that any such AFD notification must state the reason for the AFD, such as "out of range of communication devices, routine medical treatment, [or] hospitalization."<sup>84</sup>
- (U) The OSD Executive Secretary issued memorandum, "Additional Guidance on Notifications for Assumption of Functions and Duties of the Secretary of Defense," January 12, 2024, supplementing Ms. Magsamen's January 8 memorandum and including additional instructions and templates for AFD notifications. The memorandum stated, "[i]n the event the Secretary of Defense is unable to perform the functions and duties of his role such that the Deputy Secretary assumes these functions and duties, pursuant to 10 U.S.C. § 132(b), she is serving as the Acting Secretary of Defense." An attachment to the January 12 memorandum provided two notification

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<sup>84</sup> (U) On January 11, 2024, a corrected copy of the January 8, 2024 memorandum, "Review of Notification Process for Assumption of Functions and Duties of the Secretary of Defense," was issued to include reference to Executive Order 13693, issued on December 10, 2020, which revoked Executive Order 13533 that had been cited in the January 8 memorandum. Otherwise, there was no change to the January 8 memorandum.

(U) templates: 1) one that applied to a situation in which the Secretary “knows that he will be away from secure communications;” and 2) a second that applied to a situation in which the Secretary “has an unforeseen absence due to unexpected loss of secure communications, hospitalization requiring general anesthesia, or any other circumstance where he may be unreachable.”<sup>85</sup>

- (U) The DA&M completed the DoD 30-Day Review on or about February 7, 2024, and made eight recommendations, two of which were implemented soon thereafter:
  - (U) Secretary Austin’s and Deputy Secretary Hicks’ Chiefs of Staff issued a joint memorandum dated February 23, 2024, to a list of addressees that included their support staffs, Pentagon senior leadership, combatant commanders, Secretary of Defense Communications, the OSD Executive Secretary, and others. This memorandum emphasized the importance of routine information flow to the Deputy Secretary, as well as expectations for the Secretary’s and Deputy Secretary’s staffs to support to the Deputy Secretary (or another designated official) when performing the functions and duties of the Secretary.
  - (U) Secretary Austin and Deputy Secretary Hicks issued a joint memorandum dated February 24, 2024, to a list of addressees that included Pentagon senior leadership, combatant commanders, Secretary of Defense Communications, and others, reaffirming their expectations for Secretary Austin’s immediate office and support staff, as well as DoD Components, including relevant staff from the Deputy Secretary’s office on all communications related to key policy and operational matters and their expectation for the Deputy Secretary’s staff and DoD Components to include the Secretary’s staff on key communications. The memorandum also described expectations for supporting the Deputy Secretary or another successor in the event of an assumption of the functions and duties of the Secretary of Defense by that official.
- (U) Secretary Austin issued memorandum, “Follow-on Actions: Review of Notification Process for Assumption of Functions and Duties of the Secretary of Defense,” February 26, 2024, to Pentagon senior leadership, combatant commanders, Secretary of Defense Communications, and others, directing the

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<sup>85</sup> (U) The White House Chief of Staff requested on January 9, 2024, that all Cabinet Secretaries provide the White House Office of Cabinet Affairs their existing protocols for a “delegation of authority” by January 12, 2024. Secretary Austin provided the DoD’s response on January 12, providing Ms. Magsamen’s January 8 memorandum and the OSD Executive Secretary’s January 12 memorandum as enclosures, as well as highlighting the initiation of the DoD 30-Day Review.

(U) implementation of the remaining six DoD 30-Day Review recommendations, which included the following guidance.<sup>86</sup>

(U) The Director of Administration and Management [DA&M] will develop and codify internal guidance for making determinations regarding the assumptions of functions and duties of the Secretary of Defense, minimizing subjectivity in any guidance, and will provide [the Secretary] with a proposed communication and training plan for all relevant organizations and officials.

(U) The Chiefs of Staff to the Secretary of Defense and Deputy Secretary of Defense will develop a mandatory reporting protocol (i.e., criteria for mandatory reporting requirements) for personnel providing direct support to the Secretary and Deputy Secretary of Defense related to situations or circumstances that might impact these leaders' ability to perform their duties and functions.

(U) The Under Secretary of Defense for Policy will review and update. As appropriate, the Secretary of Defense Continuity of Operations Plan to consider scenarios and issues associated with the assumption of functions and duties of the Secretary of Defense and the order of succession.

- (U) Deputy Secretary Hicks issued memorandum "Mandatory Reporting Protocol for Personnel Providing Direct Support to the Secretary and Deputy Secretary of Defense," April 12, 2024, to senior DoD leadership, including combatant commanders and staff of the Secretary and Deputy Secretary of Defense, regarding the duty for all personnel providing direct support to the Secretary and Deputy Secretary to notify appropriate officials of any "condition or situation that results in the principal's inability to perform the functions and duties of the office," including "planned or unplanned loss of access to secure communications" and "medical concern[s] involving the principal's potential or actual incapacitation requiring admittance to the hospital (including emergency room visits)."
- (U) The DoDD 3020.53 establishes policy for the roles and responsibilities associated with the AFD when the Deputy Secretary or another designated official assumes the functions and duties as the Acting Secretary of Defense. Among other responsibilities, the Directive also requires communications and

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<sup>86</sup> (U) A DoD OGC senior official informed the DoD OIG on June 7, 2024, that the DoD had completed all actions directed by Secretary Austin's February 26, 2024 memorandum. We discuss the DoD 30-Day Review and Secretary Austin's February 26, 2024 memorandum further in Appendix B.



(U) training plans, sets criteria for mandatory reporting requirements, and supersedes any conflicting provisions regarding the notification processes in a previous memorandum.

### C. (U) Assessment of the DoD's AFD Policies

(U) This section provides an assessment of the DoD's AFD policies implemented in DoDD 3020.53. Specifically, we assessed whether DoDD 3020.53 addressed the concerns we identified in our review of Secretary Austin's hospitalizations. Additionally, we assessed whether the policies provide clear guidance and standards for circumstances requiring notifications and the process of such notifications.

#### ***(U) Issuance of DoDD 3020.53***

(U) The DoD established formal, written AFD policies and procedures with the publication of DoDD 3020.53.<sup>87</sup> We present findings and recommendations for further process improvements at the end of this section.

(U) In summary, DoDD 3020.53:

- (U) Established DoD policy for the roles and responsibilities associated with the assumption of functions and duties of the Secretary of Defense by the Deputy Secretary of Defense or other designated official in the order of succession.<sup>88</sup>
- (U) Established the criteria for mandatory reporting requirements for "personnel providing direct support to the [Secretary] and [Deputy Secretary]," such as members of their protective service details, in specific situations, including medical concerns "involving the principal's potential incapacitation or actual incapacitation requiring admittance to the hospital (including emergency room visits)."
- (U) Established an AFD notification process to ensure that appropriate officials, both internal and external to the DoD, including the White House, Congress, and the Comptroller General are promptly informed of an AFD and the reason for the AFD.

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<sup>87</sup> (U) DoDD 3020.53 incorporated and canceled Secretary of Defense and Deputy Secretary of Defense Memorandum, "Leadership Expectations Regarding Assumption of Functions and Duties of the Secretary of Defense," February 24, 2024; and Deputy Secretary of Defense Memorandum, "Mandatory Reporting Protocol for Personnel Providing Direct Support to the Secretary and Deputy Secretary of Defense," April 12, 2024. Additionally, the Directive superseded any conflicting provisions contained in Ms. Magsamen's January 8, 2024 memorandum (corrected copy January 11, 2024).

<sup>88</sup> (U) DoDD 3020.53 stated that the term "assumption of functions and duties (AFD)" replaced the term "transfer of authority (TOA)."

- (U) Required all DoD officials identified as having responsibilities established in DoDD 3020.53 to be familiar with their assigned responsibilities to “ensure appropriate processes, procedures, and staffing to support continuity of operations prior to, during, and following the AFD of the [Secretary of Defense].”
- (U) Assigned responsibility for the development, execution, and oversight of training plans to support the AFD process.

(U) In this Section, we discuss each of these topics in detail.

### ***(U) DoD AFD Policy***

(U) DoDD 3020.53 established DoD policy regarding AFD, and stated in Section 1.2.a:

(U) It is DoD policy to follow a prescribed process for the assumption of functions and duties ... of the [Secretary of Defense] when the [Secretary of Defense] dies, resigns, is removed by the President of the United States, or is otherwise unable to perform the functions and duties of the office. This includes anticipated and unanticipated situations and required reporting protocols.

(U) It further provides that those officials in the order of succession must be prepared at all times to assume the functions and duties of the Secretary of Defense, and that:

- (U) “In order to ensure that the DoD is always postured for continued operations, ... [senior DoD officials], including the Chairman of the Joint Chiefs of Staff (CJCS), ... will regularly inform the [Deputy Secretary] of all matters within the scope of their duties and responsibilities currently under the [Secretary]’s consideration.”<sup>89</sup>
- (U) When there is an anticipated “event of an expected or planned period when the [Secretary] may not be able perform the functions and duties of the office, the [Secretary] will initiate appropriate notifications for the [Deputy Secretary] to assume the functions and duties of the [Secretary] for that anticipated period of time.” These notifications will include, but are not limited to, appropriate advance notice to a number of individuals and entities, including within the White House, the Offices of Cabinet Affairs and the White House Chief of Staff, as described below in the section “The Notification Process.”
- (U) “[When there is] an unanticipated event that could impact the [Secretary]’s ability to perform the functions and duties of the position and is likely to trigger [an] AFD, and the [Secretary] has not initiated the appropriate notifications,” the

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<sup>89</sup> (U) DoDD 3020.53 identified specific senior DoD officials; for brevity, we do not identify them here.

(U) Secretary, if able, or the Deputy Secretary or next available person in the order of succession, “will confirm that [the Secretary] is unable to perform the functions and duties of the office and direct that AFD notifications be initiated. The [Deputy Secretary] ... will consult with the [DoD General Counsel (GC)] in advance of any such direction.”

- (U) “In the event there is a question as to an official’s ability to perform or to resume performing the functions and duties of the [Secretary], the Acting [Secretary] (if one is in place), [the Deputy Secretary], or [the] next available official in the order of succession, in consultation with the [DoD GC], will advise the President of the United States through the [WHSR] as to the official’s ability to perform or to resume performing the functions and duties of the [Secretary].”

### ***(U) Assigned DoD Staff AFD Responsibilities***

(U) DoDD 3020.53 assigned AFD responsibilities to specific DoD officials. For brevity, we do not list all of the responsibilities assigned to each official, but we provide examples to demonstrate that appropriate responsibilities were assigned. These examples highlight the importance of the concerns discussed in Section III of this review, to include staff awareness of AFD responsibilities, the establishment and assignment of oversight responsibilities for AFD succession and training, and AFD notifications—both internal and external to the DoD. The following bullet points summarize this information.

- (U) Acting Secretary of Defense:
  - (U) Establishes contact with the APNSA upon assumption of the functions and duties of the Secretary of Defense.
  - (U) Ensures the military chain of command, CJCS, and all Principal Staff Assistants, along with the immediate offices of the Secretary and Deputy Secretary of Defense, are aware of the AFD.
- (U) Chief of Staff to the Secretary of Defense:
  - (U) Provides the Cables ESO with necessary information, discussed later in the Directive, for notifications, including the reason for the notification and, “if the [Secretary of Defense] is anticipated to return to the office of Secretary of Defense, the anticipated period of assumption.”
  - (U) Develops and maintains AFD training content in coordination with the Under Secretary of Defense for Policy.

- (U) Performance Improvement Officer/Director of Administration and Management (PIO/DA&M):
  - (U) Develops guidance and provides DoD oversight of the Secretary of Defense succession processes.
  - (U) Supports the development and maintenance of the AFD training plan.
- (U) Washington Headquarters Services (WHS) Director:
  - (U) Notifies the Comptroller General of required information, consistent with the FVRA and Section 3 of DoDD 3020.53.
- (U) Under Secretary of Defense for Policy:
  - (U) Develops and maintains plans for Secretary of Defense successors and provides regular briefing for all Principal Staff Assistants in order of succession and their immediate staffs.
  - (U) Maintains the Secretary of Defense Succession Playbook and the Secretary of Defense Order of Succession Roster.
  - (U) Coordinates with the Chief of Staff to the Secretary of Defense to develop and maintain AFD training content for the immediate office staff of the Secretary and Deputy Secretary of Defense.
- (U) Assistant Secretary of Defense for Legislative Affairs (ASD[LA]):
  - (U) Notifies both Houses of Congress of required information, consistent with the FVRA and Section 3 of DoDD 3020.53.
- (U) CJCS:
  - (U) Ensures the National Military Command Center (NMCC) notifies the WHSR if the reason for AFD is a Presidential Critical Information Requirement (PCIR).<sup>90</sup>

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<sup>90</sup> (U) PCIR is defined as any incident requiring notifications to the EOP according to procedures outlined in “National Security Presidential Memorandum–32,” (NSPM-32) dated January 13, 2021, which establishes a standardized procedure for reporting PCIRs. Specific PCIRs are listed in the NSPM’s annex by the following categories: general, homeland, international, and defense.

### ***(U) Reporting Requirement for Direct Support Personnel***

(U) Deputy Secretary Hicks' April 12, 2024 memorandum titled, "Mandatory Reporting Protocol for Personnel Providing Direct Support to the Secretary and Deputy Secretary of Defense," addressed the lack of an established requirement for personnel supporting the Secretary or Deputy Secretary to report situations that potentially require an AFD, such as a medical concern involving the principal's potential or actual incapacitation requiring admittance to the hospital, including emergency room visits.

(U) DoDD 3020.53 incorporated and canceled the April 12 memorandum and required:

(U) (a) All personnel providing direct support to the [Secretary] and [Deputy Secretary of Defense] have a duty to notify appropriate officials in any of the following situations:

(U) (1) Planned or unplanned loss of access to secure communications for the principal;

(U) (2) Death of the principal;

(U) (3) Resignation of the principal;

(U) (4) Medical concern involving the principal's potential or actual incapacitation requiring admittance to the hospital (including emergency room visits); [or]

(U) (5) Any other condition or situation that results in the principal's inability to perform the functions and duties of the office.

(U) Personnel providing direct support are specifically identified in the issuance as including: "drivers; those providing security, travel, and communications support; members of the Executive Secretariat; and immediate office staff members."

Appropriate officials to receive these notifications include "the [DoD GC], the other principal ([i.e., the Secretary or the Deputy Secretary Defense]) and that principal's Chief of Staff and Senior Military Assistant."

(U) Medical personnel are not specifically identified as individuals providing direct support for purposes of this requirement. We address this matter in our Conclusions and Recommendations later in this report.

### ***(U) The Notification Process***

(U) As detailed in Section III, Senior DoD officials and their staffs did not promptly notify all appropriate DoD officials and officials external to the DoD, including the President, Comptroller General, and Congress, of Secretary Austin's hospitalization and

(U) Deputy Secretary Hicks' assumptions of functions and duties in December 2023 and January 2024.

(U) In response to these events, the DoD issued DoDD 3020.53, establishing an AFD notification process. The process requires DoD officials to send notifications when the Secretary of Defense is unable to perform their functions and duties and the Deputy Secretary of Defense or another official in the line of succession assumes those duties and serves as the Acting Secretary of Defense. Those notices are sent to DoD officials and officials outside the DoD using designated templates in DoDD 3020.53 for each specific type of notification. DoDD 3020.53 states that the notification procedures "include deliberate redundancies to ensure prompt and comprehensive reporting."

(U) The following summarized portions of the notification process relate to our assessment.

### ***(U) Internal and External Notifications***

(U) DoDD 3020.53, paragraph 3.2.d., states that on "direction from the [Secretary] for anticipated AFDs or from the Acting [Secretary] ... for unanticipated AFDs, the [Secretary of Defense Communications] will notify the following offices" and specific positions of the AFD:

- (U) Specified senior staff of the Secretary and Deputy Secretary;
- (U) The CJCS, through the NMCC, which will then alert the Vice Chairman of the Joint Chiefs of Staff, Director of the Joint Staff, and combatant commanders; the WHSR and request subsequent notification to the Office of Cabinet Affairs, the White House Chief of Staff, and the APNSA;<sup>91</sup>
- (U) DoD GC;
- (U) Secretaries of the Military Departments;
- (U) Chiefs of Staff of the Military Departments;
- (U) All other Principal Staff Assistants;

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<sup>91</sup> (U) DoDD 3020.53, Section III, states that the directive includes "deliberate redundancies to ensure prompt and comprehensive reporting." For example, paragraph 3.2a(2)(a) requires the Secretary of Defense Communications to notify the NMCC as well as the WHSR, the Office of Cabinet Affairs, the White House Chief of Staff, and the APNSA for anticipated AFDs. However, DoDD 3020.53, paragraph 3.2.d(1)(b)4., requires the CJCS, through the NMCC, to notify the WHSR and request that they make notifications to the Office of Cabinet Affairs, the White House Chief of Staff, and the APNSA for all AFDs.

- (U) Executive Secretary, “who will then alert the Executive Secretary of the National Security Council as appropriate.”

(U) The following content must be included in the notification.

(U) (a) Date and time the AFD began or will begin.

(U) (b) Name and position of the official who will be serving as Acting [Secretary of Defense].

(U) (c) Reason for the AFD (e.g., lack of access to communications, undergoing hospitalization, or a medical procedure requiring general anesthesia).

### ***(U) External Notifications—Federal Vacancies Reform Act (FVRA)***

(U) DoDD 3020.53 states, “when an Acting [Secretary of Defense] assumes the functions and duties of the [Secretary of Defense], appropriate notifications will be provided consistent with the requirements of the FVRA and the processes established therein.”

(U) The WHS Director will complete and submit the GAO FVRA notification form to the Comptroller General and provide copies to the Special Assistant to the Secretary of Defense for White House Liaison and the ASD(LA) “for transmission to Congress.” The ASD(LA) will then “transmit the required information to each House of Congress.”

### ***(U) Additional External Notification Requirements Associated with Medical Incapacitation***

(U) DoDD 3020.53 requires additional external notifications for situations involving medical incapacitation.<sup>92</sup>

(U) When the Secretary of Defense “has a planned medical procedure for which medical incapacitation is known or may be reasonably assumed,” DoDD 3020.53, paragraph 3.4, requires the Secretary to immediately notify the following officials “24 hours prior to such incapacitation” using the applicable template.

- (U) EOP

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<sup>92</sup> (U) DoDD 3020.53 states that notification procedures include deliberate redundancies to ensure prompt and comprehensive reporting. An example of such redundancy is the additional notification requirement associated with medical incapacitation, which duplicates to some extent the requirement elsewhere in the Directive that all AFD notifications, regardless of reason, must be disseminated to the White House Situation Room and request subsequent notification of the Office of Cabinet Affairs, the White House Chief of Staff, and the APNSA. DoDD 3020.53 also requires DoD compliance with the FVRA, which requires informing the Comptroller General and the heads of both Houses of Congress.

- (U) Comptroller General of the United States
- (U) Majority and Minority Leaders of the Senate
- (U) Speaker of the House of Representatives
- (U) Minority Leader of the House of Representatives

(U) In accordance with DoDD 3020.53, paragraph 3.4c., when the Secretary “unexpectedly becomes medically incapacitated,” the Acting Secretary must notify these same officials “within 24 hours of such incapacitation.” If the notices are not provided within 24 hours, “the Acting [Secretary] must provide the following information.” This information is to be sent “not later than 72 hours after the incapacitation” to the officials listed above:

(U) The name of each individual who served in an Acting capacity due to such medical incapacitation and, for each individual serving in an Acting capacity during that period:

1. (U) The individual’s dates of service as the Acting Secretary.
2. (U) Whether such individual was authorized to serve in an Acting capacity, including a reference to the applicable authorities.
3. (U) A comprehensive list of resources and authorities allocated to such individual.

(U) An explanation as to why the 24-hour notification [...] was not provided.

(U) The dates of the [Secretary’s] medical incapacitation and, if the [Secretary] has resumed performing the functions and duties of the office, the date on which such resumption occurred.

(U) An explanation as to why the [Secretary] was medically incapacitated.

(U) If the Secretary remains medically incapacitated when the report ... is submitted, the Acting Secretary will provide appropriate, periodic updates to these officials.



### ***(U) Notifications upon Resumption of Functions and Duties***

(U) DoDD 3020.53 also provides instructions for the resumption of functions and duties and states:

(U) If the [Secretary] has not resigned or been removed by the President, the [Secretary] will first notify the Acting [Secretary] and the [DoD GC] of the [Secretary's] plan to resume the functions and duties of the [Secretary].

(U) Upon resumption ... notification will be executed in the same manner as when the duties and functions were assumed by the [Deputy Secretary] or the next available official in the order of succession.

### **D. (U) AFD Training**

(U) At the time of the Secretary's hospitalizations, the DoD did not have an AFD training plan to educate Secretary Austin and his staff, Deputy Secretary Hicks and her staff, or those in the order of succession and their staffs as to their responsibilities should Deputy Secretary Hicks or other officials be called on to perform the duties as the Acting Secretary of Defense.

(U) DoDD 3020.53 assigned responsibility to the Under Secretary of Defense for Policy, in coordination with the Secretary of Defense's Chief of Staff, "to develop and maintain AFD training content for the immediate office staff of the [Secretary of Defense] and the [Deputy Secretary of Defense]."<sup>93</sup>

(U) DoDD 3020.53 assigned other officials, including the Performance Improvement Officer/Director of Administration and Management (PIO/DA&M) and the DoD GC with supporting "the development and maintenance of AFD training [plan and] content."

(U) The DoD issued the "Secretary of Defense Succession Training Plan" on May 31, 2024, with associated briefing slides. In summary, the Secretary of Defense Succession Training Plan stated the following information.

- (U) Its purpose was "to provide a comprehensive view of the briefing requirements for the [Secretary], [Deputy Secretary], and [PAS] officials in the order of succession to the Secretary of Defense, as well as personnel with responsibilities in ensuring the successful [AFD] of the [Secretary] and continuity of operations at all times and in all situations."

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<sup>93</sup> (U) The DoD 30-Day Review recommended the development of training for making AFD determinations and executing and communicating them.

- (U) It emphasizes “the requirement to clearly identify AFD responsibilities with successors and staff and how they will communicate both internally to the DoD and to required external agencies.”
- (U) The AFD training requirements are divided into three blocks:
  - (U) Block 1. Initial Overview
  - (U) Block 2. Expanded Staff-level Briefings
  - (U) Block 3. Annual Refresher Training
- (U) The Secretary of Defense Succession Training Plan also states the “[DoD GC] will also develop specialized training to address the specific responsibilities of the GC in the AFD process and DoDD 3020.53.”<sup>94</sup> This training will be done for the “DoD General Counsel, the Principal Deputy General Counsel, the Deputy General Counsel (Personnel and Health Policy), and Deputy General Counsel (International Affairs), as well as relevant members of their respective staffs.”

(U) Block 1 - Initial Overview – delivered within 1 week of arrival into a Key Leader or Support to Key Leader position

- (U) Audience: The training is “designed for the [Secretary], [Deputy Secretary], and their respective immediate offices and support staff, and the first nine PAS officials in the order of succession and their respective staffs.”
- (U) Learning Objectives: The training introduces “the policy and legal framework in the event an official assumes the functions and duties of the [Secretary], as [Acting Secretary] ... .” In addition, the training discusses “roles and responsibilities, communication requirements, operational implications, and potential situations that require an official to assume functions and duties as the Acting [Secretary].”
- (U) Training Topics: The briefing includes topics such as an overview of DoD policy on AFD of the Secretary of Defense, anticipated versus unanticipated AFDs, and the corresponding notification processes.
- (U) Accountability: Participants are required to complete an “acknowledgment form certifying their review of the Executive Overview Briefing slides and the DoDD 3020.53.”

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<sup>94</sup> (U) We were informed that the DoD OGC implemented the specialized training near the end of our review.

(U) Block 2 - Staff-Level Expanded Briefings – delivered within 2 months of arrival into a Support to Key Leader position

- (U) Audience: The training is designed for the “[Secretary’s] and [Deputy Secretary’s] immediate office and support staff, and support staff to the first nine successors after the Deputy Secretary (the Secretaries of the Military Departments and the Under Secretaries).”
- (U) Learning Objectives: “The purpose of the expanded briefing is to ensure appropriate staff are familiar with the [Secretary of Defense] Succession Playbook and understand the roles and responsibilities when any AFD occurs, anticipated or unanticipated,” and the AFD notification process. “The desired end state is for staff to be fully trained in the internal AFD process to support an Acting [Secretary] with knowledgeable staff and a working understanding of processes should the primary staff be unable to fully support an Acting [Secretary].”
- (U) Expanded Briefing Topics:
  - (U) Element 1: A review of the Secretary of Defense Succession Playbook to support an Acting Secretary, as well as reporting requirements for immediate office staff and support staff, including all PSOs and PCs.
  - (U) Element 2: Discussion of various scenarios for anticipated and unanticipated AFDs.
  - (U) Element 3: Secretary and Deputy Secretary office staff will receive an additional training block from the Joint Staff that is standard orientation training for Secretary and Deputy Secretary Military Assistants (MAs). MAs for the top nine potential successors will receive the same training, which covers various time-sensitive situations that may require Acting Secretary of Defense decisions.
- (U) Accountability: Participants are required to complete “an acknowledgment form that includes certifying review of the Expanded Briefing slides and Secretary of Defense Succession Playbook.”

(U) Block 3 - Annual Refresher of Executive Successor and Staff Overview Brief

- (U) Audience: The training is designed for the “[Secretary] and [Deputy Secretary] Front Office and Direct Support Staffs, Military Department and Undersecretaries Front Office Staffs to include [MAs].” According to the matrix that tracks requirements for attending the Secretary of Defense Succession

(U) Training, the principals in the order of succession are also required to attend the “Annual Refresher Brief.”

- (U) Learning Objectives: The training reinforces “AFD responsibilities and communication requirements from the previously-received training. It will be updated to incorporate any changes to policy and guidance, as well as lessons learned from the previous year.”
- (U) The training is self-paced, with an in-person option. Leadership can “look for opportunities to provide in-person briefings when large groups of Principals are convened for other events, such as Senior Leader Offsites, to maximize PAS participation.” The training “will cover:
  - 1) (U) a condensed version of the Executive Successor Brief;
  - 2) (U) review of lessons learned from the previous-year AFDs; and
  - 3) (U) any updates or changes (if any) made to the AFD process.”
- (U) Accountability: Participants are required to certify their review of the Annual Executive Overview slides and DoDD 3020.53.

## **E. (U) Conclusions and Recommendations from Our Assessment of DoD Policies and Procedures**

(U) The DoD has made, and continues to make, significant improvements in the AFD process, due in large part to Secretary Austin’s approval of the DoD 30-Day Review and implementation of its recommendations, including the publication of DoDD 3020.53, and the associated Secretary of Defense Succession Training Plan.<sup>95</sup>

(U) However, based on issues that arose particularly during January 2024 as discussed in Section III, DoDD 3020.53 does not provide a sufficient framework to ensure that fully informed decisions are made in all circumstances as to whether the Secretary of Defense is unable to perform the functions and duties of the office. Also, DoDD 3020.53 does not provide sufficient information as to the role of medical personnel (such as physicians) who provide medical care to the Secretary of Defense and to those in the order of succession, in the AFD process.

(U) The Secretary of Defense Succession Training Plan provides a framework for informing and educating DoD officials in the order of succession and their immediate staffs on the AFD policies contained in DoDD 3020.53. However, the plan does not

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<sup>95</sup> (U) We discuss the DoD 30-Day Review in Appendix B.

(U) include training for medical personnel, such as physicians who support the Secretary, and those in the order of succession.

(U) We provide the following conclusions and recommendations to the DoD.

### ***(U) Adequacy of AFD Plan***

(U) The DoD AFD plan does not fully address potential scenarios involving the inability of the Secretary of Defense to perform the functions and duties of the office. Our review identified concerns that DoDD 3020.53 does not:

- (U) sufficiently define the term “medically incapacitated;”
- (U) provide authority or guidance for disclosure of protected health information by medical providers or medical staff to DoD officials that may be relevant to or necessary for a fully informed AFD determination;
- (U) sufficiently minimize subjectivity with regard to the criteria by which support personnel are required to report conditions or situations that may result in the principal’s inability to perform the functions and duties of the office, particularly medical concerns that may result in “potential or actual incapacitation;”
- (U) establish objective criteria to determine when an AFD may be necessary; or
- (U) require a period of recuperation and a medical assessment after a medical incapacitation to determine whether the Secretary is able to resume their functions and duties.

(U) The following paragraphs provide details and specific recommendations for the DoD regarding these concerns.

(U) While DoDD 3020.53 glossary does not define the term “medically incapacitated,” the Directive includes an explanatory reference after the term stating, “i.e., unable to perform the functions and duties of the office due to sickness, injury, or other medical condition.” However, DoDD 3020.53 does not further define or describe the phrase “unable to perform the functions and duties of the office” and does not contain comprehensive guidance as to the types of medical scenarios that might result in an inability to perform functions and duties and, therefore, warrant an AFD. The only examples in the Directive of such medical scenarios are “undergoing unanticipated hospitalization” and an “unanticipated medical procedure requiring general anesthesia.”

(U) However, DoDD 3020.53 does not address whether certain situations, such as having a sudden medical condition requiring transportation by ambulance, should prompt consideration as to whether an AFD is required. While not all ambulance rides are due to a medical condition that impacts cognitive ability, situations such as Secretary Austin's need for an ambulance on January 1, in which he was in severe pain and faced a medical condition rendering him unable to drive himself or even ride as a passenger in a non-emergency vehicle, may not prompt examination of whether an AFD was warranted under DoDD 3020.53 as currently written.

(U) Likewise, DoDD 3020.53 does not address potential and actual effects of medications including opioids, sedatives, and anesthesia other than general anesthesia. Additionally, DoDD 3020.53 does not address the potential effects of medical procedures during which the patient might not be able to respond to events in a timely manner. Under some circumstances, the effects of medications and medical procedures may degrade an individual's physical and cognitive ability and might be severe enough to constitute medical incapacitation.

(U) DoDD 3020.53 may not have prompted consideration as to whether an AFD was warranted or prompted Secretary Austin to notify his staff or Deputy Secretary Hicks that he may be unable to perform the functions and duties of his office, particularly while undergoing procedures on January 6 and 8.

(U) RECOMMENDATION: The DoD should clarify and further define the term, "medically incapacitated," and the phrase, "unable to perform the functions and duties," in DoDD 3020.53. According to the documents we reviewed, DoDD 3020.53 was not coordinated with the Assistant Secretary of Defense for Health Affairs (ASD[HA]) or Defense Health Agency (DHA). Additionally, doctors we interviewed and DoD medical stakeholders with whom we consulted were not aware of DoDD 3020.53 or its provisions. Accordingly, we recommend that the DoD's actions to clarify and define this term and phrase include appropriate coordination with ASD(HA) and DHA.

(U) RECOMMENDATION: The DoD should review whether medical conditions or events requiring transportation by ambulance, specific medical procedures, or the administration of certain types, categories, or amounts of medications should trigger consideration of the questions of medical incapacitation, the ability "to perform the functions and duties," and the need for an AFD, and implement the results of that review accordingly. We also recommend that such review include coordination with ASD(HA) and DHA.

(U) DoDD 3020.53 also provides no authority or guidance for medical professionals to disclose medical information relevant to or necessary for AFD determinations consistent with the Health Insurance Portability and Accountability Act (HIPAA).

(U) At various points, DoDD 3020.53 provides guidance for the consideration and reporting of medical information. Specifically, paragraph 1.2.d. requires the Secretary of Defense, if able, or the Deputy Secretary of Defense to consult with the DoD GC and “other relevant experts as appropriate,” including “medical professionals,” when making a decision as to whether to initiate an AFD notification. This provision further states this may include situations in which the Secretary is “undergoing unanticipated hospitalization or an unanticipated medical procedure requiring general anesthesia.” Furthermore, the term “medical professionals” does not indicate whether those professionals are DoD employees or non-DoD medical professionals and how the process for obtaining information from or consulting with them may differ based on their status.

(U) DoDD 3020.53, paragraph 1.2.e., provides guidance for handling questions about the Secretary’s ability to perform or resume performing his functions and duties. While this paragraph does not explicitly mention medical consultations, consideration of medical information such as clinical practice guidelines, or pharmaceutical guidelines and precautions, may be appropriate in these situations.

(U) The general notification requirements in DoDD 3020.53, Section III, list a requirement to include a reason for the AFD, such as hospitalization or medical procedures requiring general anesthesia. Furthermore, the additional external notification requirements to the White House and other offices for medical incapacitation in paragraph 3.4. could foreseeably result in requests by the White House for more specific medical information. Finally, according to paragraph 3.4.c., in certain situations, the Acting Secretary of Defense is required to provide the President, Congress, and the Comptroller General “an explanation as to why the [Secretary of Defense] was medically incapacitated.”

(U) Medical witnesses told us that they did not have authorization under HIPAA to provide Secretary Austin’s staff with specific medical information about his condition. Yet, notwithstanding HIPAA limitations on the disclosure of protected health information (PHI), DoDD 3020.53 now places a duty on personnel providing direct support to the Secretary and Deputy Secretary to notify appropriate officials of, among other things, a “medical concern involving the principal’s potential or actual incapacitation requiring admittance to the hospital (including emergency room visits).” Additionally, the duty requires notification of “any other condition or situation that results in the principal’s inability to perform the functions and duties of the office.”

(U) Although Secretary Austin told us that he was confident that his medical providers, including the Primary Physician, would keep his staff updated on “significant issues or changes,” the JMA told us that the Primary Physician was “very good about HIPAA” and would not release any specific information about Secretary Austin’s medical condition. Such information might be important in determining whether the Secretary was unable

(U) to perform his functions and duties. Nonetheless, the Primary Physician documented on January 2, 2024 that he recommended a transfer of authorities based on his opinion that Secretary Austin “was unlikely to be able to devote full attention to any military contingencies that might rise today.”

(U) DoDD 3020.53 does not provide authorization, nor cite an exception to HIPAA prohibitions against the disclosure of PHI, particularly in situations in which the Secretary of Defense is unable or unwilling to authorize disclosure. The absence of acknowledgment of HIPAA or its prohibition against the disclosure of PHI in the Directive risks putting DoD personnel in an untenable situation in which they have a critical reporting obligation but may not have access to the information to perform it.

(U) While there is no dedicated position within the OSD staff or the Military Health System (MHS) for a “physician to the Secretary of Defense” nor a requirement that the Secretary of Defense or other officials in the order of succession use the MHS, we found that the Primary Physician appears to have been in a unique role in which he had access to the Secretary’s medical information while also having at least a basic understanding of the Secretary’s functions and duties. Therefore, the Primary Physician may be an important source of information as to the Secretary’s medical condition and be well positioned to provide a recommendation as to whether an AFD is medically advisable without disclosing any specific PHI. However, the Primary Physician—and thus the Acting Secretary of Defense—may not be able to provide more specific information if requested by the President or Congress. Moreover, should a future Secretary of Defense choose not to use the MHS, it is unclear from DoDD 3020.53 how the Deputy Secretary of Defense or Acting Secretary of Defense would consult with non-DoD medical providers.

(U) RECOMMENDATION: The DoD, in consultation with the Defense Health Agency (DHA), and the ASD(HA), as appropriate, should clarify DoDD 3020.53 to acknowledge and address the HIPAA limitations on disclosure of PHI in the context of AFD processes and issue appropriate guidance to medical professionals and staff providing direct support to the Secretary and Deputy Secretary.

(U) RECOMMENDATION: The DoD should include HIPAA in the matters listed in DoDD 3020.53, paragraph 2.7.a., for which the DoD GC is responsible for providing legal advice.

(U) RECOMMENDATION: The DoD should review whether to clarify the term “medical professionals” and the procedures for consulting with such persons in DoDD 3020.53, paragraph 1.2.d., including whether to designate the Primary Physician or another DoD doctor as a potential source of medical advice as to whether the Secretary of Defense is able to perform the functions and duties of the office, and implement the results of that review accordingly.



(U) DoDD 3020.53 states that it intended to “minimize subjectivity”; however, the criteria for support personnel to report medical concerns that may result in medical incapacitation still allow for a significant degree of subjectivity.

(U) For example, paragraph 3.1 states that personnel providing direct support to the Secretary of Defense have a duty to report any “medical concern involving the [Secretary’s] potential or actual incapacitation requiring admittance to the hospital (including emergency room visits).” However, the provision does not require reporting hospitalizations or emergency room visits if the personnel do not believe the circumstances involve potential or actual incapacitation. In light of our finding that DoDD 3020.53 inadequately defines “medical incapacitation,” support personnel may have difficulty assessing “potential or actual incapacitation,” and support personnel may be reluctant to report that the Secretary is incapacitated in the absence of clear indicators, such as being unconscious. This situation may be particularly true where, as in this case, the Secretary is reluctant to expose his personal medical situation to broad or public scrutiny. Furthermore, as noted above, due to HIPAA protections, the Secretary’s support personnel may not have sufficient information about the Secretary’s medical condition to assess whether they should report potential or actual incapacitation.

(U) If DoDD 3020.53 had been in effect in January 2024, it is not clear whether Secretary Austin, his medical providers, or his staff would have considered the circumstances of his January 1 transportation by ambulance to the emergency room and subsequent hospitalization involved potential or actual incapacitation. We did not note any indication that he or his support personnel believed that his condition involved potential incapacitation to perform his duties at the time Secretary Austin went to the hospital.

(U) Moreover, the newly adopted criteria would not necessarily have prompted a decision to report potential or actual incapacitation by virtue of the fact that the Secretary left his house in an ambulance. Additionally, with regard to whether the Directive’s reporting requirement of a “planned or unplanned loss of access to secure communications” would have prompted reporting of the situation, his support personnel did not consider the lack of secure communications in the ambulance during the 38-minute ride to the hospital as a reportable event, potentially requiring an AFD. They told us that there were direct communications between PSO 1 and PC 1 through text messages and that they would have stopped the ambulance and established communications with Secretary Austin if necessary.

(U) RECOMMENDATION: The DoD should further define in DoDD 3020.53 situations requiring support personnel to report medical concerns that could prompt an AFD to further minimize subjectivity by including clear, objective criteria, potentially including occurrences such as calling for emergency medical services, emergency room visits,

(U) ambulance transports, hospitalizations, and other emergent medical conditions when the origin and severity of the condition is unknown (as occurred in February 2024).

(U) Consistent with DoDD 3020.53, paragraph 1.2.g.(1), the Secretary of Defense decides when to resume their functions and duties after a medical incapacitation. DoDD 3020.53 does not require a period of recuperation or a medical assessment to determine that the Secretary is able to resume their functions and duties after a medical incapacitation. However, consistent with DoDD 3020.53, paragraph 1.2.e.(2), the Acting Secretary of Defense may raise questions about the Secretary's ability to resume their functions and duties with the President.

(U) Based on the JMA's consultation with the Primary Physician, the December 22 through December 23, 2023 transfer of authorities purposefully included time to allow Secretary Austin to rest and recuperate from his medical procedure. By contrast, Secretary Austin told us that he made the decision to resume his authorities on January 5, 2024, without consulting with his doctors because he felt he was "able to function" even though he was "still recovering." Secretary Austin remained in the hospital for another 10 days after resuming his authorities and received treatment planned around his work schedule.

(U) RECOMMENDATION: The DoD should review whether a period of recuperation and a medical assessment should be required before the Secretary of Defense resumes their functions and duties after a medical incapacitation, and implement the results of that review accordingly.

### ***(U) Inadequate Understanding of the AFD's Impact***

(U) Neither Deputy Secretary Hicks nor anyone else on the Secretary and Deputy Secretary staffs understood that the transfers of authorities meant that she was serving as the Acting Secretary from December 22 through 23, and from January 2 through 5. Additionally, Secretary Wormuth, who was third in the order of succession, was not informed of the AFDs or that Deputy Secretary Hicks was serving as the Acting Secretary from December 22 through 23, and from January 2 through 5. As a result, she was unaware she was next in the order of succession, and would have had to assume the responsibility of Acting Secretary had Deputy Secretary Hicks been unable to perform the functions and duties of the office.

(U) DoDD 3020.53 effectively addressed this concern by establishing DoD policy for the roles and responsibilities of the Secretary of Defense associated with the AFD, whereby the Deputy Secretary of Defense or another designated official, as determined by the order of succession or by the President, assumes the functions and duties of the office. Additionally, DoDD 3020.53, paragraph 3.2.d., requires distribution of AFD notifications,

(U) which specify that the official assuming the functions and duties of the office is serving as the Acting Secretary of Defense, to various DoD officials, including the others in the chain of succession.

(U) RECOMMENDATION: We make no recommendation regarding this issue.

### ***(U) Limited Reporting Requirement***

(U) The DoDD 3020.53 reporting requirements in paragraph 3.1.a only extend to the staff and do not require the Secretary or the Deputy Secretary to report to other officials within DoD or disclose to DoD staff a situation that may result in the Secretary's or the Deputy Secretary's inability to perform the functions and duties of the office.

(U) While DoDD 3020.53 requires the Secretary to provide notifications for anticipated or planned events that will result in an inability to perform the functions and duties of the office, including planned medical procedures for which medical incapacitation is known or may be reasonably assumed, the Directive relies heavily on the Secretary to determine when to transfer their duties to the Deputy Secretary and how much information to share about the reasons for such transfer, and how long it may continue. Moreover, DoDD 3020.53 contains no reporting requirements for the Deputy Secretary or other official in the order of succession with respect to situations that may result in their inability to assume the functions and duties of the Secretary. However, we acknowledge that once such official is serving as the Acting Secretary of Defense, they would need to comply with the responsibilities of the Secretary of Defense contained in DoDD 3020.53.

(U) Secretary Austin did not inform Deputy Secretary Hicks that the reason for the AFD on December 22, 2023 was because he planned to undergo a medical procedure that required him to undergo general anesthesia. Similarly, Secretary Austin did not disclose to Ms. Magsamen or any other staff member that he was undergoing general anesthesia on December 22, 2023.

(U) While DoDD 3020.53 may have helped address that planned event, it is not clear that had the Directive been in effect in January 2024, it would have prompted a timely transfer of duties to the Deputy Secretary when Secretary Austin experienced an unplanned medical event and departed his house in an ambulance, when he was hospitalized, and even as he experienced further complications.

(U) Secretary Austin also did not disclose to Ms. Magsamen or Deputy Secretary Hicks that he was undergoing the January 6, 8, and 9, 2024 medical procedures. While we acknowledge Secretary Austin's instructions to his physicians that he did not want any treatment to impair his ability to function, we believe that his condition and treatment should have at least prompted consideration by Secretary Austin and others as to whether his authorities should have been transferred to Deputy Secretary Hicks. In so

(U) concluding, we do not make or suggest a medical judgment as to whether the Secretary was, in fact, medically incapacitated or otherwise unable to carry out the functions and duties of his position during those periods, but that does not mean it would not be prudent to have considered the issue at the time in question.

(U) DoDD 3020.53, paragraph 3.1, states that personnel providing direct support to the Secretary of Defense and Deputy Secretary of Defense have a duty to report any “medical concern involving the principal’s potential or actual incapacitation requiring admittance to the hospital (including emergency room visits).” However, DoDD 3020.53 does not extend that obligation to the Secretary of Defense, Deputy Secretary of Defense, or other officials in the order of succession with respect to reporting their own inability to perform the functions and duties of the office.

(U) RECOMMENDATION: The DoD should review and consider whether to include the Secretary of Defense, Deputy Secretary of Defense, and other officials in the order of succession in the list of those persons in DoDD 3020.53 who have a duty to provide timely and complete notifications to DoD officials of a situation that potentially results in their inability to perform the functions and duties of the office, and implement the results of the review accordingly.

(U) DoDD 3020.53 does not require medical personnel to report to appropriate officials any situation that results in the Secretary’s inability to perform the functions and duties of the office.

(U) DoDD 3020.53, paragraph 3.1., requires personnel who provide direct support to the Secretary to notify “appropriate officials,” as defined in the Directive, of a medical concern involving the principal’s potential or actual incapacitation requiring admittance to the hospital (including emergency room visits), or any other condition or situation that results in the Secretary’s inability to perform the functions and duties of the office.

(U) DoDD 3020.53 defines individuals providing direct support to the Secretary and Deputy Secretary as drivers; those providing security, travel, and communications support; members of the Executive Secretariat; and immediate office staff members. However, the provision does not include medical personnel.

(U) Additionally, there is no dedicated position within the OSD staff or the MHS for a “physician to the Secretary of Defense” nor a requirement that the Secretary of Defense or other officials in the order of succession use the MHS. Additionally, DoDD 3020.53 does not specify any role in the AFD process for the Primary Physician nor recognize or acknowledge any relationship between the Primary Physician (or any other appropriate DoD physician), Secretary of Defense, and Secretary’s staff in providing care and advice regarding the Secretary of Defense’s ability to perform his duties. Furthermore, as previously stated, the Primary Physician may be well positioned to provide a

(U) recommendation as to whether an AFD is medically advisable. However, the list of “appropriate officials” whom support personnel must notify does not include the Primary Physician (or any other DoD physician), even when the reason for the notification involves potential or actual medical incapacitation.

(U) However, had Secretary Austin been taken to a civilian emergency room, his support staff (PSOs and PCs) might be the only DoD personnel with knowledge of the situation and therefore would be in the best position to notify the Primary Physician (or any other appropriate DoD doctor) in addition to the other “appropriate officials” under DoDD 3020.53, paragraph 3.1. Such notification would facilitate the involvement of the Primary Physician at an early stage to best assess the impact of the Secretary of Defense’s medical condition on his ability to perform the functions and duties of the office.

(U) The HIPAA Privacy Rule includes a standard for uses and disclosures of PHI without the authorization of the patient for certain “specialized government functions,” including the disclosure of the PHI of “Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission.”<sup>96</sup> However, this exception does not include disclosures of PHI for civilian leaders of the Armed Forces, such as the Secretary of Defense, Deputy Secretary of Defense, or others in the line of succession. Accordingly, unless another exception applies, a covered entity under HIPAA may not disclose the PHI of the Secretary of Defense without his authorization, even if the disclosure is a military necessity or otherwise essential to assessing his ability to perform the functions and duties of his office and therefore to a determination as to whether a transfer of authorities is warranted.

(U) RECOMMENDATION: The DoD GC should review potential options to authorize and require DoD medical personnel to notify appropriate officials, such as the Primary Physician or any other appropriate DoD covered entity under HIPAA, of medical situations, treatments, and medications that may potentially impact the ability of the Secretary of Defense and others in the line of succession to perform the functions and duties of the office. In addition, the DoD GC should include in its review of options a process to require the Secretary and other senior DoD officials, whether using DoD or non-DoD medical providers, to authorize a limited HIPAA authorization to disclose to appropriate DoD officials medical information that is related to their ability to perform the functions and duties of the office. The DoD GC should provide the results of their

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<sup>96</sup> (U) 45 C.F.R. 164.512(k)(1)(i). The DoD implemented this rule in DoD Manual (DoDM) 6025.18, “Implementation of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule in DoD Health Care Programs,” March 13, 2019, including defining “appropriate military command authorities” and the purposes for which the PHI may be used or disclosed. Under this implementing regulation, the Secretary of Defense is among the “appropriate military command authorities” who can receive PHI of Service members for authorized purposes.

(U) review to the Under Secretary of Defense for Policy for consideration and implementation as appropriate.

(U) RECOMMENDATION: The DoD GC should review whether to include the Primary Physician or any other appropriate DoD covered entity under HIPAA in the AFD process to provide information, evaluate information received from others, and provide advice to the Secretary, Deputy Secretary, or their staffs, on the impact, if any, of medical situations, treatments, and medications on the Secretary's ability to perform the functions and duties of the office and on the Secretary's ability to access secure communications. The DoD GC should provide the results of their review to the Under Secretary of Defense for Policy for consideration and implementation as appropriate.

(U) DoDD 3020.53 does not expressly require the Department of the Army CID Director to report any situations concerning the Secretary or Deputy Secretary that potentially could result in an AFD. The CID is responsible for providing protective services to the Secretary and Deputy Secretary. The CID Director was informed of Secretary Austin's hospitalization on January 2, 2024, but we did not find a policy that required the CID Director to report this matter to other DoD officials or any evidence that he had done so.

(U) However, DoDD 3020.53, paragraph 3.1.c., requires individuals providing direct support to Secretary Austin and Deputy Secretary Hicks, including those providing security, to notify appropriate officials of medical concerns or other conditions involving the potential or actual incapacitation or other inability to perform the functions and duties of their office. Therefore, we do not believe it is necessary to extend the reporting requirement to the CID Director.

(U) RECOMMENDATION: We make no recommendation regarding this issue.

(U) DoDD 3020.53 does not specifically require reporting or consideration of home-based medical treatment. DoDD 3020.53, paragraph 3.1.a.(4), only requires notification of a medical concern involving the Secretary's potential or actual incapacitation requiring admittance to the hospital, including emergency room visits. While paragraph 3.1.a.(5) of the Directive also requires reporting of "[a]ny other conditions or situations that result in the [Secretary's] inability to perform [their] functions and duties," it does not specifically address home health care.

(U) After Secretary Austin's discharge from the hospital on January 15, until his re-admittance to the hospital on February 11, he received medical care at home.

(U) RECOMMENDATION: The DoD should review and consider including a specific reporting requirement for home medical care with criteria for identifying treatment or conditions that may impede the ability to perform the functions and duties or result in

(U) potential or actual medical incapacitation, and implement the results of that review accordingly.

(U) DoDD 3020.53 does not require the DHA to report instances of hospitalization in a Military Medical Treatment Facility of the Secretary of Defense, Deputy Secretary of Defense, or others in the order of succession.

(U) DHA Procedural Instruction 3700.01, "Director's Critical Information Requirements (DCIR), Situation Report (SITREP)," establishes an internal DHA reporting requirement for unplanned hospital admissions of "Cabinet-Level officials" or "other high-visibility patients" to a Military Medical Treatment Facility, but there is no requirement to forward this report to the Deputy Secretary of Defense or other senior DoD officials.

(U) RECOMMENDATION: The DoD should review and consider establishing a reporting requirement for the DHA to notify appropriate DoD officials of the hospitalization of the Secretary of Defense, the Deputy Secretary of Defense, and other DoD officials in the order of succession, and implement the results of that review accordingly.

### ***(U) Inadequate Notification Process***

(U) The DoD did not report two AFDs, occurring on June 17, 2024, and June 21, 2024, to the Comptroller General and Congress as required by DoDD 3020.53.<sup>97</sup>

(U) As part of our effort to assess the adequacy of DoD AFD policies following the issuance of DoDD 3020.53, we found that Secretary Austin directed two AFDs to Deputy Secretary Hicks—one on June 17, 2024, and the other on June 21, 2024.

(U) Both AFD notifications stated that the reason for the AFD was travel and further stated that the Deputy Secretary of Defense was serving as the Acting Secretary of Defense.<sup>98</sup> However, although these AFDs were reported to the WHSR, they were not reported to the Comptroller General and Congress.

(U) DoDD 3020.53, paragraph 3.3.a., states, "When an Acting [Secretary] assumes the functions and duties of the [Secretary], appropriate notifications will be provided consistent with the requirements of the FVRA." The FVRA requires the DoD to notify the Comptroller General and Congress of each instance of a "vacancy," which occurs when the Secretary "dies, resigns, or is otherwise unable to perform the functions and duties of the office." Similarly, the Deputy Secretary may only serve as the Acting

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<sup>97</sup> (U) In response to our draft report, the DoD emphasized that DoDD 3020.53 requires notifications to the Comptroller General and Congress "only when 'appropriate' and 'consistent with the FVRA,'" and stated that "[t]he Department intends to report under this standard moving forward." We declined to modify our report because DoDD 3020.53 is not clear as to when the Department considers such notifications to be "appropriate."

<sup>98</sup> (U) The AFDs did not indicate the expected duration of the transfer. However, the June 17 AFD lasted 1 hour and the June 21 AFD lasted 35 minutes.

(U) Secretary of Defense when the Secretary “dies, resigns, or is otherwise unable to perform the functions and duties of the office.” Thus, every AFD by the Deputy Secretary as the Acting Secretary constitutes a “vacancy” under the FVRA. The FVRA does not specify any minimum duration that constitutes a vacancy, nor did our review of the legislative history provide further insight as to whether Congress contemplated the reporting of short-duration periods in which the Secretary of Defense is unable to perform his functions and duties.<sup>99</sup>

(U) The Secretary of Defense position is one of a few PAS officials that require continuous access to secure communications to carry out the functions and duties of the office. Therefore, any loss of secure communications that results in the Secretary being “otherwise unable” to perform the functions and duties of the office would result, by operation of law, in a technical vacancy under the FVRA and require a report to the Comptroller General and Congress. It is not uncommon for the Secretary to plan for, or actually experience, a short-term loss of secure communications and initiate an AFD.<sup>100</sup>

(U) RECOMMENDATION: The DoD GC should review the FVRA reporting requirement in DoDD 3020.53 and determine whether the FVRA requires reporting of instances of relatively short duration in which the Secretary is unable to perform the functions and duties of the office, and revise the directive as appropriate.

### **(U) AFD Training Plan**

(U) According to Executive Order 13963, “Providing an Order of Succession within the Department of Defense,” December 10, 2020, the Secretaries of the Military Departments are next in the order of succession after the Deputy Secretary of Defense in order upon the date of their appointment to their position after Senate confirmation. In this case, the Secretary of the Army was the most senior of the Service Secretaries and therefore next in order of succession to the Deputy Secretary of Defense.

(U) We interviewed Secretary Wormuth to determine what she knew as it related to her position in the order of succession to the Secretary of Defense. Secretary Wormuth acknowledged to us that she was third in the order of succession. Secretary Wormuth also told us that she knew that Deputy Secretary Hicks planned to vacation in Puerto Rico in late December 2023. However, she told us that she was unfamiliar with

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<sup>99</sup> (U) The FVRA does not require heads of executive agencies to report the end date of service by an Acting official. Because the notifications for the December 2023 and January 2024 vacancies in the office of the Secretary of Defense were submitted to the GAO after Secretary Austin had resumed his authorities, the WHS reported the end date at the same time they reported the start date. Although the vacancy resulting from Secretary Austin’s February hospitalization ended on February 13, 2024, the end date of the vacancy was not reported to the GAO until March 11, 2024.

<sup>100</sup> (CU) Based on information provided by the DoD, we determined that 34 AFDs occurred between Secretary Austin’s swearing in on January 22, 2021, and his hospitalization on January 1, 2024, and ranged from approximately [REDACTED] in duration.



(U) the AFD process and received no specific training to prepare her to assume the functions and duties of the Acting Secretary of Defense.

(U) The Secretary of Defense Succession Training Plan provides a strategy for educating DoD officials in the order of succession and their respective immediate staffs on the AFD policies contained in DoDD 3020.53.

(U) Additionally, the Secretary of Defense Succession Training Plan assigned the DoD OGC with the responsibility to develop specialized training to address the specific responsibilities of the DoD GC in the AFD process and DoDD 3020.53. We were informed that the DoD OGC implemented the specialized training near the end of our review.

(U) RECOMMENDATION: The DoD should update the Secretary of Defense Succession Training Plan to address any changes implemented as a result of this review.

(U) DoDD 3020.53, paragraph 1.2.d., includes a requirement to coordinate with “other relevant experts as appropriate (e.g., medical professionals)” when making an AFD decision, and as described above, the directive does not identify those medical professionals. Additionally, the Secretary of Defense Succession Training Plan does not include a provision to train medical professionals, including the Primary Physician, on their roles in the AFD process.

(U) RECOMMENDATION: The DoD should publish guidance and train relevant “medical professionals” on their roles in the AFD process.

## V. (U) Assessment of the DoD Continuity of Operations

(U) Part of our review examined DoD Continuity of Operations (COOP) processes related to the notification requirements in the event the Secretary of Defense becomes incapacitated. DoD COOP processes ensure the functions of essential DoD Components remain uninterrupted in the event of unplanned, contingency, or crisis situations. The National Military Command Center (NMCC) makes notifications to the EOP as part of DoD COOP processes.<sup>101</sup> The EOP requires such notifications to effectively manage incidents and crises on a national level and to support national security decision-making.

(U) We reviewed White House and DoD documents establishing DoD COOP processes related to the notification requirements and found several discrepancies. We summarize some of those documents in the following bullets and highlight the discrepancies in three tables below.

- (U) National Security Presidential Memorandum-32 (NSPM-32), January 13, 2021: This memorandum requires agencies to “report information to the [EOP] in a consistent, standardized manner.” This ensures “the President, Vice President, and appropriate advisors within the EOP have the information they require to effectively manage incidents and crises on a national level and support national security decision-making.” Additionally, the document describes incidents requiring notification to the EOP [referred to as Presidential Critical Information Requirements (PCIRs)] and assigns corresponding Tiers (I, II, III) to indicate the timeline and priority of notification.
- (U) Secretary of Defense Memorandum, “Standardized Reporting Policy for Presidential Critical Information Requirements,” March 23, 2021 (Standardized Reporting Policy for PCIR): This memorandum establishes DoD policy for reporting PCIRs to the White House Situation Room (WHSR) within the timeframes and standards specified by NSPM-32. The memorandum states, “The [NMCC] is the single point of contact within the DoD to provide PCIRs to the WHSR.” The memorandum includes a matrix for the NMCC to use to determine the threshold for reporting PCIR to the WHSR.
  - (S) [REDACTED]

<sup>101</sup> (U) The WHSR is the primary Point of Contact for agencies to provide reportable information to the EOP.

(S) [REDACTED]

- (U) Secretary of Defense Continuity of Operations Plan (SD COOP Plan), May 31, 2024: Prescribes actions to support the Secretary of Defense, Deputy Secretary of Defense, and key designated staff who may be assigned to perform essential functions from alternative locations in unplanned, contingency, or crisis situations.<sup>102</sup> The SD COOP Plan references the Secretary of Defense Continuity Playbook (SD Continuity Playbook) and Secretary of Defense Succession Playbook (SD Succession Playbook).
- (U) SD Continuity Playbook, October 27, 2023 (Titled as an Addendum to the SD COOP Plan): The SD Continuity Playbook outlines the “Secretary of Defense Immediate Office responsibilities” and provides checklists “for staff and support sections” to conduct COOP-related events. The SD Continuity Playbook also includes requirements to identify the location of specific DoD senior officials, including the Secretary and Deputy Secretary, to make appropriate decisions during a COOP-related event.
- (U) SD Succession Playbook, September 13, 2024: Provides a level of detail for administrative actions not addressed in DoDD 3020.53. The SD Succession Playbook also outlines the method and order in which Secretary of Defense and Deputy Secretary of Defense senior staff notify required personnel of an anticipated or unanticipated AFD.
- (U) Chairman of the Joint Chiefs of Staff Chairman’s Critical Information Requirements (CCIR), August 30, 2023: The CCIR is used, among other things, to determine if a situation or incident meets the criteria for the PCIR and reporting to the WHSR. The Standardized Reporting Policy for PCIR directs the CJCS to update the CCIR “to correspond with the PCIR categories, reporting criteria, and [...] response time criteria.”
- (U) Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3411.01E, “Key Personnel Location Reports to the National Military Command Center,” August 23, 2016: This Instruction “establishes procedures for informing the [NMCC] of the location of designated key personnel,” including the Secretary of Defense, Deputy Secretary of Defense, and key personnel in the line of

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<sup>102</sup> (U) The May 31, 2024 SD COOP Plan rescinds and supersedes the SD COOP Plan, dated October 27, 2023. We reviewed both documents.

(U) The Emergency Relocation Group (ERG) are “select personnel assigned to perform essential functions when such functions can no longer be supported from the primary/normal working location due to a local, regional, or national change in operating status and the need to operate from an alternate operating location exists.”

(U) succession. The NMCC requires such data as part of Chairman of the Joint Chiefs of Staff COOP Plan.

- (U) Secretary of Defense Succession Training Plan (SD Succession Training Plan), May 31, 2024: Provides a comprehensive view of the briefing requirements for the Secretary of Defense, Deputy Secretary of Defense, and PAS Officials in the order of succession. It also provides guidance to staff with responsibilities for ensuring successful AFDs. This guidance includes information on potential situations that require an official to assume functions and duties as the Acting Secretary of Defense, roles and responsibilities of various staff members, communication requirements, and operational implications.

(U) We interviewed witnesses who work in the NMCC and asked them about the reporting requirements in NSPM-32, the Standardized Reporting Policy for PCIR, and the CCIR. The witnesses told us that they were not familiar with the PCIR reporting requirements in NSPM-32 and the Standardized Reporting Policy for PCIR. They told us that they only use the CCIR when determining PCIR reporting requirements.

(U) We identified several discrepancies between NSPM-32, the Standardized Reporting Policy for PCIR, and the CCIR.

(U) The following tables summarize the discrepancies in reporting requirements for a “leadership event” (Table 7), “loss of public trust” (Table 8) and a “media event” (Table 9) each of which may occur or apply when the Secretary of Defense is hospitalized or incapacitated.<sup>103</sup> We bolded specific terms for emphasis.

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<sup>103</sup> (U) We included “loss of trust event” here in this section to document the discrepancies we found with the NSPM-32 requirement, and the inclusion of such event in our analysis does not imply that we consider the Secretary’s hospitalizations to be a potential “loss of trust event.”

(U) Table 7. Reporting Requirements for Leadership Events

(S) Event	Document	Reporting Criteria	Tier/PCIR Reporting Requirement
Leadership Event	NSPM-32	“Death, <b>incapacitation</b> , kidnapping, or attempted assassination of Cabinet member or Agency head ... <b>or credible indications that such an incident is imminent.</b> ” <sup>1</sup>	<b>Tier I - Report PCIR information to the WHSR within 3 Hours.</b> <sup>2</sup>
	Secretary of Defense Memorandum, “Standardized Reporting Policy for PCIR,”	“Death, <b>incapacitation</b> , kidnapping, or attempted assassination of Cabinet member or Agency head.” <sup>3</sup>	<b>[Redacted]</b> - <b>[Redacted]</b> <b>[Redacted]</b> <b>[Redacted]</b> <b>[Redacted]</b>
	CCIR	The CCIR has a reporting requirement for a leadership event. However, the criteria for this event, “Death, <b>serious injury</b> , attack on, or capture of U.S. Senior Official,” does not include incapacitation as part of the reporting requirement. <sup>4</sup>	No reporting requirement for this event if the incapacitation of the Secretary of Defense does not involve “serious injury.”

<sup>1</sup> (U) The term “incapacitation” is not defined.

<sup>2</sup> (U) This leadership event is one of the PCIRs for which NSPM-32 requires a telephonic notification to the WHSR “upon initial indications that [the] event meets [the] the PCIR threshold, within several minutes, independent of Tier level” in addition to a PCIR report within the specified Tier timeline.

<sup>3</sup> (U) The term “incapacitation” is not defined.

<sup>4</sup> (U) The CCIR also includes “Leadership Notification Events” for a “Serious injury, illness, death, or incapacitation of a member of the Joint Staff” as well as “Miscellaneous” events not covered by other Leadership Notification Events. However, neither of these events trigger a PCIR or a phone call to the WHSR using the CCIR guidance.

(U) Source: DoD OIG analysis of NSPM-32, Standardized Reporting Policy for PCIR, CCIR.

(U) Table 8. Reporting Requirements for Public Trust

(S) Event	Document	Description	Tier/PCIR Reporting Requirement
Public Trust	NSPM-32	<b>Loss of Public Trust</b> - “Event that is likely to cause the loss of public trust in a U.S. Government department or agency.”	<b>Tier II - Report PCIR to the WHSR within 48 Hours</b>
	Secretary of Defense Memorandum, “Standardized Reporting Policy for PCIR,”	<b>Loss of Public Trust</b> - “Event that has the potential to cause the loss of public trust in a U.S. Government department or agency.” <sup>1</sup>	[REDACTED]
	CCIR	<b>Public Trust Event</b> - Significant anomaly event that may have the potential to cause a perceived loss of public trust or confidence in the DoD.	Does not require a PCIR for this event <sup>2</sup>  (S)

<sup>1</sup> (U) The Standardized Reporting Policy for PCIR and the CCIR both refer to events involving “the potential” loss of public trust, and the CCIR further refers to events that may have the potential to cause a “perceived” loss of public trust, while NSPM-32 is limited to events involving the “likely” loss of public trust.

<sup>2</sup> (U) Although the CCIR indicates that this event does not require a PCIR, the CCIR requires a review of the PCIR to determine if another reporting requirement applies.

(U) Source: DoD OIG analysis based on NSPM-32, Standardized Reporting Policy for PCIR, CCIR.

(U) Table 9. Reporting Requirements for Media Attention Events

(S) Event	Document	Description	Tier/PCIR Reporting Requirement
<b>Media Attention Incident</b>	NSPM-32	Event that has received or is likely to receive significant national media attention or scrutiny directed at the U.S. Government.	<b>Tier I - Report PCIR to the WHSR within 3 Hours</b>
	Secretary of Defense Memorandum, "Standardized Reporting Policy for PCIR,"	Event that received or may receive significant national media attention directed at the U.S. Government. <sup>1</sup>	[REDACTED]
	CCIR	<b>(Non-Operations Related)</b> - Incident involving U.S. personnel that will likely generate immediate media attention or international concern.	Does not require a PCIR for this event <sup>2</sup>  (S)

<sup>1</sup> (U) The Standardized Reporting Policy for PCIR and the CCIR both refer to an event that "received or may receive" significant media attention, while the NSPM-32 refers to an event that "received or is likely to receive" significant media attention. In addition, the CCIR refers to events that will be of interest of "media attention or international concern," while the NSPM-32 and Standardized Reporting Policy for PCIR refer to events will be of interest of "national media attention."

<sup>2</sup> (U) Although the CCIR indicates that this event does not require a PCIR, the CCIR requires a review of the PCIR to determine if another reporting requirement applies.

(U) Source: DoD OIG analysis based on NSPM-32, Standardized Reporting Policy for PCIR, CCIR.

(U) As shown in the tables above, Standardized Reporting Policy for PCIRs has internal inconsistencies for Tier II event reporting timelines and does not accurately reflect the reporting requirements of NSPM-32.

(S) [REDACTED]

(U) In addition, NSPM-32 requires certain types of PCIRs, including the “Leadership Event” encompassing the incapacitation of a Cabinet member, to be immediately communicated to the WHSR by telephone. Specifically, NSPM-32 states that “a telephonic notification to the WHSR of PCIR information upon initial indications that an event meets PCIR threshold, within several minutes, independent of Tier level.” However, the Standardized Reporting Policy for PCIR does not require a phone alert for PCIRs. Furthermore, although the CCIR identifies events that require a call to the WHSR, it does not state the required timeframe for making the call.

(U) Separately, a COOP-related event may require relocation of the Secretary of Defense, Deputy Secretary of Defense, and Emergency Relocation Group (ERG) to a pre-determined COOP site. The SD Continuity Playbook requires medical equipment and supplies be prepositioned at the relocation sites, and that the sites have a variety of pharmaceuticals, a blood bank, and any other unique medical gear on hand. The SD COOP Plan indicates that senior officials and ERG members will have immediate access to DoD emergency medical services and trained medical staff. In addition, the SD Continuity Playbook states that the Secretary, Deputy Secretary, or other key staff may need to be evacuated to a Military Medical Treatment Facility for medical care during a COOP-related event.

(U) Our review found that Secretary Austin’s medical records were “locked down” and only specific individuals had access to those records. Medical providers told us they had difficulties accessing Secretary Austin’s records. Furthermore, one medical provider, who is involved in the SD COOP Plan, expressed concerns that such difficulties extended to COOP-related facilities where medical providers might not have knowledge of senior, civilian DoD officials’ medical conditions or the necessary medications to have on hand in case of an emergency relocation to the COOP site, unless that information was previously provided.

## **(U) Conclusions on the Assessment of the DoD Continuity of Operations and Related Documents**

(U) Based on the foregoing analysis, we make the following findings and recommendations to the DoD.

(U) As stated above, our review identified discrepancies between and within NSPM-32, the Standardized Reporting Policy for PCIR, and the CCIR. Specifically, we determined: 1.) the CCIR does not accurately reflect reporting requirements in NSPM-32 and the Standardized Reporting Policy for PCIR; 2.) the Standardized Reporting Policy for PCIR had internal inconsistencies as to the reporting timelines for Tier II events and did not accurately reflect reporting requirements in NSPM-32; and 3.) both the Standardized Reporting Policy for PCIR and the CCIR do not implement the PCIR phone alert process as required by NSPM-32.



(U) According to witnesses working in the NMCC, they only consider the CCIR when determining whether to report information to the WHSR. While we found no evidence that the NMCC did not comply with the applicable notification requirements in the instances that are the subject of this review, this disconnect potentially could result in the NMCC failing to comply with the reporting requirements established in NSPM-32 and the Standardized Reporting Policy for PCIR.

(U) RECOMMENDATION: The DoD should review and identify discrepancies, including but not limited to those identified in this report, between and within NSPM-32, the Standardized Reporting Policy for PCIR, and the CCIR, and implement changes to ensure that the reporting requirements are consistent across all relevant guidance documents.

(U) Neither NSPM-32 nor the Standardized Reporting Policy for PCIR define the term “incapacitation,” and different terminology is used in the CCIR. Consistent with our recommendation in Section IV that the DoD define the term “medically incapacitated” in DoDD 3020.53, the failure to define the term “incapacitation” may result in a failure to report to the WHSR when the Secretary of Defense is “medically incapacitated” or “unable to perform the functions and duties of the office.” Additionally, the use of different terminology in the CCIR, which is what witnesses told us they look to when deciding PCIR requirements, creates additional uncertainty as to when such reporting is required.

(U) RECOMMENDATION: The DoD, in coordination with the EOP and WHSR, should define the term “incapacitation” in the Standardized Reporting Policy for PCIR and include a consistent definition in the CCIR, ensuring that such definition is consistent with the DoD’s actions to define the term “medically incapacitated” in DoDD 3020.53 as recommended in Section IV of this report.

(U) Our review identified concerns and delays resulting from limitations on medical professionals’ access to Secretary Austin’s records. Additionally, there were questions raised regarding ensuring the availability of medicines for treatment of key DoD senior leaders during COOP related events.

(U) RECOMMENDATION: The DoD should review and consider processes to ensure medical professionals have appropriate and timely access to medical records and medications to support the potential treatment of the Secretary of Defense, Deputy Secretary of Defense, and others in the order of succession for COOP-related events, and implement the results of that review accordingly.

## VI. (U) Related Topics

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(U) During the course of our work, we identified other topics related to the scope of our review. This section provides a brief synopsis of each issue for consideration.<sup>104</sup>

### A. (U) Movement Notifications

(U) During our review, witnesses told us the PCs send movement notifications to a distribution list to report all movements from one location to another for the Secretary and Deputy Secretary. According to the COOP Program Manager, accurately reporting and recording the locations and whereabouts of the Secretary of Defense and Deputy Secretary of Defense is extremely important, especially as it relates to DoD COOP and the order of succession. DoD personnel are required to track and report this information according to the SD COOP Plan and CJCSI 3411.01E, "Key Personnel Location Reports to the National Military Command Center," however the references do not specify the level of precision that is required in such reports.

(U) We reviewed emails and asked witnesses about movement notifications for Secretary Austin and Deputy Secretary Hicks. We requested documentation outlining this process; however, witnesses could not identify or provide us a standard setting forth the requirements for the distribution or content of movement notifications.

(U) As discussed in Section III, when Secretary Austin was hospitalized at WRNMMC from December 22 through December 23, 2023, one of Secretary Austin's PCs sent movement email notifications describing his movement as an unscheduled event and did not reveal his location at WRNMMC.

(U) For Secretary Austin's transportation to WRNMMC on January 1, 2024, PC 1 sent an initial movement email notification reporting Secretary Austin's movement to WRNMMC. However, 3 minutes later, PC 1 sent a second email reporting the event as "unscheduled" without identifying WRNMMC and thereafter recalled the first email.

(U) We found no movement notifications for Deputy Secretary Hicks while she performed the functions and duties as the Acting Secretary of Defense from January 2 through 5, 2024.

(U) RECOMMENDATION: The DoD should review its processes concerning movement notifications for the Secretary and Deputy Secretary, update those processes in writing, including the designated recipients and type of location data required in those

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<sup>104</sup> (U) During the course of our work, we also noted other issues unrelated to the scope of our review regarding the forwarding of official DoD information to a personal email account, the transporting of classified materials, the use of messaging applications, and the use of personal mobile devices. We have referred those issues to the Department for separate consideration.

(U) notifications, and train DoD personnel on those processes to ensure they provide consistent notifications to the appropriate offices.

## **B. (U) Home Health Care**

(U) Secretary Austin continued to receive medical care at home after his discharge on January 15. However, we found that care was not documented in his Electronic Health Record (EHR). DoDI 6040.45, “DoD Health Record Life Cycle Management,” states personnel providing medical services will “ensure accurate and complete descriptions of all care and services rendered are entered into the appropriate [EHR] for every individual treated” (emphasis added).<sup>105</sup>

(U) RECOMMENDATION: The Assistant Secretary of Defense for Health Affairs, in coordination with the DHA, should review DoD medical policies to ensure they adequately address the circumstances under which home health care by DoD medical providers is authorized and contain sufficient controls to ensure that medical providers document such care in the EHR, and implement the results of the review accordingly.

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<sup>105</sup> (U) DoDI 6040.45, “DoD Health Record Life Cycle Management,” November 16, 2015 (Incorporating Change 1, April 11, 2017).

(U) Defense Health Agency Procedures Manual (DHA-PM) 6025.02, Volume 1, “DoD Health Record Lifecycle Management, Volume 1: General Principles, Custody and Control, and Inpatient Records,” November 23, 2021, contains a similar requirement.

## VII. (U) Consolidated List of Recommendations

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(U) This is a consolidated list of recommendations contained in this report.

1. (U) RECOMMENDATION: The DoD should clarify and further define the term, “medically incapacitated,” and the phrase, “unable to perform the functions and duties,” in DoDD 3020.53. According to the documents we reviewed, DoDD 3020.53 was not coordinated with the Assistant Secretary of Defense for Health Affairs (ASD[HA]) or Defense Health Agency (DHA). Additionally, doctors we interviewed and DoD medical stakeholders with whom we consulted were not aware of DoDD 3020.53 or its provisions. Accordingly, we recommend that the DoD’s actions to clarify and define this term and phrase include appropriate coordination with ASD(HA) and DHA.
2. (U) RECOMMENDATION: The DoD should review whether medical conditions or events requiring transportation by ambulance, specific medical procedures, or the administration of certain types, categories, or amounts of medications should trigger consideration of the questions of medical incapacitation, the ability “to perform the functions and duties,” and the need for an AFD, and implement the results of that review accordingly. We also recommend that such review include coordination with ASD(HA) and DHA.
3. (U) RECOMMENDATION: The DoD, in consultation with the DHA, and the ASD(HA), as appropriate, should clarify DoDD 3020.53 to acknowledge and address the HIPAA limitations on disclosure of PHI in the context of AFD processes and issue appropriate guidance to medical professionals and staff providing direct support to the Secretary and Deputy Secretary.
4. (U) RECOMMENDATION: The DoD should include HIPAA in the matters listed in DoDD 3020.53, paragraph 2.7.a., for which the DoD GC is responsible for providing legal advice.
5. (U) RECOMMENDATION: The DoD should review whether to clarify the term “medical professionals” and the procedures for consulting with such persons in DoDD 3020.53, paragraph 1.2.d., including whether to designate the Primary Physician or another DoD doctor as a potential source of medical advice as to whether the Secretary of Defense is able to perform the functions and duties of the office, and implement the results of that review accordingly.
6. (U) RECOMMENDATION: The DoD should further define in DoDD 3020.53 situations requiring support personnel to report medical concerns that could prompt an AFD to further minimize subjectivity by including clear, objective criteria, potentially including occurrences such as calling for emergency medical

- (U) services, emergency room visits, ambulance transports, hospitalizations, and other emergent medical conditions when the origin and severity of the condition is unknown (as occurred in February 2024).
7. (U) RECOMMENDATION: The DoD should review whether a period of recuperation and a medical assessment should be required before the Secretary of Defense resumes their functions and duties after a medical incapacitation, and implement the results of that review accordingly.
  8. (U) RECOMMENDATION: The DoD should review and consider whether to include the Secretary of Defense, Deputy Secretary of Defense, and other officials in the order of succession in the list of those persons in DoDD 3020.53 who have a duty to provide timely and complete notifications to DoD officials of a situation that potentially results in their inability to perform the functions and duties of the office, and implement the results of the review accordingly.
  9. (U) RECOMMENDATION: The DoD GC should review potential options to authorize and require DoD medical personnel to notify appropriate officials, such as the Primary Physician or any other appropriate DoD covered entity under HIPAA, of medical situations, treatments, and medications that may potentially impact the ability of the Secretary of Defense and others in the line of succession to perform the functions and duties of the office. In addition, the DoD GC should include in its review of options a process to require the Secretary and other senior DoD officials, whether using DoD or non-DoD medical providers, to authorize a limited HIPAA authorization to disclose to appropriate DoD officials medical information that is related to their ability to perform the functions and duties of the office. The DoD GC should provide the results of their review to the Under Secretary of Defense for Policy for consideration and implementation as appropriate.
  10. (U) RECOMMENDATION: The DoD GC should review whether to include the Primary Physician or any other appropriate DoD covered entity under HIPAA in the AFD process to provide information, evaluate information received from others, and provide advice to the Secretary, Deputy Secretary, or their staffs, on the impact, if any, of medical situations, treatments, and medications on the Secretary's ability to perform the functions and duties of the office and on the Secretary's ability to access secure communications. The DoD GC should provide the results of their review to the Under Secretary of Defense for Policy for consideration and implementation as appropriate.
  11. (U) RECOMMENDATION: The DoD should review and consider including a specific reporting requirement for home medical care with criteria for identifying treatment or conditions that may impede the ability to perform the functions and duties or

- (U) result in potential or actual medical incapacitation, and implement the results of that review accordingly.
12. (U) RECOMMENDATION: The DoD should review and consider establishing a reporting requirement for the DHA to notify appropriate DoD officials of the hospitalization of the Secretary of Defense, the Deputy Secretary of Defense, and other DoD officials in the order of succession, and implement the results of that review accordingly.
  13. (U) RECOMMENDATION: The DoD GC should review the FVRA reporting requirement in DoDD 3020.53 and determine whether the FVRA requires reporting of instances of relatively short duration in which the Secretary is unable to perform the functions and duties of the office, and revise the directive as appropriate.
  14. (U) RECOMMENDATION: The DoD should update the Secretary of Defense Succession Training Plan to address any changes implemented as a result of this review.
  15. (U) RECOMMENDATION: The DoD should publish guidance and train relevant “medical professionals” on their roles in the AFD process.
  16. (U) RECOMMENDATION: The DoD should review and identify discrepancies, including but not limited to those identified in this report, between and within NSPM-32, the Standardized Reporting Policy for PCIR, and the CCIR, and implement changes to ensure that the reporting requirements are consistent across all relevant guidance documents.
  17. (U) RECOMMENDATION: The DoD, in coordination with the EOP and WHSR, should define the term “incapacitation” in the Standardized Reporting Policy for PCIR and include a consistent definition in the CCIR, ensuring that such definition is consistent with the DoD’s actions to define the term “medically incapacitated” in DoDD 3020.53 as recommended in Section IV of this report.
  18. (U) RECOMMENDATION: The DoD should review and consider processes to ensure medical professionals have appropriate and timely access to medical records and medications to support the potential treatment of the Secretary of Defense, Deputy Secretary of Defense, and others in the order of succession for COOP-related events, and implement the results of that review accordingly.
  19. (U) RECOMMENDATION: The DoD should review its processes concerning movement notifications for the Secretary and Deputy Secretary, update those processes in writing, including the designated recipients and type of location data

(U) required in those notifications, and train DoD personnel on those processes to ensure they provide consistent notifications to the appropriate offices.

20. (U) RECOMMENDATION: The Assistant Secretary of Defense for Health Affairs, in coordination with the DHA, should review DoD medical policies to ensure they adequately address the circumstances under which home health care by DoD medical providers is authorized and contain sufficient controls to ensure that medical providers document such care in the EHR, and implement the results of the review accordingly.

## (U) Appendix A – Standards

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(U) This Appendix summarizes the standards relevant to vacancies in the office of the Secretary of Defense and the events covered in this report. We first provide an overview the legal framework, following by excerpts of the pertinent standards.

### A. (U) Overview of Legal Framework Related to Vacancies in Executive Offices

(U) The Federal Vacancies Reform Act (FVRA) of 1998, codified at title 5, U.S.C., §§ 3345–3349d, was enacted to provide a uniform and generally exclusive means by which a government employee may temporarily perform the functions and duties of a vacant presidentially appointed, Senate-confirmed (PAS) position in an executive agency.<sup>106</sup> A vacancy occurs when the officer holding that position “dies, resigns, or is otherwise unable to perform the functions and duties of the office.”<sup>107</sup> Under the FVRA, the “functions or duties” of a PAS office are those that are established by statute or regulation and required by such statute or regulation to be performed by the applicable PAS officer and only that officer.<sup>108</sup> In other words, they are non-delegable.<sup>109</sup>

(U) The default rule under section 3345 of the FVRA is that the “first assistant” to the vacant office “shall perform the functions and duties of the office temporarily in an acting capacity subject to the time limitations of section 3346.” The FVRA also specifies that the President may direct another PAS official to temporarily perform the functions and duties of the vacant office.<sup>110</sup> In addition, section 3347 of the FVRA states that sections 3345 and 3346 are not the exclusive means for temporarily authorizing an acting official to perform the functions and duties of a PAS office when another statutory provision expressly “designates an officer or employee to perform the functions and duties of a specified office temporarily in an acting capacity.”<sup>111</sup>

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<sup>106</sup> (U) See Senate Report 105-250, “Federal Vacancies Reform Act: Report of the Committee on Governmental Affairs, United States Senate, together with Additional and Minority Views to Accompany S. 2176,” July 15, 1998, p. 1.

<sup>107</sup> (U) 5 U.S.C. § 3345(a). The FVRA does not specify the full range of circumstances that may render a PAS official “otherwise unable to perform the functions and duties of the office.” However, certain provisions of the FVRA refer to examples of such circumstances. See 5 U.S.C. § 3345(c)(2) (“the expiration of a term of office is an inability to perform the functions and duties of such office”) and 5 U.S.C. § 3346(a) (specifying that the time limitations of that section do not apply “in the case of a vacancy caused by sickness”). “Sickness” is not further defined in the FVRA.

<sup>108</sup> (U) 5 U.S.C. § 3348(a)(2). For functions or duties established by regulation, this includes any regulation that is in effect at any time during the 180-day period preceding the vacancy; this prevents an agency from revising its regulations to make non-delegable functions or duties of the office delegable, in anticipation of a vacancy in that office. See Senate Report 105-250, p. 18.

<sup>109</sup> (U) Senate Report 105-250, p. 18.

<sup>110</sup> (U) 5 U.S.C. §§ 3345(a)(1), (a)(2).

<sup>111</sup> (U) 5 U.S.C. § 3347(a)(1)(B).



### ***(U) Applicability of FVRA to the Office of the Secretary of Defense***

(U) Because the Secretary of Defense is a PAS position, it is an office covered by the FVRA. However, the office of the Secretary of Defense is one for which a statutory provision meets the requirements of section 3347 of the FVRA by explicitly designating an officer to perform the functions and duties of that office temporarily in an acting capacity; thus, the provisions of sections 3345 and 3346 of the FVRA are not the exclusive means to determine who will serve as Acting Secretary of Defense and for what duration, respectively. Specifically, 10 U.S.C. § 132(b) provides, “The Deputy Secretary [of Defense] shall act for, and exercise the powers of, the Secretary when the Secretary dies, resigns, or is otherwise unable to perform the functions and duties of the office.” This provision is self-executing—provided the triggering circumstances factually exist, the Deputy Secretary of Defense becomes the Acting Secretary of Defense by operation of law. This statutory authority only applies however to an individual who is appointed by the President and confirmed by the Senate in the position of Deputy Secretary of Defense; assumption of the functions and duties of the Secretary of Defense by any other person is governed by the FVRA and Executive Order.

(U) Pursuant to the authority vested in the President by the Constitution, as well as by the FVRA and its predecessor statutes, past Presidents have issued executive orders to designate an order of succession for the office of the Secretary of Defense.<sup>112</sup> The current order, Executive Order 13963, designates the Deputy Secretary of Defense to “act as and perform the functions and duties of the office of the Secretary of Defense (Secretary) during any period in which the Secretary has died, resigned, or otherwise become unable to perform the functions and duties of the office of the Secretary, until such time as the Secretary is able to perform the functions and duties of that office.”<sup>113</sup> Following the Deputy Secretary of Defense in the order of succession are the Secretaries of the Military Departments, in the order in which they were appointed, and various PAS officers within DoD and the Military Departments, provided they are not serving in the listed office in an acting capacity and are otherwise eligible to serve under the FVRA. The President retains discretion to depart from this standing order of succession and designate another qualified individual to serve as Acting Secretary of Defense.

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<sup>112</sup> (U) See 5 U.S.C. § 3345(a)(2), which provides that the President may direct a PAS officer to fill the vacancy instead of the “first assistant” to the vacant office.

<sup>113</sup> (U) Executive Order 13963, “Providing an Order of Succession Within the Department of Defense,” December 10, 2020. This Executive Order is implemented by DoDD 3020.04, “Order of Succession Pursuant to Executive Order 13963 and the Federal Vacancies Reform Act of 1998,” August 25, 2010 (Incorporating Change 1, April 18, 2024). The Office of the Under Secretary of Defense for Policy maintains a roster (updated monthly) of current PAS officials within the DoD and their contact information, in rank order, for the purposes of succession to the office of the Secretary of Defense.

### **(U) FVRA Reporting Requirement**

(U) Under the FVRA, the head of the executive agency is required to notify the Comptroller General of the United States and both houses of Congress immediately upon the occurrence of a vacancy in an office to which the FVRA applies, as well as provide the name of any person serving in an acting capacity and the date such service began.<sup>114</sup> This reporting requirement applies even if an agency official acts for and performs the functions and duties of the vacant office pursuant to an agency-specific statute, such as when the Deputy Secretary of Defense serves as Acting Secretary of Defense pursuant to 10 U.S.C. § 132(b). The FVRA does not define “immediately,” nor does it specify any minimum duration for a vacancy to trigger the reporting requirement.<sup>115</sup>

### **(U) Functions and Duties of the Office of the Secretary of Defense**

(U) The FVRA defines the “functions or duties” of an applicable office as those required by law or regulation to be performed by *only* the applicable officer; they are therefore non-delegable. Under 10 U.S.C. § 113, which establishes the office of the Secretary of Defense and its general responsibilities, the Secretary of Defense may delegate all powers, functions, and duties of his office “[u]nless specifically prohibited by law.”<sup>116</sup> Pursuant to this authority, the Secretary of Defense has traditionally delegated all such powers and responsibilities to the Deputy Secretary of Defense. Currently, Secretary Austin has delegated all delegable authorities and responsibilities to Deputy Secretary Hicks’ by-name through DoDD 5105.02.<sup>117</sup> Consistent with 10 U.S.C. § 113(d), the Secretary of Defense is not “relieved of his responsibility” with respect to authorities and responsibilities he delegates; rather, both the Secretary and his delegee (Deputy Secretary of Defense) are empowered to exercise or perform them.

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<sup>114</sup> (U) Notification to the Comptroller general may be accomplished by submitting a form to the Government Accountability Office. See <https://www.gao.gov/legal/federal-vacancies-reform-act/report-a-vacancy>.

<sup>115</sup> (U) Our review of the legislative history of the FVRA did not reveal any discussion of the application of the FVRA and its reporting requirements to short-duration inability by a PAS officer to perform their functions and duties. The DoD OGC told us, “As far as DoD OGC has been able to determine, DoD’s practice has not been to consider situations in which [the Deputy Secretary of Defense] has previously acted for and exercised the powers of [the Secretary of Defense] by operation of 10 U.S.C. § 132(b) to require notification under the FVRA. [The] DoD has, however, notified consistent with the FVRA [the Deputy Secretary of Defense]’s acting for and exercising the powers of [the Secretary of Defense] between December 22-23, 2023 and January 2-5, 2024.” DoDD 3020.53, “Assumption of Functions and Duties of the Secretary of Defense,” May 28, 2024, paragraph 3.3.a., requires, “When an Acting [Secretary] assumes the functions and duties of the [Secretary], appropriate notifications will be provided consistent with the requirements of the FVRA and the process established therein.”

<sup>116</sup> (U) 10. U.S.C. § 113(d).

<sup>117</sup> (U) DoDD 5105.02, “Deputy Secretary of Defense,” February 11, 2021.

(U) By contrast, the non-delegable functions and duties of the office of the Secretary of Defense may only be exercised or performed by the Secretary of Defense himself or, when the Secretary dies, resigns, or is otherwise unable to perform all of his functions and duties, by the Acting Secretary of Defense. At any given time, only one individual may serve as, and exercise the non-delegable authorities of, the Secretary of Defense.<sup>118</sup>

~~(CUI)~~ The DoD OGC maintains a list of non-delegable functions and duties.<sup>119</sup> In general, these consist of chain of command functions; certain national security matters; certain military and civilian personnel matters; certain contracting, procurement, and funding limitations; and certain environmental matters. Although an Acting Secretary of Defense assumes *all* of the functions and duties of the Secretary, the most time-sensitive matters during a short-term assumption normally involve operational chain of command functions, including ██████████.

(U) We list the following excerpts from the pertinent standards.

## **B. (U) Federal Vacancies Reform Act of 1998, as Amended (5 U.S.C. §§ 3345-3349d)**

(U) States, in part:

### ***(U) 5 U.S.C. § 3345, “Acting Officer”***

(U) (a) If an officer of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the office:

(U) (1) the first assistant to the office of such officer shall perform the functions and duties of the office temporarily in an acting capacity subject to the time limitations of section 3346;

(U) (2) notwithstanding paragraph (1), the President (and only the President) may direct a person who serves in an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate, to perform the functions and duties of the vacant office temporarily in an acting capacity subject to the time limitations of section 3346... .

<sup>118</sup> (U) The DoD OGC told us that a limited exception to this rule is in the context of partial inability to perform the functions and duties of the Secretary of Defense, which principally occurs when the Secretary of Defense is recused from a particular matter for ethics reasons.

<sup>119</sup> (U) In addition to the non-delegable functions and duties on this list, under 3 U.S.C. § 19, the Secretary of Defense is sixth in the order of succession for the President of the United States.

***(U) 5 U.S.C. § 3346, “Time Limitation”***

(U) (a) Except in the case of a vacancy caused by sickness, the person serving as an acting officer as described under section 3345 may serve in the office:

(U) (1) for no longer than 210 days beginning on the date the vacancy occurs<sup>120</sup>; or

(U) (2) subject to subsection (b), once a first or second nomination for the office is submitted to the Senate, from the date of such nomination for the period that the nomination is pending in the Senate.

***(U) 5 U.S.C. § 3347, “Exclusivity”***

(U) (a) Sections 3345 and 3346 are the exclusive means for temporarily authorizing an acting official to perform the functions and duties of any office of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) for which appointment is required to be made by the President, by and with the advice and consent of the Senate, unless:

(U) (1) a statutory provision expressly:

(U) (A) authorizes the President, a court, or the head of an Executive department, to designate an officer or employee to perform the functions and duties of a specified office temporarily in an acting capacity; or

(U) (B) designates an officer or employee to perform the functions and duties of a specified office temporarily in an acting capacity... .

***(U) 5 U.S.C. § 3348, “Vacant Office”***

(U) (a)(2) the term “function or duty” means any function or duty of the applicable office that:

(U) (A)(i) is established by statute; and (ii) is required by statute to be performed by the applicable officer (and only that officer); or

(U) (B)(i)(I) is established by regulation; and (II) is required by such regulation to be performed by the applicable officer (and only that officer); and (ii) includes a function or duty to which clause (i) (I) and (II) applies, and the applicable regulation is in effect at any time during the 180-day period preceding the date on which the vacancy occurs.

(U) (b) Unless an officer or employee is performing the functions and duties in accordance with sections 3345, 3346, and 3347, if an officer of an Executive agency (including the Executive Office of the President, and other than the Government

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<sup>120</sup> (U) This report does not address whether there are any time limitations for Deputy Secretary, the Secretary of the Army, or any other PAS official to serve as the Acting Secretary in cases where the Secretary is unavailable due to sickness or any other circumstance.

(U) Accountability Office) whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the office—(1) the office shall remain vacant... .

### **(U) 5 U.S.C. § 3349, “Reporting of Vacancies”**

(U) (a) The head of each Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) shall submit to the Comptroller General of the United States and to each House of Congress:

(U) (1) notification of a vacancy in an office to which this section and sections 3345, 3346, 3347, 3348, 3349a, 3349b, 3349c, and 3349d apply and the date such vacancy occurred immediately upon the occurrence of the vacancy;

(U) (2) the name of any person serving in an acting capacity and the date such service began immediately upon the designation;

(U) (3) the name of any person nominated to the Senate to fill the vacancy and the date such nomination is submitted immediately upon the submission of the nomination; and

(U) (4) the date of a rejection, withdrawal, or return of any nomination immediately upon such rejection, withdrawal, or return.

### **C. (U) 10 U.S.C. § 113, “Secretary of Defense”**

(U) (a) (1) There is a Secretary of Defense, who is the head of the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(U) (b) The Secretary is the principal assistant to the President in all matters relating to the Department of Defense. Subject to the direction of the President and to this title and section 2 of the National Security Act of 1947 (50 U.S.C. § 3002), he has authority, direction, and control over the Department of Defense.

(U) (d) Unless specifically prohibited by law, the Secretary may, without being relieved of his responsibility, perform any of his functions or duties, or exercise any of his powers through, or with the aid of, such persons in, or organizations of, the Department of Defense as he may designate.

### **D. (U) 10 U.S.C. § 132, “Deputy Secretary of Defense”**

(U) (b) The Deputy Secretary shall perform such duties and exercise such powers as the Secretary of Defense may prescribe. The Deputy Secretary shall act for, and exercise the powers of, the Secretary when the Secretary dies, resigns, or is otherwise unable to perform the functions and duties of the office.

## **E. (U) 10 U.S.C. § 162, “Combatant Commands: Assigned Forces; Chain of Command”**

(U) (b) Chain of command. Unless otherwise directed by the President, the chain of command to a unified or specified combatant command runs: (1) from the President to the Secretary of Defense; and (2) from the Secretary of Defense to the commander of the combatant command.

## **F. (U) DoDD 5105.02, “Deputy Secretary of Defense,” February 11, 2021**

(U) Section 2: Responsibilities

(U) The Deputy Secretary of Defense:

(U) a. In accordance with the authorities contained in Titles 5, 10, and 31, United States Code, and except as expressly prohibited by law, Deputy Secretary of Defense Kathleen H. Hicks has full power and authority to act for the Secretary of Defense and to exercise the powers of the Secretary of Defense upon any and all matters concerning which the Secretary of Defense is authorized to act pursuant to law. Included, without limitation, in these authorities is serving as the Chief Operating Officer of the Department of Defense, who will:

(U) (1) Ensure Department-wide capability and resources across all functions to carry out the strategic plan of the DoD in support of national security objectives.

(U) (2) Serve as the accountable official for DoD management and performance, pursuant to Section 1123 of Title 31, United States Code.

(U) (3) Develop and maintain a strategic plan or equivalent, pursuant to Section 306 of Title 5, United States Code.

(U) b. The all-inclusive authority reflected in Paragraph 2.a., may not be further delegated in its entirety; however, the Deputy Secretary of Defense is authorized, except where otherwise restricted, to make specific written delegations.

## **G. (U) Executive Order 13472, “Executive Branch Responsibilities With Respect To Orders of Succession,” September 15, 2008**

(U) Section 1 requires, in substance, that all Executive agencies to establish and maintain an order of succession.

(U) Section 3 specifies that each agency requiring presidential action to establish an order of succession will send its proposed initial draft, updates, or revisions of the agency's order of succession to the Counsel to the President for review and comment.

## **H. (U) Executive Order 13963, “Providing an Order of Succession Within the Department of Defense,” December 10, 2020**

(U) Executive Order 13963, states, in part, Section 1, “Order of Succession”:

(U) (a) Subject to the provisions of section 2 of this order, the following officials of the Department of Defense, in the order listed, shall act as and perform the functions and duties of the office of the Secretary of Defense (Secretary) during any period in which the Secretary has died, resigned, or otherwise become unable to perform the functions and duties of the office of the Secretary, until such time as the Secretary is able to perform the functions and duties of that office:

- (U) (i) Deputy Secretary of Defense;
- (U) (ii) Secretaries of the Military Departments;
- (U) (iii) Under Secretary of Defense for Policy;
- (U) (iv) Under Secretary of Defense for Intelligence and Security;
- (U) (v) Chief Management Officer of the Department of Defense;<sup>121</sup>
- (U) (vi) Under Secretary of Defense for Acquisition and Sustainment;
- (U) (vii) Under Secretary of Defense for Research and Engineering;
- (U) (viii) Under Secretary of Defense (Comptroller);
- (U) (ix) Under Secretary of Defense for Personnel and Readiness;
- (U) (x) Deputy Under Secretary of Defense for Policy;
- (U) (xi) Deputy Under Secretary of Defense for Intelligence and Security;
- (U) (xii) Deputy Under Secretary of Defense for Acquisition and Sustainment;
- (U) (xiii) Deputy Under Secretary of Defense for Research and Engineering;
- (U) (xiv) Deputy Under Secretary of Defense (Comptroller);
- (U) (xv) Deputy Under Secretary of Defense for Personnel and Readiness;
- (U) (xvi) General Counsel of the Department of Defense, Assistant Secretaries of Defense, Director of Cost Assessment and Program Evaluation, Director of

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<sup>121</sup> (U) This position was repealed pursuant to section 901 of the National Defense Authorization Act for FY 2021 (Public Law 116–283), effective January 1, 2021.

(U) Operational Test and Evaluation, and Chief Information Officer of the Department of Defense;

(U) (xvii) Under Secretaries of the Military Departments; and

(U) (xviii) Assistant Secretaries of the Military Departments and General Counsels of the Military Departments.

(U) (b) Precedence among officers designated within the same paragraph of subsection (a) of this section shall be determined by the order in which they have been appointed to such office. Where officers designated within the same paragraph of subsection (a) of this section have the same appointment date, precedence shall be determined by the order in which they have taken the oath to serve in that office.

## **I. (U) National Security Presidential Memorandum–32 (NSPM-32), January 13, 2021**

(U) Section II (Policy) states, in pertinent part:

(U) It is the policy of the United States that agencies effectively report information to the Executive Office of the President (EOP) in a consistent, standardized manner to ensure the President, the Vice President, and appropriate advisors within the EOP have the information they require to effectively manage incidents and crises on a national level and to support national security decision-making. [The Annex] defines incidents requiring notification to the EOP according to the procedures outlined within this policy. Such information will be referred to as Presidential Critical Information Requirements (PCIRs).

(U) Section III (EOP's Roles and Responsibilities) states, in pertinent part:

(U) The White House Situation Room (WHSR) shall act as the primary entry point and conduit for agencies to provide reportable information to the EOP pursuant to this memorandum.

(U) Section VI (Definitions) states, in pertinent parts:

(U) Tiers. For purposes of this policy, tiers indicates the timeline and priority of information within the Annex in which agencies must report PCIR information to WHSR. Tier I PCIRs require providing available pertinent information and actions taken within a maximum of three hours of initial indications discovered by a responsible agency; Tier II requires providing the information within a maximum of forty-eight hours; and Tier III requires providing the information within a maximum of ninety-six hours. Information may be provided by e-mail, telephone, or facsimile to WHSR.



(U) Phone Alert. Indication within the Annex mandating a telephonic notification to WHSR of PCIR information upon initial indications that an event meets PCIR threshold, within several minutes, independent of Tier level. ... Conducting a phone alert does not preclude the requirement in this policy to report PCIR information to WHSR within the Tier timelines specified.

(U) The NSPM-32 Annex contains the following Tier 1 PCIR, which also requires a phone alert:

(U) GEN-1 (Leadership Event) – Death, incapacitation, kidnapping, or attempted assassination of Cabinet member or Agency head, or the kidnapping, assassination, of senior U.S. Government official, or credible indications that such an incident is imminent.

**J. (U) Secretary of Defense Memorandum, “Standardized Reporting Policy for Presidential Critical Information Requirements,” March 23, 2021**

(U) This memorandum states, in pertinent parts:

(U) This memorandum establishes standardized reporting policy that DoD will use when reporting Presidential Critical Information Requirements (PCIRs) to the White House Situation Room (WHSR). This memorandum applies to the Secretary of Defense Front Office ... It is DoD policy that PCIRs are identified and reported to the WHSR within the timeframes and standards specified by [NSPM-32]. The National Military Command Center [NMCC] is the single point of contact within the DoD to provide PCIRs to the WHSR.

(U) Attachment 1 (Procedures) states, in pertinent part:

(S) [REDACTED]

(S) [REDACTED]  
[REDACTED]

(S) [REDACTED]  
[REDACTED]

(S) [REDACTED]  
[REDACTED]

(U) Attachment 3 (Responsibilities) states, in pertinent parts:

(U) 3. Secretaries of the Military Departments, Directors of the Defense Agencies, and Directors of the DoD Field Activities will submit PCIR reports on matters within their responsibility to the NMCC.

(U) 4. Chairman of the Joint Chiefs of Staff (CJCS). The CJCS will:

d. (U) Update CJCS Chairman's Critical Information Requirements (CCIR) to correspond with the PCIR categories, reporting criteria, and three tiers of response time criteria.

(S)

(U) GEN-1 (Leadership Event): "Death, incapacitation, kidnapping, or attempted assassination of Cabinet member or Agency head ..."

(S)

### **K. (U) DoDD 3020.04, "Order of Succession Pursuant to Executive Order 13533 and the Federal Vacancies Reform Act of 1998," August 25, 2010**

(U) DoDD 3020.04, "Order of Succession Pursuant to Executive Order 13533 and the Federal Vacancies Reform Act of 1998," states, in part, in paragraph 3.a, that it is DoD policy that:<sup>122</sup>

(U) The order of succession to act as the Secretary of Defense shall be that in the event of the death, resignation, or inability of the Secretary of Defense to perform the functions and duties of the office of Secretary of Defense, the DoD officials, in the order listed in the Enclosure, shall act for, and exercise the powers of, the Secretary of Defense.

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<sup>122</sup> (U) Executive Order 13963, issued December 10, 2020, supersedes Executive Order 13533, which was in effect at the time DoDD 3020.04 was issued on August 25, 2010. As a result of the DoD 30-Day Review, Change 1 to DoDD 3020.04 was published April 18, 2024, changing the title to "Order of Succession Pursuant to Executive Order 13963 and the Federal Vacancies Reform Act of 1998" and updating the Enclosure to reflect the order of succession established in Executive Order 13963.

## L. (U) Title 45, Code of Federal Regulations (CFR) Part 164, Subpart E, “Privacy of Individually Identifiable Health Information”<sup>123</sup>

(U) 45 CFR § 164.512, “Uses and disclosures for which an authorization or opportunity to agree or object is not required,” states in pertinent parts:<sup>124</sup>

(U) A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity’s information and the individual’s agreement may be given orally.

(U) (a) Standard: Uses and disclosures required by law.

(U) (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.

(U) (2) A covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law.

(U) (b) Standard: Uses and disclosures for public health activities. [...]

(U) (c) Standard: Disclosures about victims of abuse, neglect or domestic violence. [...]

(U) (d) Standard: Uses and disclosures for health oversight activities. [...]

(U) (e) Standard: Disclosures for judicial and administrative proceedings. [...]

(U) (f) Standard: Disclosures for law enforcement purposes. [...]

(U) (g) Standard: Uses and disclosures about decedents. [...]

(U) (h) Standard: Uses and disclosures for cadaveric organ, eye or tissue donation purposes. [...]

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<sup>123</sup> (U) The Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), as amended, Section 264, required the Secretary of Health and Human Services to promulgate regulations regarding the privacy of individually identifiable health information.

<sup>124</sup> (U) 45 CFR 164.512 was amended effective June 26, 2024, to support reproductive health care privacy. Because the events covered by this review occurred before that date, we cite the version of this section that was in effect through June 25, 2024.

(U) (i) Standard: Uses and disclosures for research purposes. [...]

(U) (j) Standard: Uses and disclosures to avert a serious threat to health or safety. [...]

(U) (k) Standard: Uses and disclosures for specialized government functions:

(U) (1) Military and veterans activities:

(U) (i) Armed Forces personnel. A covered entity may use and disclose the protected health information of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission, if the appropriate military authority has published by notice in the Federal Register the following information:

(U) (A) Appropriate military command authorities; and

(U) (B) The purposes for which the protected health information may be used or disclosed. [...]

### **M. (U) DoD Manual 6025.18, “Implementation of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule in DoD Health Care Programs,” March 13, 2019**

(U) DoDM 6025.18 provides procedures for DoD compliance with the privacy regulations adopted pursuant to HIPAA, Public Law 104-191.

- (U) Part 160, and part 164, subpart E of title 45, Code of Federal Regulations (CFR) (also known and referred to in this issuance as the “HIPAA Privacy Rule”).
- (U) Part 160, and part 164, subpart D of title 45, CFR (also known and referred to in this issuance as the “HIPAA Breach Rule”).

### **N. (U) DoDI 6040.45, “DoD Health Record Life Cycle Management,” November 16, 2015 (Incorporating Change 1, April 11, 2017)**

(U) DoDI 6040.45 establishes policy, assigns responsibilities, and prescribes procedures for DoD Health Record management. DoDI 6040.45, paragraph 3.d.(2), states that personnel providing medical services “will ensure accurate and complete descriptions of all care and services rendered are entered into the appropriate DoD Health Record for every individual treated, using the designated primary electronic medical record (EMR) of the MHS whenever possible.”

**O. (U) DoDI 8170.01, “Online Information Management and Electronic Messaging,” January 2, 2019 (Incorporating Change 1, August 24, 2021)**

(U) DoDI 8170.01 provides policies and procedures for successful online information management and electronic messaging. It establishes policy and assigns responsibilities for operating and maintaining electronic messaging services. DoDI 8170.01 prohibits the use of personal e-mail to exchange official information and disclose personally identifiable information. It also includes policies and procedures related to the use of personal mobile devices.

**P. (U) DoDM 52001.01-V3, “DoD Information Security Program: Protection of Classified Information,” February 24, 2012 (Incorporating Change 3, July 28, 2020)**

(U) DoDM 52001.01-V3 implements policy, assigns responsibilities, and provides procedures for the designation, marking, protection, and dissemination of CUI and classified information, including information categorized as collateral, sensitive compartmented information (SCI), and Special Access Program (SAP). It establishes policy for the transporting of classified information. DoDM 52001.01-V3 requires that each individual who is authorized to escort, courier, or hand-carry classified material, to obtain a written statement to that effect from DoD Component designees. The authorization statement may be contained in a courier card.

**Q. (U) Chairman of the Joint Chiefs of Staff Chairman’s Critical Information Requirements (CCIR), August 30, 2023**

(U) One of the uses of the CCIR is to determine if a situation or incident meets the criteria for the PCIR and reporting to the WHSR.

**R. (U) Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3411.01E, “Key Personnel Location Reports to the National Military Command Center,” August 23, 2016 (December 15, 2021)**

(U) Paragraph 1 (Purpose) states, “This instruction establishes procedures for informing the National Military Command Center (NMCC) of the location of designated key personnel in accordance with [the Continuity of Operations Plan for the Chairman of the Joint Chiefs of Staff].”

(U) Paragraph 6 (Responsibilities) states, in pertinent parts:

(U) a. Applicable key personnel are responsible for implementing procedures to ensure the timely reporting of locator information to the NMCC Emergency Actions Element.

(U) e. The NMCC maintains access to continuous location data (e.g., normal duty location or trip itinerary) on the following Office of the Secretary of Defense (OSD), Service, and Combatant Command key personnel as reported by the principals or their representatives:

(U) (1) Office of the Secretary of Defense (OSD)

(U) (a) Secretary of Defense

(U) (b) Deputy Secretary of Defense

(U) f. The key personnel or their designated representative listed above ... are required to:

(U) (1) Ensure the NMCC is continuously able to contact them in a timely manner by updating the NMCC Commander Telephone List (“Yellow Stripe”) with changes submitted to the NMCC and no later than end of the last duty day of the week.

(U) (2) Provide the NMCC with an itinerary when away from their duty station.

**S. (U) Defense Health Agency (DHA) Procedures Manual (DHA-PM) 6025.02, Volume 1, “DoD Health Record Lifecycle Management, Volume 1: General Principles, Custody and Control, and Inpatient Records,” November 23, 2021**

(U) DHA-PM 6025.02, Volume 1, states, in part, in Enclosure 4, paragraph 2.b.(1), “All healthcare providers will include, in appropriate health records, an accurate, legible, and complete description of all services rendered to patients. (a) Healthcare providers will complete and sign their encounters (to include telephone consults) in the EHR within 3 business days of treatment ... .”

**T. (U) Defense Health Agency (DHA) Procedural Instruction (DHA-PI) 3700.01, “Director’s Critical Information Requirements (DCIR), Situation Report (SITREP),” October 4, 2019 (Change 2, June 8, 2020)**

(U) DHA-PI 3700.01 states, in part, that it is the DHA’s policy “that Assistant Directors (ADs), Deputy Assistant Directors (DADs), Special Staff, Markets, [Military Medical Treatment Facilities], and [Dental Treatment Facilities] use reporting processes outlined in this DHA-PI to notify the Director, DHA and/or subordinate leaders, of specific events that may affect mission accomplishment, incidents, and/or events of importance to DHA Leadership.”

(U) Enclosure 3, paragraph 1 states that DCIR events must be reported in SITREP [Situation Report] format. The SITREP format states, “Do not include Name/personally identifiable information (PII)/protected health information (PHI).”

(U) Enclosure 5, DCIR Reporting Matrix, identifies the minimum reporting requirements.

(U) #9 is “Unplanned admission of an active member of Congress, General Officer/Flag Officer (GO/FO), Cabinet Level official, Foreign Dignitaries, or other high visibility patients in an [Military Medical Treatment Facility].”

(U) Reporting of this DCIR is mandatory to the DADs (include all DADs on distro), DHA Strategic Communications, AD-CS-DAD-Command Operations Support Operations Division and Market Director; optional to Director DHA; DHA Deputy Director; DHA Chief of Staff, AD’s on distro, and DHA OGC.

(U) #20 is “Other. Items that are not listed above but need to be brought to the attention of DHA leadership.”

(U) Reporting of this DCIR is mandatory to the DADs (include all DADs on distro), AD-CS-DAD-COS Operations Division and Market Director; optional to Director DHA; DHA Deputy Director; DHA Chief of Staff; AD’s on distro; DHA Strategic Communications; and DHA OGC.



## (U) Appendix B – DoD AFD Policies and Procedures

(U) This appendix summarizes the DoD’s AFD policies and procedures published from January 8, 2024, through the issuance of DoDD 3020.53 on May 28, 2024.

### A. (U) Review of Notification Process for Assumption of Functions and Duties of the Secretary of Defense (January 8, 2024)

(U) Ms. Magsamen issued a memorandum to OSD organizations, dated January 8, 2024, “SUBJECT: Review of Notification Process for Assumption of Functions and Duties of the Secretary of Defense.”<sup>125</sup> The memorandum stated, “On January 2, 2024, **certain authorities** of the Secretary of Defense were transferred to the Deputy Secretary of Defense” (emphasis added).

(U) The memorandum indicated that Ms. Magsamen directed the Director of Administration and Management to lead the DoD 30-Day Review to identify the relevant facts and circumstances during the period from January 1 through 5, 2024, regarding Secretary Austin’s hospitalization. The memorandum indicated, in part, that effective immediately:

- (U) When a “transfer of authority” (TOA) occurs, the Cables Executive Support Office (ESO) will ensure the following parties are notified via email: the General Counsel, Chairman and Vice Chairman of the Joint Chiefs of Staff, combatant commanders, Service Secretaries, Service Chiefs of Staff, White House Situation Room, and senior staff of the Secretary and Deputy Secretary of Defense.
- (U) The email message will include the reason for the TOA (e.g., out of range of communication devices, routine medical treatment, and hospitalization).
- (U) When coordinating a pre-planned TOA, a member of the Secretary’s Military Assistant (MA) team will update [Ms. Magsamen], the Deputy Secretary’s Chief of Staff, the Deputy Chiefs of Staff to the Secretary and Deputy Secretary, the Deputy Secretary’s Senior Military Assistant, and other Secretary and Deputy Secretary’s MAs, on the expected schedule for pre-planned [TOAs]. ... In all cases, the email from Cables ESO will memorialize the notification.

<sup>125</sup> (U) A corrected copy of this memorandum was issued on January 11, 2024, to reference the correct Executive Order 13963, but otherwise there was no change to the January 8, 2024 memorandum.

## B. (U) Additional Guidance on Notifications for Assumption of Functions and Duties of the Secretary of Defense (January 12, 2024)

(U) The OSD Executive Secretary issued a memorandum, dated January 12, 2024, to appropriate organizations, "SUBJECT: Additional Guidance on Notifications for Assumption of Functions and Duties of the Secretary of Defense." The memorandum indicated that in the event the Secretary of Defense is unable to perform the functions and duties of his role such that the Deputy Secretary assumes these functions and duties, pursuant to 10 U.S. C. § 132(b), she is serving as the Acting Secretary of Defense. The memorandum also stated that if the Deputy Secretary was unable to assume the functions and duties of the Secretary, the current Secretary of Defense Order of Succession Roster will be used to determine the next official in the order of succession, in consultation with the General Counsel.

(U) The memorandum stated that the Cables ESO will include in its required notification of this information, the White House Offices of Cabinet Affairs and the White House Chief of Staff, in addition to those officials and offices listed in the January 8, 2024 memorandum. Further, the Acting Secretary of Defense will establish contact with the Assistant to the President for National Security Affairs.

(U) The memorandum provided notification templates for both planned and unplanned AFD situations.

(U) Situation 1: Secretary of Defense (SD) knows that he will be away from secure communications.

~~(CU)~~ **Template for initial notification:** The Secretary of Defense has determined that he will be unable to perform his functions and duties beginning at [INSERT TIME] on [INSERT DATE]. Therefore, consistent with 10 U.S.C. § 132, [INSERT EITHER: the Deputy Secretary of Defense or the designated official as determined by the order of succession] shall assume the functions and duties as the Acting Secretary of Defense, including any time sensitive authorities, such as [REDACTED] authorities, beginning at [INSERT TIME] on [INSERT DATE].

(U) **Template for resumption of functions and duties:** The Secretary of Defense has determined that he will resume his ability to perform his functions and duties beginning at [INSERT TIME] on [INSERT DATE]. Upon notification that the Secretary of Defense has resumed the performance of his duties, the Deputy Secretary of Defense will no longer exercise the Secretary of Defense's non-delegable authorities.

(U) Situation 2: SD has an unforeseen absence due to unexpected loss of secure communications, hospitalization requiring general anesthesia, or any other circumstance where he may be unreachable.

~~(CUI)~~ **Template for initial notification:** The [Secretary of Defense's Chief of Staff/Deputy Secretary of Defense/President of the United States] has determined, in consultation with the Department of Defense General Counsel and, if appropriate, medical professionals, that the Secretary of Defense is unable to perform his functions and duties within the meaning of 10 U.S.C. § 132(b), beginning at [INSERT TIME] on [INSERT DATE]. Therefore, consistent with 10 U.S.C. § 132, at [INSERT TIME] on [INSERT DATE], [INSERT EITHER: the Deputy Secretary of Defense or the designated official as determined by the order of succession] is assuming the functions and duties as the Acting Secretary of Defense, including any time sensitive authorities such as [REDACTED] [REDACTED] authorities.

(U) **Template for resumption of functions and duties:** The Secretary of Defense has determined that he will resume his ability to perform his functions and duties beginning at [INSERT TIME] on [INSERT DATE], in consultation with the Department of Defense General Counsel and, if appropriate, relevant medical professionals.

### C. (U) DoD 30-Day Review

(U) The DoD 30-Day Review was completed on or about February 7, 2024, and sent to Secretary Austin for review.

(U) Acting on a recommendation from the DoD 30-Day Review, Ms. Magsamen and Ms. King issued a memorandum, dated February 23, 2024, "SUBJECT: Review of Notification Process for Assumption of Functions and Duties of the Secretary of Defense: Recommendation Implementation, Chiefs of Staff Guidance on Information Flow." The memorandum issued written guidelines and reporting expectations to ensure that all personnel were aware of issues that could fall to the Deputy Secretary in a routine or unplanned period when the Deputy Secretary assumed the functions and duties as Acting Secretary.

(U) Acting on a similar recommendation from the DoD 30-Day Review, Secretary Austin and Deputy Secretary Hicks issued a memorandum, dated February 24, 2024, "Leadership Expectations Regarding Assumption of Functions and Duties of the

(U) Secretary of Defense.”<sup>126</sup> In their memorandum, Secretary Austin and Deputy Secretary Hicks provided written instructions regarding their expectations for their immediate offices and support staff in the context of information sharing and understanding any changes in staff support during any period when the Deputy Secretary assumes the functions and duties as Acting Secretary of Defense.

(U) Secretary Austin issued a memorandum on February 26, 2024, “SUBJECT: Follow-on Actions: Review of Notification Process for Assumption of Functions and Duties of the Secretary of Defense,” to a list of addresses that included Pentagon senior leadership, combatant commanders, Secretary of Defense Communications, and others, informing them that he had implemented the first two recommendations and directed implementation of the remaining six recommendations from the DoD 30-Day Review. Secretary Austin stated that the review validated that the Deputy Secretary was at all times positioned to perform all the functions and duties of the Secretary of Defense during the period of transfer from December 22 to 23, as well as from January 2 through 5, 2024.

(U) Deputy Secretary Hicks issued a memorandum dated April 12, 2024, “SUBJECT: Mandatory Reporting Protocol for Personnel Providing Direct Support to the Secretary and Deputy Secretary of Defense.”<sup>127</sup> The memorandum stated that all personnel providing direct support to the Secretary and Deputy Secretary of Defense have a duty to notify appropriate officials in any of the following situations:

- (U) planned or unplanned loss of access to secure communications for the principal,
- (U) death of the principal,
- (U) resignation of the principal,
- (U) medical concern involving the principal’s potential or actual incapacitation requiring admittance to the hospital (including emergency room visits), or
- (U) any other condition or situation that results in the principal’s inability to perform the functions and duties of the office.

(U) Table 10 summarizes the eight DoD 30-Day Review recommendations and the associated DoD implementation actions.

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<sup>126</sup> (U) DoDD 3020.53 “Assumption of Functions and Duties of the Secretary of Defense,” May 28, 2024, incorporated and cancelled this memorandum.

<sup>127</sup> (U) DoDD 3020.53 “Assumption of Functions and Duties of the Secretary of Defense,” May 28, 2024, incorporated and cancelled this memorandum.

*(U) Table 10. Summary of the Eight DoD 30-Day Review Recommendations and the Associated DoD Implementation Actions*

(U) No.	The Eight DoD 30-Day Review Recommendations	DoD Implementation Actions Taken
1.	The Secretary and Deputy Secretary should set their expectations of and for their immediate offices in the context of information sharing, staffing support, team relationships, and understandings of any changes in processes or staff support during TOA periods when the Deputy or another senior leader assumes the functions and duties as Acting Secretary.	Secretary Austin and Deputy Secretary Hicks provided written instructions on February 24, 2024, reaffirming their expectations of and for their immediate offices and support staff in the context of information sharing during periods when Deputy Secretary Hicks assumes the functions and duties as Acting Secretary. <sup>1</sup>
2.	The Secretary and Deputy Secretary’s Chiefs of Staff, together, should issue guidelines and reporting expectations that make routine how information flowing to the Secretary is shared with the Deputy Secretary and her team to ensure they are aware and tracking issues that could fall to the Deputy in a routine or TOA situation. This could include expectations for how the respective staffs support the Deputy Secretary when she is performing the functions and duties of the Secretary, clearly delineating the staffs’ respective roles.	Secretary Austin’s and Deputy Secretary Hicks’ Chiefs of Staff, together, issued written guidelines and conveyed reporting expectations on February 23, 2024, to ensure their respective staffs were aware and tracking issues that could fall to the Deputy Secretary in a routine or unplanned period when she assumes the functions and duties as Acting Secretary. <sup>2</sup>
3.	Develop and codify guidance for making TOA determinations and executing and communicating those determinations, minimizing subjectivity in reporting; regularly train on this guidance.	DoDD 3020.53 was published May 28, 2024, and is discussed in detail in Section IV, “Assessment of DoD Policies on the AFD.”  The DoD published the “Secretary of Defense Succession Training Plan” on May 31, 2024; the Secretary of Defense Succession Playbook was updated on September 13, 2024.
4.	Institute mechanisms to ensure the Deputy Secretary and other officials designated in the order of succession are familiar with the processes, procedures, and staffing support, should they be called on to perform the functions and duties of the Acting Secretary. Specifically address how to ensure that the Secretary’s team is prepared to onboard quickly an Acting Secretary, particularly when another individual, other than the Deputy Secretary, serves in this role. Include this scenario in comprehensive planning and training and include appropriate officials when exercising this. Additionally, include in training the impact of a TOA, specifically that the Deputy Secretary or other official in the order of succession is assuming the functions and duties of the Secretary and is Acting Secretary.	DoDD 3020.53 was published May 28, 2024.  The DoD published the Secretary of Defense Succession Training Plan on May 31, 2024; the Secretary of Defense Succession Playbook was updated on September 13, 2024.

(U)

Appendix B – DoD AFD Policies and Procedures

(U) No.	The Eight DoD 30-Day Review Recommendations	DoD Implementation Actions Taken
5.	Update applicable DoD issuances, as appropriate, to reflect policy changes made as a result of this review. This could include, among others, DoD Directive 3020.04, "Order of Succession Pursuant to Executive Order 13533 and the Federal Vacancies Reform Act of 1998."	DoDD 3020.04 was updated through Change 1, April 18, 2024. The title of this Directive was changed to "Order of Succession Pursuant to Executive Order 13963 and the Federal Vacancies Reform Act of 1998," and the Enclosure was updated to incorporate Executive Order 13963 in place of Executive Order 13533.  DoDI 3020.26, "DoD Continuity Policy," was published June 4, 2024.
6.	Develop a mandatory reporting protocol for personnel providing direct support to the Secretary and Deputy Secretary of Defense on situations or circumstances that might impact these leaders' ability to perform their duties and functions.	This recommendation was initially implemented through Deputy Secretary of Defense Memorandum, "Mandatory Reporting Protocol for Personnel Providing Direct Support to the Secretary of Defense," April 12, 2024. DoDD 3020.53 "Assumption of Functions and Duties of the Secretary of Defense," issued May 28, 2024, incorporated and cancelled this memorandum.
7.	Review, update and align internal reporting requirements and remove ambiguity associated with "transfer of authorities" situations relating to the Secretary, Deputy Secretary, and other senior leaders; work with appropriate partners to align, where possible, language and requirements for external reporting, including NSPM-32 Annex PCIR.	A DoD OGC senior official informed the DoD OIG on June 7, 2024, that the DoD had completed all actions directed by Secretary Austin's February 26, 2024, "SUBJECT: Follow-on Actions: Review of Notification Process for Assumption of Functions and Duties of the Secretary of Defense."  See Section IV for our assessment of the DoD's reporting requirements, as implemented in DoDD 3020.53 "Assumption of Functions and Duties of the Secretary of Defense," issued May 28, 2024.
8.	Review and update, as appropriate, the Secretary of Defense Continuity of Operations Plan to consider scenarios and issues associated with TOA and order of succession.	The Secretary of Defense COOP Plan was updated on May 31, 2024. On September 13, 2024, the Secretary of Defense Succession Playbook and training scenarios were published (see Section V).

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<sup>1</sup> (U) "SUBJECT: Leadership Expectations Regarding Assumption of Functions and Duties of the Secretary of Defense," February 24, 2024. DoDD 3020.53 incorporated and canceled this memorandum.

<sup>2</sup> (U) "SUBJECT: Review of Notification Process for Assumption of Functions and Duties of the Secretary of Defense: Recommendation Implementation, Chiefs of Staff Guidance on Information Flow," February 23, 2024.

(U) Source: DoD 30-Day Review report and other DoD sources as noted.

## (U) Appendix C – Secretary Austin’s Statements and HASC Testimony Concerning His Hospitalizations

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(U) This Appendix summarizes key statements that Secretary Austin provided in February 2024 on his diagnosis and hospitalizations.

### A. (U) Secretary Austin’s Press Conference (February 1, 2024)

(U) Secretary Austin spoke at a press conference on February 1, 2024, to address questions and concerns regarding his December 2023 and January 2024 hospitalizations. Secretary Austin made the following statements during the press conference.

(U) Secretary Austin’s opening statement included the following statements.

- (U) “... I want to make it very clear that there were no gaps in authorities and no risks to the Department’s command and control. At every moment, either I or the Deputy Secretary was in full charge.”
- (U) “I was being treated for prostate cancer. ... [M]y first instinct was to keep it private. I don’t think it’s news that I’m a pretty private guy. I’ve never liked burdening others with my problems. It’s just not my way.”
- (U) “But I’ve learned from this experience. Taking this kind of job means losing some of the privacy that most of us expect. The American people have a right to know if their leaders are facing health challenges that might affect their ability to perform their duties, even temporarily. So a wider circle should have been notified, especially the President.”
- (U) “... on 22nd December, I had a minimally invasive procedure to cure me of my recently diagnosed prostate cancer.”
- (U) “On January 1st, I felt severe leg pain and – and pain in the abdomen and hip. And that evening, an ambulance took me to Walter Reed.”
- (U) “On January 2nd, ... The medical staff decided to transfer me to the critical-care unit for several days for closer monitoring and better team care by my doctors. And the Deputy Secretary assumed the functions and duties of my office, ... . Her senior staff, my senior staff, and the Joint Staff were notified ... .

Appendix C – Secretary Austin’s Statements and HASC Testimony

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(U) And I never directed anyone to keep my January hospitalization from the White House.”

- (U) “On January 5th, I resumed my functions and duties as Secretary from the hospital. I was functioning – functioning well mentally, but not so well physically. And so I stayed at Walter Reed for additional time, for additional treatment, including physical therapy for some lingering issues with my leg.”

(U) The press conference was then opened for questions from different press agencies. Secretary Austin made the following statements during the question and answer session.

- (U) A member of the press asked, “You said that you never directed anyone to keep this from the White House. Did you direct your staff or others to keep it from the public and from other senior staff members?”

(U) Secretary Austin responded, “The answer to your question on whether or not I directed my staff to conceal my hospitalization from anyone else, the answer is no.”

- (U) A member of the press asked, “Mr. Secretary, you said you didn’t direct your staff to hide this truth or – or lie, but did you create a culture of secrecy that then – the staff kind of interpreted your – your desire or your intentions when it came to getting sick?”

(U) Secretary Austin responded, “Yeah, I – you know, I – I – I don’t think I’ve created a culture of secrecy. I think there will be security officers, there will be other staff members who – who may perceive that they’re doing things in my best interest, and, you know, I can’t – I can’t predict or – or determine or ascertain what those things may be.”

(U) I just know what I said and – and did not say. And of course, you know, I – I have a great staff and – and they always want to and tend to do the right things. But in terms of what one – one may or may not have perceived at any one point in time, I won’t speculate on that, so.”

- (U) A member of the press asked, “You said that you never directed your staff to keep the news of your hospitalization from the – from anyone. Did any senior members of your family or your wife direct people to keep this a secret?”

(U) Secretary Austin responded, “To my knowledge, no members – well, I don’t know – I don’t know what anyone of my – on my staff may have said but at that – I think these things will come out in the – in the review. And so rather than speculate, I – I think we should – we should let that – the facts come out as the review is done, so.”



- (U) A member of the press asked, “Mr. Secretary, you went to the hospital on December 22nd. Was your staff aware that you’d gone to the hospital? And if so, why didn’t they tell the White House? You went back to the hospital on January 1st and an aide told the dispatcher ‘when the ambulance arrives, no lights, no sirens.’ Did you direct the aide to say that?”

(U) Secretary Austin responded, “I asked my assistant to call the ambulance. I -- that did not direct him to do anything further than just call the ambulance. And so what he said and why he said it, I think that should come out in the -- in the review as well, so.”

- (U) A member of the press asked, “What about December 22nd, when you went to the hospital the first time, was your staff aware? And if so, why didn’t they tell the White House?”

(U) Secretary Austin responded, “When -- when I went to the hospital on December 22nd, it was -- I went in for that procedure. My duties were transferred to the deputy. That was planned. And -- and I decided to stay in the hospital overnight -- didn’t have to. Decided to stay there overnight because of the anesthesia that was involved. And then, the next day, later in the afternoon, early evening, we transferred authorities back.”

- (U) A member of the press stated, “You were hospitalized for days before you informed the White House or the commander in chief of your condition. In your absence, anyone else within the military chain of command would have faced reprimanded or even dismissal. Why shouldn’t the same standard apply to you, sir?”

(U) Secretary Austin responded, “In terms of why, on the second notification was not made to the White House, that information was available. I’m not sure, at this point, what exactly happened.”

## **B. (U) Secretary Austin’s Letter to Honorable Mike Rogers (February 7, 2024)**

(U) The Honorable Mike Rogers, Chairman, Committee on Armed Services, U.S. House of Representatives (HASC Chairman), sent a letter dated January 18, 2024, to Secretary Austin regarding his hospitalization at WRNMMC. Secretary Austin provided a written response on February 7, 2024. Secretary Austin’s February 7 response including the following statements.

- (U) “When I was diagnosed with prostate cancer in December, the news shook me, and my first instinct was to keep it private. But I did not handle this right. In retrospect, I should have told the President and my team about my cancer

(U) diagnosis sooner. [...] But I want to be clear: I did not direct anyone to keep my January hospitalization from the White House.”

- (U) “... I underwent a prostatectomy at Walter Reed on December 22. I was placed under general anesthesia for the procedure and the Deputy Secretary assumed the functions and duties of my office and was serving as the Acting Secretary of Defense pursuant to 10 U.S.C. § 132(b), referred to internally as a “transfer of authority” (TOA), for a temporary period. On December 23, I was discharged from the hospital and resumed my full functions and duties as Secretary of Defense that same day.”
- (U) “On January 1, I decided to return to Walter Reed via ambulance, given the amount of pain that I was experiencing. With respect to the 911 call on January 1, I did not direct my assistant to do anything other than to call an ambulance. On January 2, the Deputy Secretary assumed the functions and duties of my office. Her senior staff, my senior staff, and the Joint Staff were notified of this through regular email notification procedures. I did not personally speak with Deputy Secretary Hicks when she assumed the functions and duties of my office, and I cannot speak to any context that may or may not have been conveyed to her about the reason that she would be assuming those functions and duties.”
- (U) “... at no time during my stay at Walter Reed were there any gaps in authorities or risk to command-and-control. Either I, or the Deputy Secretary of Defense, were always fully prepared to support the President as Commander-in-Chief throughout the duration of my care.”

### **C. (U) Secretary’s Austin’s Testimony to the Committee on Armed Services, U.S. House of Representatives (February 29, 2024)**

(U) Secretary Austin testified on February 29, 2024, to the Committee on Armed Services, U.S. House of Representatives (HASC) regarding his hospitalizations and the authority transfers. Secretary Austin also provided a written statement for the record to the HASC, also dated February 29, 2024.<sup>128</sup>

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<sup>128</sup> (U) The official HASC transcript was not released during our review and we found a few errors on the CQ Congressional Transcript dated February 29, 2024, that we reviewed on CQ.com. Therefore, we transcribed the HASC hearing and cite quotes from our validated transcript throughout this report.

### ***(U) Secretary Austin’s Opening Statement to the HASC***

(U) Secretary Austin’s oral opening statement to the HASC included the following statements.

(U) There was never any lapse in authorities or in command and control. At all times either I or the Deputy Secretary was in a position to conduct the duties of my office.

(U) But we did have a breakdown in notifications during my January stay at Walter Reed, and that is sharing my location and why I was there. And back in December, I should have promptly informed the President, my team, and Congress and the American people of my – of my cancer diagnosis and subsequent treatment.

(U) Again, we did not handle this right, and I did not handle it right. As you know, I’ve apologized, including directly to the President, and I take full responsibility. I’m also taking responsibility for some institutional changes to make sure that this cannot happen again. It’s not enough for me to pledge to do better, the system must be postured better to make the appropriate notifications when authorities are transferred, and my staff must be ready to carry all of this out.

(U) But let me be clear. I never intended to keep my hospitalization from the White House or from anybody else.

### ***(U) Secretary Austin’s Statements About His Cancer Diagnosis and 2023 Procedure***

(U) Secretary Austin was asked by members of the panel about his cancer diagnosis and his December 22, 2023 procedure. The questions and answers included the following language.

- (U) Representative Austin Scott asked, “... the December 22nd date, when did you know that you were going to have surgery on December the 22nd?”

(U) Secretary Austin responded, “Well, I scheduled that surgery about a week prior to the actual surgery. That [inaudible] and I was – I took leave in order to – in order to do that and I made sure that we transferred authorities to the Deputy that day. And I resumed my duties the following day.”

- (U) Representative Mike Gallagher asked, “What prevented you at that initial hospitalization, which was a planned procedure, from telling the president, albeit privately, about your condition, that you had cancer?”

Appendix C – Secretary Austin’s Statements and HASC Testimony

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(U) Secretary Austin responded, “As – as I said, you know, a diagnosis of cancer is – is a very personal and deeply troubling issue. And – and it’s one that, quite frankly, you know, I described it as a gut punch. And – and again, I – I didn’t want to burden the President with one of my personal issues, but I’ve also said that – that I didn’t do – I didn’t get this right.”

(U) Representative Mike Gallagher stated, “Yeah.”

(U) Secretary Austin responded, “I should have informed him. I should have, you know, talked to him about it. And I have since talked to the President. I have apologized, and – and he responded with a warmth and – warmth and empathy that –.”

- (U) Representative Mike Gallagher stated, “You – I don’t mean to be rude. You said you – or you just said you expect your organization in early questioning to do the right thing and notify higher. But when you initially went in, it was not your intent or expectation to notify higher. You didn’t expect your organization to notify the President, correct?”

(U) Secretary Austin responded, “You know, as I said, I didn’t get that right, and I – that was – that was not done appropriately.”

(U) Mike Gallagher stated, “I appreciate that – that candor. But just – just so I have clarity, your initial intent was to go in, have the procedure, for there to be not any complications, and the White House would be none the wiser in the process, correct?”

(U) Secretary Austin responded, “We – we didn’t – I didn’t instruct anybody to notify anyone. That’s right.”

(U) Representative Mike Gallagher stated, “So, it is not the fault of your organization or an aide not to notify higher, at least in that initial case.”

(U) Secretary Austin responded, “That’s right.”

- (U) Representative Nancy Mace asked Secretary Austin, “... when did you first receive your diagnosis?”

(U) Secretary Austin responded, “It was early December.”

(U) Representative Nancy Mace then asked, “And then who did you tell? Did you tell your staff when you received the diagnosis?”

(U) Secretary Austin responded, “I didn’t. Again, as I said earlier –.”

(U) Representative Nancy Mace then asked, “Did you tell your staff you received the diagnosis, yes or no?”

(U) Secretary Austin responded, “No, I did not.”

Appendix C – Secretary Austin’s Statements and HASC Testimony

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(U) Representative Nancy Mace then asked, “Okay. When did you learn that you needed surgery?”

(U) Secretary Austin responded, “Well, as soon as that diagnosis was made.”

(U) Representative Nancy Mace then asked, “Okay. And then when did you – did you tell your staff that you needed surgery? When you found out you needed surgery, did you then inform your staff that you –.”

(U) Secretary Austin responded, “I didn’t –.”

(U) Representative Nancy Mace then asked, “– needed surgery?”

(U) Secretary Austin responded, “– I didn’t tell my staff that I needed surgery.”

- (U) Representative Nancy Mace asked Secretary Austin, “So, you didn’t inform your staff in December when you had the December surgery that you were going to be incapacitated at all?”

(U) Secretary Austin responded, “I – I knew I was going to be incapacitated and I transferred the authorities to the – to the Deputy Secretary.”

(U) In addition, Secretary Austin’s written statement to the HASC included the following language.

(U) “Following my prostate cancer diagnosis, I underwent a minimally invasive prostatectomy at Walter Reed on December 22, 2023. I was placed under general anesthesia for the procedure. The Deputy Secretary assumed the functions and duties of my office and was serving as the Acting Secretary of Defense pursuant to 10 U.S.C. § 132(b), referred to internally as a ‘transfer of authority’ (TOA), for a temporary period.”

### ***(U) Secretary Austin’s Statements About His Hospitalization in January 2024***

(U) Secretary Austin was asked by members of the panel about his hospitalization in January 2024. Secretary Austin provided the following statements.

- (U) Representative Scott DesJarlais asked Secretary Austin, “It’s been reported that when you returned to the hospital on January 1st, an aide told the dispatcher, ‘Can I ask that the ambulance not show up with lights and sirens? We’re trying to remain subtle.’ Did you direct the aide to say that?”

(U) Secretary Austin responded, “What I – what I told my – my assistant to do was call an ambulance, and that’s all that I told them to do.”

Appendix C – Secretary Austin’s Statements and HASC Testimony

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- (U) Representative Nancy Mace asked, “Okay. And then they had this emergency event. That was January 1?”  

(U) Secretary Austin responded, “That’s correct.”

(U) Representative Nancy Mace asked, “What time of day did that happen?”

(U) Secretary Austin responded, “Late afternoon.”

(U) Representative Nancy Mace asked, “And then did you tell your staff late afternoon when it happened what was happening?”

(U) Secretary Austin responded, “I didn’t. My concern there was – was getting to the hospital.”
- (U) Representative Mike Gallagher asked Secretary Austin, “You went back to the hospital on January 1st. Your condition worsened, at which point you – you said earlier the decision was made, the decision was made to transfer authorities again to the [Deputy Secretary of Defense]. Again, did you make that decision to transfer authorities?”  

(U) Secretary Austin responded, “I did not. The decision was whether or not we – they had reached a point, a threshold where I could not communicate or have access to secure communications. And so, that triggers the process –.”
- (U) Representative Mike Gallagher stated to Secretary Austin, “So, your – your condition was severe such that you could not personally action the transfer of authority.”  

(U) Secretary Austin responded, “The issue was, number one, they could not get to me. But number two, it was access to secure communications. Had nothing to do with my physical condition at the time.”
- (U) Representative Doug Lamborn asked Secretary Austin, “Is – was there a – we talk about seamless, it sounds like there was a gap between the 1st of January and the 2nd of January, or am I mistaken?”  

(U) Secretary Austin responded, “Well, the 1st of January, while I was in the hospital, I could still – I was – still had the ability to access communications. And – and so I remained – I retained the responsibilities. On the 2nd of January, as I was admitted to critical care, it was determined that I would not have access my – my communicators would not be able to provide – provide timely access to the communications for me and so the decision was made to put the process that’s – that’s in place in – in play.”
- (U) Representative Scott DesJarlais asked Secretary Austin, “Did she know on January 2nd that she was in charge?”

(U) Secretary Austin responded, “She knew on January 2nd that – that we had transferred authority, yes.”

(U) In addition, Secretary Austin stated in his opening testimony, “ ... from the time that I resumed my duties on January 5th, I fully participated in national security decision making on events in the Middle East and about military operations in self-defense to protect our troops and our facilities over there.”

(U) Furthermore, Secretary Austin’s written statement to the HASC on February 29, 2024, included the following language.

(U) On January 2, my medical condition changed, and I began to experience fever, chills, and shallow breathing. The medical staff decided to transfer me to the Critical Care Unit for closer monitoring and better team care by my doctors. Given the inability to provide timely communications to me while in the Critical Care Unit, my military assistants agreed that a TOA to the Deputy Secretary was necessary and identified next steps in executing the transfer process and notifying additional personnel. The Deputy Secretary again assumed the functions and duties of my office. The Deputy Secretary’s staff and my staff, as well as the Joint Staff, were notified that the TOA had occurred through regular notification procedures. The Deputy Secretary, who was in Puerto Rico at the time, as always had access to the classified and unclassified communications systems necessary to carry out her duties and to act for, and exercise the powers of, the Secretary of Defense, as required.

### ***(U) Secretary Austin Informing Others of Condition in December and January***

- (U) Representative Jim Banks asked Secretary Austin, “Yes or no, did you tell your staff not to inform the President, anyone on your staff?”

(U) Secretary Austin responded, “I never told anyone not to inform the President, the White House, or anyone else about my hospitalization.”

(U) Representative Jim Banks then stated, “Okay. So, the – the [DoD] 30-Day Review summary lays a lot of blame at the feet of your staff, it seems that – that would appear, correct, for the breakdown in the process? You’ve told us that you are responsible, but the – the [DoD] 30-Day Review seems to blame your staff.”

Appendix C – Secretary Austin’s Statements and HASC Testimony

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(U) Secretary Austin responded, “Well, the [DoD] 30-Day Review pointed out that – that there were some missteps and – and – but there was never any ill intent or an intent to obfuscate some.”

- (U) Representative Scott DesJarlais asked Secretary Austin, “Did you ever explicitly direct anyone to keep your condition from the White House on [sic] your staff?”

(U) Secretary Austin responded, “As I said earlier, I never directed anyone to keep my hospitalization from the White House.”

(U) Representative Scott DesJarlais then asked Secretary Austin, “Okay. Did you ever direct your staff or others to keep the status of your condition from the public or any other senior officials?”

(U) Secretary Austin responded, “No.”

(U) Representative Scott DesJarlais then asked Secretary Austin, “Has anyone been disciplined for doing something that you did not tell them to do, namely actively suppressing information pertaining to your condition?”

(U) Secretary Austin responded, “Again, as it pointed out in a [DoD] 30-Day Review, there was a lot of things that happened, but there was no evidence of – of an intent to obfuscate or – or, you know, willingly conceal something. And so, at the end of the day, as I said earlier, you know, I take full responsibility for – for this. We didn't get this right. We've put the procedures in place to ensure that – that this doesn't happen again.”

- (U) Representative Mike Gallagher asked Secretary Austin, “What prevented you at that initial hospitalization, which was a planned procedure, from telling the President, albeit privately, about your condition, that you had cancer?”

(U) Secretary Austin responded, “As – as I said, you know, a diagnosis of cancer is – is a very personal and deeply troubling issue. And – and it's one that, quite frankly, you know, I described it as a gut punch. And – and again, I – I didn't want to burden the President with one of my personal issues, but I've also said that – that I didn't do – I didn't get this right.”

- (U) Representative Michael Waltz asked Secretary Austin, “But let's talk about whether there was a break because you've testified under oath, there was no gap. Did the President of the United States, Commander in Chief know on the 1st of January you were going to the hospital in an ambulance?”

(U) Secretary Austin responded, “He did not.”

(U) Representative Michael Waltz then asked, “Did he know on the 2nd of January that you had been admitted to critical care in the ICU?”



Appendix C – Secretary Austin’s Statements and HASC Testimony

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(U) Secretary Austin responded, “He did not.”

(U) Representative Michael Waltz then asked, “The Commander in Chief, elected by the American people, civilian oversight of the military didn’t know on January 1st, didn’t know on January 2nd. January 3rd comes around, did the President know? Yes or no.”

(U) Secretary Austin responded, “He did not.”

- (U) Representative Lisa McClain asked Secretary Austin, “So what error did you make, if any?”

(U) Secretary Austin responded, “Well, first of all, I said that I didn’t inform the President initially of my cancer diagnosis, and that was a mistake. In terms of the hospitalization January 1st, throughout, again, I was the patient. And so my expectation is that the organization inform the right agencies that –.”

(U) Representative Lisa McClain then stated, “Okay. So my – maybe I didn’t understood [sic] it. So as long as you inform somebody other than your boss to let the boss know, that is acceptable.”

(U) Secretary Austin responded, “You know, certainly informing the – the Chief of Staff of the White House National Security Advisor, I think they would immediately inform the President.”

(U) Representative Lisa McClain stated, “So yes, so it really wasn’t your fault, it was the staff’s fault. So you inform the staff, the staff made an error not to inform the President. I’m just trying to connect the dots.”

(U) Secretary Austin responded, “No, no.”

(U) Representative Lisa McClain then stated, “No. Okay.”

(U) Secretary Austin responded, “... my Chief of Staff informed the National Security Advisor on the 4th of – of January and then that notification followed through to the President.”

(U) Representative Lisa McClain then stated, “So in your opinion you didn’t make an error, it was a process that was the issue.”

(U) Secretary Austin responded, “We didn’t get this right.”

(U) Representative Lisa McClain stated, “Again – ok, I’m just trying to find where the blame lays -.”

(U) Secretary Austin stated, “As a patient in critical care at the – from, you know, from the 2nd to the 4th.”

(U) Representative Lisa McClain then asked, “Okay. So it wasn’t your fault? It was the staff’s fault.”

(U) Secretary Austin responded, “Well, I you know, I didn't have access to – to any kind of communications during that time.”

(U) Secretary Austin’s written statement to the HASC included the following language.

(U) “I did not direct anyone to keep my hospitalizations from the White House. Health matters, particularly serious illnesses such as cancer are deeply personal, but I recognize that the office I hold requires a greater level of transparency.”

***(U) Secretary Austin’s Statements Regarding His February 2024 Hospitalization and the DoD 30-Day Review***

- (U) Representative Veronica Escobar asked Secretary Austin, “I’d like to give you the opportunity to assure the American people who are watching what lessons were learned in that [DoD] 30-Day Review and looking forward [to] what can and will be done better.”

(U) Secretary Austin responded, “Well, the importance of prompt notification of key leaders of -- of a senior leader being ill or being hospitalized. And the importance of everyone in the -- any in -- in the chain, in the environment, understanding of the policies and procedures and are able to put those into play right away. And we put measures in place that ensure that, first of all, people are aware of -- of the policies and procedures and -- and they execute them. We had an opportunity to -- to put this in play. And on February 11th, when I went back to the hospital and prompt notification was -- was made, the transfer of authorities was made promptly. And -- and again, I re-assumed my responsibilities on February 13th.”

(U) Secretary Austin’s written statement to the HASC included the following language.

(U) On February 11, I was admitted to Walter Reed with discomfort and concern from a bladder issue related to my December 2023 prostatectomy. The Deputy Secretary of Defense was notified of my hospitalization and again assumed the functions and duties of my office. We employed the new procedures we recently put in place to prevent any lapses in notification, and the Chairman of the Joint Chiefs of Staff, the White House, and Congress were notified.

## (U) Appendix D – Acronyms and Abbreviations

(U) AFD	Assumption of Functions and Duties
(U) APNSA	Assistant to the President for National Security Affairs
(U) ASD[HA]	Assistant Secretary of Defense for Health Affairs
(U) DA&M	Director of Administration and Management
(U) BMD	Ballistic Missile Defense
(U) Cables ESO	Cables Executive Support Office
(CU) ██████████	██
(U) CCIR	Chairman’s Critical Information Requirements
(U) CFR	Code of Federal Regulations
(U) CID	(Army) Criminal Investigation Division
(U) CJCS	Chairman of the Joint Chiefs of Staff
(U) CJCSI	Chairman of the Joint Chiefs of Staff Instruction
(U) COOP	Continuity of Operations
(U) CUI	Controlled Unclassified Information
(U) DADs	Deputy Assistant Directors
(U) DCIR	Director’s Critical Information Requirements
(U) DHA	Defense Health Agency
(U) DHA-PI	Defense Health Agency Procedural Instruction
(U) DHA-PM	Defense Health Agency Procedures Manual
(U) DoDD	Department of Defense Directive
(U) DoDI	Department of Defense Instruction
(U) DoDM	Department of Defense Manual
(U) DoD OIG	Department of Defense Office of Inspector General
(U) EHR	Electronic Health Record
(U) EOP	Executive Office of the President
(U) ERG	Emergency Relocation Group
(U) ESO	Executive Support Office
(U) EXORD	Execute Order
(U) FDA	Food and Drug Administration
(U) FVRA	Federal Vacancies Reform Act
(U) GAO	Government Accountability Office
(U) GC	General Counsel
(U) GEN	General

Appendix D – Acronyms and Abbreviations

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<b>(U) HASC</b>	Committee on Armed Services, U.S. House of Representatives
<b>(U) HIPAA</b>	Health Insurance Portability and Accountability Act
<b>(U) JMA</b>	Junior Military Assistant
<b>(U) LTG</b>	Lieutenant General
<b>(U) MA</b>	Military Assistant
<b>(U) MAJ GEN</b>	Major General
<b>(U) MHS</b>	Military Health System
<b>(U) NC3</b>	Nuclear Command, Control, and Communications
<b>(U) NMCC</b>	National Military Command Center
<b>(U) NSPM-32</b>	National Security Presidential Memorandum–32
<b>(U) OGC</b>	Office of General Counsel
<b>(U) ONE</b>	Operation Noble Eagle
<b>(U) OSD</b>	Office of the Secretary of Defense
<b>(U) PAS</b>	Presidential Appointment with Senate Confirmation
<b>(U) PC</b>	Personal Communicator
<b>(U) PCIR</b>	Presidential Critical Information Requirement
<b>(U) PDB</b>	Presidential Daily Brief
<b>(U) PHI</b>	Protected Health Information
<b>(U) PMA</b>	Principal Military Assistant
<b>(U) PSO</b>	Personal Security Officer
<b>(U) SAC</b>	Special Agent in Charge
<b>(U) SD</b>	Secretary of Defense
<b>(U) SICU</b>	Surgical Intensive Care Unit
<b>(U) SITREP</b>	Situation Report
<b>(U) SMA</b>	Senior Military Assistant
<b>(U) TOA</b>	Transfer of Authority
<b>(U) U.S.C.</b>	United States Code
<b>(U) USNORTHCOM</b>	U.S. Northern Command
<b>(U) WHMU</b>	White House Medical Unit
<b>(U) WHS</b>	Washington Headquarters Services
<b>(U) WHSR</b>	White House Situation Room
<b>(U) WRA</b>	Weapons Release Authority
<b>(U) WRNMMC</b>	Walter Reed National Military Medical Center

## (U) Appendix E – DoD Comments



SECRETARY OF DEFENSE  
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WASHINGTON, DC 20301-1000

JAN 03 2025

MEMORANDUM FOR INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE

SUBJECT: Review of the Department of Defense Office of Inspector General Draft Report, "Review of DoD's Policies on the Assumption of Functions and Duties of the Secretary of Defense" (20240110-091090-CASE-01)

I am writing in response to the recommendations contained in the subject report.

The Department of Defense (DoD) takes seriously this review conducted by the DoD Office of Inspector General (OIG). Since January 10, 2024, when DoD OIG announced the review,<sup>1</sup> the Department has cooperated in good faith with the OIG's efforts—reflecting the Department's commitment to strengthening its internal processes and identifying ways to improve upon existing procedures.

The DoD OIG's review builds on the critical work that the Department has already undertaken to establish and improve upon existing policies and procedures concerning the roles and responsibilities associated with the assumption of functions and duties (AFD) of the Secretary of Defense when the Deputy Secretary of Defense or another designated official, as determined by the order of succession or the President, assumes the functions and duties as Acting Secretary of Defense during any period in which the Secretary of Defense is unable to perform the functions and duties of the office. Before DoD OIG decided to undertake this review, on January 8, 2024, the Department initiated its own comprehensive effort to improve its notification processes and procedures.<sup>2</sup> The Department is a learning organization, and improvement requires constant dedication. We are committed to continuing to learn and adjust.

Consistent with the Department's position, the DoD OIG report did not identify any adverse impacts on operational command and control or DoD functions during, or as a result of Secretary Austin's hospitalizations in December 2023, January 2024, and February 2024.

<sup>1</sup> The stated purpose of the review, as announced on January 10, 2024, was "to examine the roles, processes procedures, responsibilities, and actions related to the Secretary of Defense's hospitalization" in December 2023 and January 2024 and "to assess whether the DoD's policies and procedures are sufficient to ensure timely and appropriate notifications and the effective transition of authorities as may be warranted due to health-based or other unavailability of senior leadership." The timeframe of the review was subsequently extended to include events and circumstances in February 2024.

<sup>2</sup> On January 8, 2024, the Secretary of Defense's Chief of Staff directed the DoD's Director of Administration and Management and Performance Improvement Officer (DA&M/PIO) to conduct a 30-Day Review of the Department's notification process for the assumption of functions and duties of the Secretary of Defense. The purpose of the review was to ensure (1) clarity and transparency when a determination has been made that certain authorities have been transferred; and (2) that proper and timely notification has been made to the President and White House and, as appropriate, the United States Congress and the American public. The same day, the Secretary's Chief of Staff also directed several actions, effective immediately, to ensure increased situational awareness within the Department and with the White House regarding AFD notifications, including an explanation of the reason for the AFD.

The Department concurs with all 20 recommendations in the draft report, many of which were already considered or addressed by the Department during the development of Department of Defense Directive (DoDD) 3020.53, “Assumption of the Functions and Duties of the Secretary of Defense.” DoDD 3020.53, effective May 28, 2024, provides guidance on the assumption of functions and duties of the Secretary of Defense to minimize subjectivity by requiring communication and training plans for all relevant officials and sets the criteria for mandatory reporting requirements for personnel providing direct support to the Secretary of Defense and the Deputy Secretary of Defense. As detailed below, the Department must factor into its review of recommendations the HIPAA limitations on disclosure of protected health information (PHI). HIPAA’s requirements are critical to ensuring privacy protections for patients’ sensitive personal information and protected health information, and the Department takes seriously the obligations to comply with this statute.

#### **DoD Considerations in the Development of DoDD 3020.53**

The DoD OIG draft report’s recommendations do not reflect gaps in what the Department considered when the Department took steps to improve the AFD process earlier this year through the development of DoDD 3020.53 and accompanying documents and materials. When developing DoDD 3020.53, the Department carefully considered important concepts and themes that emerge across several of the DoD OIG draft report’s recommendations, including: (1) the roles and responsibilities of medical professionals in the AFD process; (2) the establishment of criteria, events, or conditions that should trigger consideration of whether to initiate the AFD process; (3) the balance between providing clarification of terms within DoDD 3020.53 to help minimize subjectivity while, at the same time, allowing sufficient flexibility to enable the policy to be adapted to new and unforeseen scenarios and circumstances; (4) the applicability of the Federal Vacancies Reform Act of 1998 (FVRA) when the Deputy Secretary assumes the functions and duties of the Secretary of Defense pursuant to 10 U.S.C. § 132(b); and (5) the establishment of AFD processes and procedures that are consistent with—and that recognize the importance of—privacy and information protections required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Department appreciates the DoD OIG’s recommendations and will undertake a holistic effort to review DoDD 3020.53 to determine what further clarifications or revisions may be appropriate.

#### **DoD Response on Previous Transfers of Authority as a Historical Practice**

To provide additional context, previous Secretaries of Defense effectuated a “transfer of authorities” or “TOA” process when transferring certain operational authorities from the Secretary of Defense to the Deputy Secretary of Defense from time to time as part of the institution’s regular practice. For example, the Department’s 30-Day Review, conducted by the DoD Performance Improvement Officer and Director of Administration and Management (PIO/DA&M), assessed a sampling of “TOAs” dating back to Secretary of Defense Ashton Carter, who served from February 2015 to January 2017. This practice was employed at least as far back as 2006, when Secretary of Defense Donald Rumsfeld reportedly transferred certain operational authorities to Deputy Secretary Gordon England.

**DoD Response on FVRA Reporting Requirements**

The Department disagrees with the draft DoD OIG report's conclusion with respect to required notifications under the FVRA. The draft DoD OIG report concludes that "Secretary Austin did not meet the requirement under the FVRA to immediately notify the Comptroller General and Congress" of the December 22-23, 2023 AFD,<sup>3</sup> and that neither "Secretary Austin nor Deputy Secretary Hicks met the requirement under the FVRA to immediately notify the Comptroller General and Congress" of the January 2-5, 2024 AFD.<sup>4</sup> The draft report further asserts that "DoD did not report two AFDs, occurring on June 17, 2024, and June 21, 2024, to the Comptroller General and Congress as required by DoDD 3020.53."<sup>5</sup> We explain the reasons for our disagreement below.

The Department's longstanding practice has been not to consider temporary situations in which the Deputy Secretary performs the functions and duties of the Secretary of Defense as Acting Secretary pursuant to 10 U.S.C. § 132(b) to require notification under the FVRA. This office-specific statute specifically prescribes when the Deputy Secretary of Defense acts for and exercises the powers of the Secretary of Defense. Indeed, it is not clear that the FVRA's notification provisions are applicable in such situations when, pursuant to the independent authority of 10 U.S.C. § 132(b), the Deputy Secretary has assumed the functions and duties of the Secretary of Defense.<sup>6</sup>

Nevertheless, as indicated in the DoD OIG draft report, the Department submitted reports to the Comptroller General and to Congress, consistent with the FVRA, reflecting the instances on December 22, 2023, January 2, 2024, and February 11, 2024, when the Deputy Secretary assumed the functions and duties of the Secretary as Acting Secretary of Defense. On January 9, 2024, the Department notified the Comptroller General of the January 2, 2024 AFD. On January 10, 2024, the Department notified the Comptroller General of the December 22, 2023 AFD. On January 11, 2024, the Department notified Congress of both the December 22, 2023 and January 2, 2024 AFDs. On February 12, 2024, the Department notified the Comptroller General and Congress of the February 11, 2024 AFD. Each of these reports was made "consistent with" the FVRA, thereby not taking a position regarding whether FVRA reports were required.

<sup>3</sup> Draft report at 74.

<sup>4</sup> Draft report at 76.

<sup>5</sup> Draft report at 110. In addition, the Department notes that the June AFDs are outside the DoD OIG's stated review period, which covers December 2023, January 2024, and February 2024; accordingly, these AFDs are outside the scope of the review.

<sup>6</sup> See S. Rep. No. 105-250 (1998), at 16-17 (expressly identifying 10 U.S.C. § 132(b) as falling into one of "three narrowly delineated exceptions" that "allow temporary appointments to be made other than through the Vacancies Reform Act." The applicable exception, as described in the report, is for 40 retained statutes, including 10 U.S.C. § 132(b), "in effect on the date of enactment of the Vacancies Act of 1998 that expressly authorize the President, or the head of an executive department to designate an officer to perform the functions and duties of a specified office temporarily in an acting capacity, as well as statutes that expressly provide for the temporary performance of the functions and duties of an office by a particular officer or employee." The Senate report advises that "the various authorizing committees may choose in the future to reexamine whether these positions should continue to be filled through the existing procedure, or whether it would be advisable to repeal those statutes in favor of the procedures contained in the Vacancies Reform Act," thereby suggesting that the prior procedures are controlling).

The FVRA requires that the head of each executive agency report a vacancy “immediately” to Congress and the Comptroller General. *See* 10 U.S.C. § 3349(a)(1). As the DoD OIG report acknowledges, the FVRA does not define the term “immediately,” nor does the statute’s legislative history suggest what notification timeframe qualifies as “immediate[.]” In addition, the reporting requirements of the FVRA ensure that GAO is provided the information needed to determine whether an acting officer is serving beyond the time limitations prescribed in § 3346 of the FVRA. In the situations in which the Deputy Secretary assumes the functions and duties of the Secretary of Defense pursuant to 10 U.S.C. §132(b) temporarily, such time limitations do not apply. Given the lack of a statutory definition, and without prejudice to whether any FVRA reports were required in the instances referenced above, DoD OGC believes that these reports—submitted within three weeks of the AFDs—were consistent with the FVRA’s notification provisions. This interpretation is consistent with prior DoD practice. For example, when Secretary Mattis departed DoD on January 1, 2019, and Deputy Secretary Shanahan assumed his functions and duties as Acting Secretary of Defense, the Department submitted a report to the Comptroller General approximately two weeks later.

#### **DoD Response on DoDD 3020.53 Reporting Requirements**

The DoD OIG report interprets DoDD 3020.53 to require the Department to notify the Comptroller General and Congress every time that an AFD of the Secretary of Defense occurs, no matter the circumstances or duration. But DoDD 3020.53 is more limited—it requires notifications to the Comptroller General and the heads of both Houses of Congress only when “appropriate,” “consistent with” the FVRA. Indeed, there may be circumstances in which the Secretary of Defense effectuates an Anticipated Temporary AFD for only a short duration, such as an in-transit movement during which the Secretary knows that he or she will not have reliable access to secure communications, for which it may be impractical to report as a vacancy under the FVRA. *See* Section 1.2(h)(2)(b) (“When an Acting SecDef assumes the functions and duties of the SecDef, *appropriate* notifications will be provided *consistent with* the requirements of the FVRA and the processes established therein.”); Section 2.8 (“[W]hen *appropriate*, the [Assistant Secretary of Defense for Legislative Affairs] notifies both Houses of Congress of required information, *consistent with* the FVRA.”); Section 3.3 (“When an Acting SecDef assumes the functions and duties of the SecDef, *appropriate* notifications will be provided *consistent with* the requirements of the FVRA and the processes established therein.”) (all emphases added). The Department intends to report under this standard moving forward and will consider such reporting on a case-by-case basis.



**DoD Response to OIG Recommendations****RECOMMENDATION 1:**

The DoD should clarify and further define the term, “medically incapacitated,” and the phrase, “unable to perform the functions and duties,” in DoDD 3020.53. According to the documents we reviewed, DoDD 3020.53 was not coordinated with the Assistant Secretary of Defense for Health Affairs (ASD(HA)) or [the Defense Health Agency (DHA)]. Additionally, doctors we interviewed and DoD medical stakeholders with whom we consulted were not aware of DoDD 3020.53 or its provisions. Accordingly, we recommend that the DoD’s actions to clarify and define this term and phrase include appropriate coordination with ASD(HA) and DHA.

**RESPONSE:**

The Department concurs with this recommendation and will consider further defining “medically incapacitated” in DoDD 3020.53 beyond the explanatory references in DoDD 3020.53, paragraphs 1.2.h.(2)(c) and 3.4.a., which define the term as “i.e., unable to perform the functions and duties of the office due to sickness, injury, or other medical condition.” The Department will also consider further clarifying and defining the phrase “unable to perform the functions and duties” in DoDD 3020.53, consistent with applicable law and policy. The Department will coordinate specifically with ASD(HA) and DHA through OUSD(P&R), as appropriate, in undertaking these efforts.

**RECOMMENDATION 2:**

The DoD should review whether medical conditions or events requiring transportation by ambulance, specific medical procedures, or the administration of certain types, categories, or amounts of medications should trigger consideration of the questions of medical incapacitation, the ability “to perform the functions and duties,” and the need for an AFD, and implement the results of that review accordingly. We also recommend that such review include coordination with ASD(HA) and DHA.

**RESPONSE:**

The Department concurs with this recommendation and will review whether medical conditions or events requiring transportation by ambulance, specific medical procedures, or the administration of certain types, categories, or amounts of medications should trigger consideration of potential medical incapacitation, potential inability “to perform ... functions and duties,” and potential need for an AFD. The Department will implement the results of that review as appropriate. The Department notes that several of these potential triggers were taken into account during the development of DoDD 3020.53 and were accordingly included in the follow-on training materials to DoDD 3020.53. The Department will coordinate with ASD(HA) and DHA through OUSD(P&R), as appropriate, when undertaking this review.

**RECOMMENDATION 3:**

The DoD, in consultation with the [DHA], and the ASD(HA), as appropriate, should clarify DoDD 3020.53 to acknowledge and address the HIPAA limitations on disclosure of [protected health information (PHI)] in the context of AFD processes and issue appropriate guidance to medical professionals and staff providing direct support to the Secretary and Deputy Secretary.

**RESPONSE:**

The Department concurs with this recommendation and will clarify DoDD 3020.53 to acknowledge and address the HIPAA limitations on disclosure of PHI in the context of AFD processes and will issue appropriate guidance to medical professionals and staff providing direct support to the Secretary and Deputy Secretary. HIPAA's requirements are critical to ensuring privacy protections for patients' sensitive personal information and protected health information, and the Department takes seriously the obligations of DoD covered entities to comply with this statute. The Department will coordinate with ASD(HA) and DHA, as appropriate.

**RECOMMENDATION 4:**

The DoD should include HIPAA in the matters listed in DoDD 3020.53, paragraph 2.7.a., for which the DoD GC is responsible for providing legal advice.

**RESPONSE:**

The Department concurs with this recommendation and will update DoDD 3020.53, paragraph 2.7.a., to include HIPAA on the list of matters for which DoD OGC is responsible for providing legal advice.

**RECOMMENDATION 5:**

The DoD should review whether to clarify the term "medical professionals" and the procedures for consulting with such persons in DoDD 3020.53, paragraph 1.2.d., including whether to designate the Primary Physician or another DoD doctor as a potential source of medical advice as to whether the Secretary of Defense is able to perform the functions and duties of the office, and implement the results of that review accordingly.

**RESPONSE:**

The Department concurs with this recommendation and will review DoDD 3020.53 to consider whether to clarify in paragraph 1.2.d. the term "medical professionals" and the procedures for consulting with such persons regarding whether the Secretary of Defense is able to perform the functions and duties of the office and will implement the results of that review as appropriate. The Department also clarifies that there is not an established role of "Primary Physician" dedicated to the Secretary of Defense, nor is there a requirement that a Secretary of Defense must seek care through the Military Health System.

**RECOMMENDATION 6:**

The DoD should further define in DoDD 3020.53 situations requiring support personnel to report medical concerns that could prompt an AFD to further minimize subjectivity by including clear, objective criteria, potentially including occurrences such as calling for emergency medical services, emergency room visits, ambulance transports, hospitalizations, and other emergent medical conditions when the origin and severity of the condition is unknown (as occurred in February 2024).

**RESPONSE:**

The Department concurs with the recommendation, which has already been implemented in the form of Department-wide training materials intended to provide more granular, situation-specific guidance to relevant DoD non-medical personnel in accordance with DoDD 3020.53. Although the Department agrees to undertake a review of the DoDD to determine whether to further define these situations in the directive itself, such revisions may be more suitable for inclusion in the Department's follow-on training materials, which will be updated on a continual basis to ensure that they are readily adaptable to new scenarios and circumstances that could prompt consideration of an AFD.

**RECOMMENDATION 7:**

The DoD should review whether a period of recuperation and a medical assessment should be required before the Secretary of Defense resumes their functions and duties after a medical incapacitation, and implement the results of that review accordingly.

**RESPONSE:**

The Department concurs with this recommendation and will review whether a period of recuperation and a medical assessment should be required before the Secretary of Defense resumes his or her functions and duties after a medical incapacitation and implement the results of that review as appropriate. Depending on the circumstances surrounding the AFD, a period of recuperation may not always be necessary or prudent, but the Department agrees that a period of recuperation and a medical assessment may be appropriate in certain instances after a medical incapacitation and therefore should be "considered" rather than "required."

**RECOMMENDATION 8:**

The DoD should review and consider whether to include the Secretary of Defense, Deputy Secretary of Defense, and other officials in the order of succession in the list of those persons in DoDD 3020.53 who have a duty to provide timely and complete notifications to DoD officials of a situation that potentially results in their inability to perform the functions and duties of the office, and implement the results of the review accordingly.

**RESPONSE:**

The Department concurs with this recommendation and will review and consider whether to expressly reference the Secretary of Defense, Deputy Secretary of Defense, and other officials in the order of succession in the list of those persons in DoDD 3020.53 who have a duty to provide timely and complete notifications to DoD officials of a situation that potentially results in the principal's inability to perform the functions and duties of the office, and implement the results of the review as appropriate.

**RECOMMENDATION 9:**

The DoD GC should review potential options to authorize and require DoD medical personnel to notify appropriate officials, such as the Primary Physician or any other appropriate DoD covered entity under HIPAA, of medical situations, treatments, and medications that may potentially impact the ability of the Secretary of Defense and others in the line of succession to perform the functions and duties of the office. In addition, the DoD GC should include in its review of

options a process to require the Secretary and other senior DoD officials, whether using DoD or non-DoD medical providers, to authorize a limited HIPAA authorization to disclose to appropriate DoD officials['] medical information that is related to their ability to perform the functions and duties of the office. The DoD GC should provide the results of their review to the Under Secretary of Defense for Policy for consideration and implementation as appropriate.

**RESPONSE:**

The DoD GC concurs with the recommendation and will undertake this recommended review, subject to the clarification that the DoD GC will provide the results of its review directly to the Secretary and Deputy Secretary of Defense, not the Under Secretary of Defense for Policy. As indicated above, the Department also clarifies that there is not an established role of “Primary Physician” dedicated to the Secretary of Defense, nor is there a requirement that a Secretary of Defense must seek care through the Military Health System. As stated above, HIPAA’s requirements are critical to ensuring privacy protections for patients’ sensitive personal information and protected health information, and the Department takes seriously the obligations of DoD covered entities to comply with this statute. Requiring DoD officials to agree to authorize the disclosure of their statutorily protected health information (PHI) as a condition of their service at the Department would create a chilling effect and could potentially deter individuals from seeking needed care out of concern that their most sensitive and personal health information, including PHI, could be subject to disclosure. The DoD GC will undertake this review while bearing in mind the importance of maintaining and preserving individuals’ HIPAA protections and ensuring DoD’s compliance with HIPAA.

**RECOMMENDATION 10:**

The DoD GC should review whether to include the Primary Physician or any other appropriate DoD covered entity under HIPAA in the AFD process to provide information, evaluate information received from others, and provide advice to the Secretary, Deputy Secretary, or their staffs, on the impact, if any, of medical situations, treatments, and medications on the Secretary’s ability to perform the functions and duties of the office and on the Secretary’s ability to access secure communications. The DoD GC should provide the results of their review to the Under Secretary of Defense for Policy for consideration and implementation as appropriate.

**RESPONSE:**

The DoD GC concurs with this recommendation and will undertake this recommended review, subject to the clarification that the DoD GC will provide the results of its review directly to the Secretary and Deputy Secretary of Defense, not the Under Secretary of Defense for Policy. As indicated above, the Department also clarifies that there is not an established role of “Primary Physician” dedicated to the Secretary of Defense, nor is there a requirement that a Secretary of Defense must seek care through the Military Health System. As stated above, HIPAA’s requirements are critical to ensuring privacy protections for patients’ sensitive personal information and protected health information, and the Department takes seriously the obligations of DoD covered entities to comply with this statute. Requiring DoD officials to agree to authorize the disclosure of their statutorily protected health information (PHI) as a condition of their service at the Department would create a chilling effect and could potentially deter individuals from

seeking needed care out of concern that their most sensitive and personal health information, including PHI, could be subject to disclosure. DoD GC will undertake this review while bearing in mind the importance of maintaining and preserving individuals' HIPAA protections and ensuring DoD's compliance with HIPAA.

**RECOMMENDATION 11:**

The DoD should review and consider including a specific reporting requirement for home medical care with criteria for identifying treatment or conditions that may impede the ability to perform the functions and duties or result in potential or actual medical incapacitation and implement the results of that review accordingly.

**RESPONSE:**

The Department concurs with this recommendation and seeks to clarify for the DoD OIG that DoDD 3020.53 is intended to be applicable in all locations. Although the Department will review and consider whether to include a specific reporting requirement for home medical care with criteria for identifying treatment or conditions that may impede the ability to perform the functions and duties or result in potential or actual medical incapacitation, and implement the results of that review as appropriate, the Department does not intend to establish policies or requirements that operate differently depending on the location of the activity. The Department will therefore undertake this review with the goal of ensuring alignment of DoDD 3020.53's reporting requirements across all locations, including home medical care.

**RECOMMENDATION 12:**

The DoD should review and consider establishing a reporting requirement for the DHA to notify appropriate DoD officials of the hospitalization of the Secretary of Defense, the Deputy Secretary of Defense, and other DoD officials in the order of succession, and implement the results of that review accordingly.

**RESPONSE:**

The Department concurs with this recommendation and will review and consider establishing a reporting requirement for DHA to notify appropriate DoD officials of the hospitalization of the Secretary of Defense, the Deputy Secretary of Defense, and other DoD officials in the order of succession, and implement the results of that review as appropriate. While the Department will review and consider establishing such a reporting requirement, the Department must factor into its review HIPAA limitations on disclosure of protected health information (PHI). HIPAA's requirements are critical to ensuring privacy protections for patients' sensitive personal information and protected health information, and the Department takes seriously the obligations of DoD covered entities to comply with this statute. In addition, the Department clarifies that DHA operates hospitals, clinics, and facilities in the Military Health System (MHS); it does not exercise authority over and cannot establish reporting requirements for non-DoD medical facilities outside of the MHS.

**RECOMMENDATION 13:**

The DoD GC should review the FVRA reporting requirement in DoDD 3020.53 and determine whether the FVRA requires reporting of instances of relatively short duration in which the Secretary is unable to perform the functions and duties of the office, and revise the directive as appropriate.

**RESPONSE:**

DoD OGC concurs with DoD OIG's recommendation and will further review the Federal Vacancies Reform Act ("FVRA") notification provisions in DoDD 3020.53. DoDD 3020.53 currently requires notifications to the Comptroller General and the heads of both Houses of Congress only when "appropriate," "consistent with" the FVRA. Upon further review of the FVRA notification provisions in DoDD 3020.53 to determine whether FVRA reporting is required in instances of relatively short duration in which the Secretary of Defense is unable to perform the functions and duties of the office, OGC will suggest revisions to the directive, if appropriate. OGC will take into account recently enacted modifications to 10 U.S.C. § 132(b) notification requirements as set forth in section 901 of H.R. 5009, the "Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025," which was signed into law on December 23, 2024.

**RECOMMENDATION 14:**

The DoD should update the Secretary of Defense Succession Training Plan to address any changes implemented as a result of this review.

**RESPONSE:**

The Department concurs with this recommendation and will update the Secretary of Defense Succession Training Plan and related training materials, as appropriate, to address any changes implemented as a result of this review. As noted above, the Department's training materials will be continually updated to ensure adaptability and relevance to the types of situations that could result in a potential AFD.

**RECOMMENDATION 15:**

The DoD should publish guidance and train relevant "medical professionals" on their roles in the AFD process.

**RESPONSE:**

The Department concurs with this recommendation and, consistent with the Department's concurrence with Recommendations 2, 5, and 6, will publish guidance and establish relevant training for relevant "medical professionals" on their roles in the AFD process, where appropriate.

**RECOMMENDATION 16:**

The DoD should review and identify discrepancies, including but not limited to those identified in this report, between and within NSPM-32, the Standardized Policy for PCIR, and the CCIR, and implement changes to ensure that the reporting requirements are consistent across all relevant guidance documents.

**RESPONSE:**

The Department concurs in part with this recommendation and will review NSPM-32, the Standardized Policy for PCIR, and the CCIR accordingly. Of note, the DoD OIG's findings are consistent with those of the Department's 30-Day Review with respect to the discrepancies in NSPM-32, the Standardized Policy for PCIR, and the CCIR. Although the Department maintains the CCIR and has the ability to refine it accordingly, NSPM-32 and the Standardized Policy for PCIR are documents owned and maintained by the Executive Office of the President.

**RECOMMENDATION 17:**

The DoD, in coordination with the EOP and WHSR, should define the term "incapacitation" in the Standardized Reporting Policy for PCIR and include a consistent definition in the CCIR, ensuring that such definition is consistent with the DoD's actions to define the term "medically incapacitated" in DoDD 3020.53 as recommended in Section IV of the report.

**RESPONSE:**

The Department concurs in part with this recommendation and will consider defining the term "incapacitation" in the CCIR as appropriate and consistent with the Standardized Policy for PCIR. Of note, the DoD OIG's findings are consistent with the findings of the Department's 30-Day Review with respect to the definitional discrepancies the Standardized Policy for PCIR and the CCIR. Although the Department maintains the CCIR and has the ability to refine it accordingly, NSPM-32 and the Standardized Policy for PCIR are documents owned and maintained by the Executive Office of the President.

**RECOMMENDATION 18:**

The DoD should review and consider processes to ensure medical professionals have appropriate and timely access to medical records and medications to support the potential treatment of the Secretary of Defense, Deputy Secretary of Defense, and others in the order of succession for COOP-related events, and implement the results of that review accordingly.

**RESPONSE:**

The Department concurs with this recommendation and will review and consider processes to ensure medical professionals have appropriate and timely access to medical records and medications to support the potential treatment of the Secretary of Defense, Deputy Secretary of Defense, and others in the order of succession for COOP-related events and implement the results of that review accordingly. To provide further context, the Secretary of Defense COOP Plan ensures that a principal and his or her travel delegation shall have immediate access to DoD emergency medical services, trained medical staff, and medical supply available during any continuity situation. In addition, the Secretary of Defense Continuity Playbook identifies the responsibilities and requirements for members of both the Secretary of Defense Emergency Relocation Group (ERG) and the Deputy Secretary of Defense ERG in preparation for a COOP-related event. Both the Secretary and the Deputy Secretary are members of their respective ERGs. According to the Playbook, each ERG member is required to "[r]eceive and appropriately load" their issued "GO BAG" on an ongoing and continuous basis to

include, among other items, medications for 30 days.<sup>7</sup> The Department will work to ensure that this guidance from the Secretary of Defense Continuity Playbook is incorporated, as appropriate, in training and guidance across other DoD Components.

**RECOMMENDATION 19:**

The DoD should review its processes concerning movement notifications for the Secretary and Deputy Secretary, update those processes in writing, including the designated recipients and type of location data required in those notifications, and train DoD personnel on those processes to ensure they provide consistent notifications to the appropriate offices.

**RESPONSE:**


The Department concurs with this recommendation and will review its processes concerning movement notifications for the Secretary and Deputy Secretary, update those processes in writing, including the designated recipients and type of location data required in those notifications, and train DoD personnel on those processes to ensure they provide consistent notifications to the appropriate offices.

**RECOMMENDATION 20:**

The Assistant Secretary of Defense for Health Affairs, in coordination with the DHA, should review DoD medical policies to ensure they adequately address the circumstances under which home health care by DoD medical providers is authorized and contain sufficient controls to ensure that medical providers document such care in the [Electronic Health Record (EHR)] and implement the results of the review accordingly.

**RESPONSE:**

The Department concurs with this recommendation and the Assistant Secretary of Defense for Health Affairs, in coordination with DHA, will review DoD medical policies to ensure that they adequately address the circumstances under which home health care by DoD medical providers is authorized and contain sufficient controls to ensure that medical providers document such care in the EHR and implement the results of the review as appropriate.



<sup>7</sup> Secretary of Defense Continuity Playbook (27 October 2023), at 3F-2.



## (U) Appendix F – DoD OIG Analysis of the DoD’s Response to Recommendations

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(U) In the DoD’s January 3, 2025 response to our report, attached as Appendix E, the Secretary of Defense stated that the Department concurred with all 20 of our recommendations.<sup>129</sup>

(U) The Department also stated in its response that it disagrees with certain aspects of our conclusions regarding its reporting requirements under FVRA. We carefully considered the Department’s response and continue to believe that our report is correct. Our analysis regarding the FVRA reporting requirements, which fully addresses the points raised by the Department, is described generally in Section II (see pages 14-15 with associated footnotes), and as applied in Section III, concerning the Secretary’s hospitalizations in December, January, and February (see pages 74-82 with associated footnotes), and in Section IV, concerning the June AFDs (see pages 110-111 with associated footnotes). Additionally, we note that the Department concurred with Recommendation 13 that it review the FVRA reporting requirement in DoD policy with respect to short duration instances when the Secretary is unable to perform the functions and duties of the office.

(U) We also note that Congress recently addressed the notification issue in section 901 of the *Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025*, Public Law No. 118-159 (December 23, 2024), by requiring the Deputy Secretary of Defense, or any other individual performing the functions and duties of the Secretary in accordance with applicable law, to provide notification to specified committees and the respective leadership of both houses of Congress not later than 24 hours before any planned transfer of such functions and duties or 24 hours after any unplanned transfer of functions and duties.

(U) We will continue to track the Department’s actions to address the recommendations in our report until we determine that the Department has taken actions sufficient to meet the intent of each recommendation.

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<sup>129</sup> (U) DoD’s specific responses to Recommendations 16 and 17 state that it “concur[s] in part” with those recommendations, indicating that although the Department maintains the CCIR and has the ability to refine it, NSPM-32 and the Standardized Reporting Policy for PCIR are owned and maintained by the EOP. While we recognize that the Standardized Reporting Policy for PCIR is based on the requirements of NSPM-32, the Standardized Reporting Policy for PCIR is contained in a memorandum issued by the Secretary and we continue to believe it can be refined by the DoD as may be necessary, consistent with our recommendations and the requirements of NSPM-32. Additionally, we note that in its responses to Recommendations 1 and 17, the DoD states that it will “consider” defining the term “medically incapacitated” and the phrase “unable to perform the functions and duties” in DoDD 3020.53 and the term “incapacitation” in the CCIR and the Standardized Reporting Policy for PCIR. As stated in our recommendations, we believe the DoD should clearly define these provisions and we will continue to track the DoD’s actions until it has taken action sufficient to meet the intent of our recommendations.

## **(U) Annex: Sources of Classified Information**

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(U) The following documents are sources used to support the classification of information in this report.

(U) Source 1: Review of Notification Process for Assumption of Functions and Duties of the Secretary of Defense (Document is Secret).

(U) Declassification date: October 24, 2048

(U) Generated date: February 7, 2024

(U) Source 2: Secretary of Defense Continuity of Operations Plan (Document is Secret).

(U) Declassification date: October 27, 2048

(U) Generated date: May 31, 2024

(U) Source 3: Secretary of Defense Continuity Playbook (Document is Secret).

(U) Declassification date: October 27, 2048

(U) Generated date: October 27, 2023

(U) Source 4: Department of Defense Continuity Security Classification Guide (Document is CUI).

(U) Declassification date: October 27, 2048

(U) Generated date: February 1, 2022

(U) Source 5: Secretary of Defense Memorandum, "Standardized Reporting Policy for Presidential Critical Information Requirements" (Document is Secret).

(U) Declassification date: January 01, 2046

(U) Gene

rated date: March 23, 2021

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