

this section and section 2671 of Title 28, Judiciary and Judicial Procedure] and the repeal made by section 334 of this Act [repealing section 334 of Title 32, National Guard] shall apply only with respect to claims arising on or after the date of enactment of this Act [Dec. 29, 1981].”

#### EFFECTIVE DATE

Pub. L. 94-464, §4, Oct. 8, 1976, 90 Stat. 1989, provided that: “This Act [enacting this section, section 334 of Title 32, National Guard, section 2458a of Title 42, The Public Health and Welfare, and provisions set out as notes under this section and section 334 of Title 32] shall become effective on the date of its enactment [Oct. 8, 1976] and shall apply only to those claims accruing on or after such date of enactment.”

#### CONGRESSIONAL FINDINGS

Pub. L. 94-464, §2(a), Oct. 8, 1976, 90 Stat. 1986, provided that: “The Congress finds—

“(1) that the Army National Guard and the Air National Guard are critical components of the defense posture of the United States;

“(2) that a medical capability is essential to the performance of the mission of the National Guard when in Federal service;

“(3) that the current medical malpractice crisis poses a serious threat to the availability of sufficient medical personnel for the National Guard; and

“(4) that in order to insure that such medical personnel will continue to be available to the National Guard, it is necessary for the Federal Government to assume responsibility for the payment of malpractice claims made against such personnel arising out of actions or omissions on the part of such personnel while they are performing certain training exercises.”

### § 1090. Identifying and treating drug and alcohol dependence

The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations, implement procedures using each practical and available method, and provide necessary facilities to identify, treat, and rehabilitate members of the armed forces who are dependent on drugs or alcohol.

(Added Pub. L. 97-295, §1(15)(A), Oct. 12, 1982, 96 Stat. 1290; amended Pub. L. 98-94, title XII, §1268(7), Sept. 24, 1983, 97 Stat. 706; Pub. L. 101-510, div. A, title V, §553, Nov. 5, 1990, 104 Stat. 1567; Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1090 .....	10:1071 (note).	Sept. 28, 1971, Pub. L. 92-129, §501(a)(1), 85 Stat. 361.

The word “regulations” is added for consistency. The word “persons” is omitted as surplus.

#### AMENDMENTS

2002—Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

1990—Pub. L. 101-510 inserted “, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy,” after “Secretary of Defense”.

1983—Pub. L. 98-94 struck out “(a)” before “The Secretary of Defense”.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of

Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

### § 1090a. Commanding officer and supervisor referrals of members for mental health evaluations

(a) REGULATIONS.—The Secretary of Defense shall prescribe and maintain regulations relating to commanding officer and supervisor referrals of members of the armed forces for mental health evaluations. The regulations shall incorporate the requirements set forth in subsections (b), (c), and (d) and such other matters as the Secretary considers appropriate.

(b) REDUCTION OF PERCEIVED STIGMA.—The regulations required by subsection (a) shall, to the greatest extent possible—

(1) seek to eliminate perceived stigma associated with seeking and receiving mental health services, promoting the use of mental health services on a basis comparable to the use of other medical and health services; and

(2) clarify the appropriate action to be taken by commanders or supervisory personnel who, in good faith, believe that a subordinate may require a mental health evaluation.

(c) PROCEDURES FOR INPATIENT EVALUATIONS.—The regulations required by subsection (a) shall provide that, when a commander or supervisor determines that it is necessary to refer a member of the armed forces for a mental health evaluation—

(1) the health evaluation shall only be conducted in the most appropriate clinical setting, in accordance with the least restrictive alternative principle; and

(2) only a psychiatrist, or, in cases in which a psychiatrist is not available, another mental health professional or a physician, may admit the member pursuant to the referral for a mental health evaluation to be conducted on an inpatient basis.

(d) PROHIBITION ON USE OF REFERRALS FOR MENTAL HEALTH EVALUATIONS TO RETALIATE AGAINST WHISTLEBLOWERS.—The regulations required by subsection (a) shall provide that no person may refer a member of the armed forces for a mental health evaluation as a reprisal for making or preparing a lawful communication of the type described in section 1034(c)(2) of this title, and applicable regulations. For purposes of this subsection, such communication shall also include a communication to any appropriate authority in the chain of command of the member.

(e) DEFINITIONS.—In this section:

(1) The term “mental health professional” means a psychiatrist or clinical psychologist, a person with a doctorate in clinical social work, or a psychiatric clinical nurse specialist.

(2) The term “mental health evaluation” means a psychiatric examination or evaluation, a psychological examination or evaluation, an examination for psychiatric or psychological fitness for duty, or any other means of assessing the state of mental health of a member of the armed forces.

(3) The term “least restrictive alternative principle” means a principle under which a member of the armed forces committed for

hospitalization and treatment shall be placed in the most appropriate and therapeutic available setting—

(A) that is no more restrictive than is conducive to the most effective form of treatment; and

(B) in which treatment is available and the risks of physical injury or property damage posed by such placement are warranted by the proposed plan of treatment.

(Added Pub. L. 112–81, div. A, title VII, §711(a)(1), Dec. 31, 2011, 125 Stat. 1475.)

### § 1091. Personal services contracts

(a) AUTHORITY.—(1) The Secretary of Defense, with respect to medical treatment facilities of the Department of Defense, and the Secretary of Homeland Security, with respect to medical treatment facilities of the Coast Guard when the Coast Guard is not operating as a service in the Navy, may enter into personal services contracts to carry out health care responsibilities in such facilities, as determined to be necessary by the Secretary. The authority provided in this subsection is in addition to any other contract authorities of the Secretary, including authorities relating to the management of such facilities and the administration of this chapter.

(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may also enter into personal services contracts to carry out other health care responsibilities of the Secretary (such as the provision of medical screening examinations at Military Entrance Processing Stations) at locations outside medical treatment facilities, as determined necessary pursuant to regulations prescribed by the Secretary.

(b) LIMITATION ON AMOUNT OF COMPENSATION.—In no case may the total amount of compensation paid to an individual in any year under a personal services contract entered into under subsection (a) exceed the amount of annual compensation (excluding the allowances for expenses) specified in section 102 of title 3.

(c) PROCEDURES.—(1) The Secretary shall establish by regulation procedures for entering into personal services contracts with individuals under subsection (a). At a minimum, such procedures shall assure—

(A) the provision of adequate notice of contract opportunities to individuals residing in the area of the medical treatment facility involved; and

(B) consideration of interested individuals solely on the basis of the qualifications established for the contract and the proposed contract price.

(2) Upon the establishment of the procedures under paragraph (1), the Secretary may exempt contracts covered by this section from the competitive contracting requirements specified in section 2304 of this title or any other similar requirements of law.

(3) The procedures established under paragraph (1) may provide for a contracting officer to authorize a contractor to enter into a sub-contract for personal services on behalf of the agency upon a determination that the sub-contract is—

(A) consistent with the requirements of this section and the procedures established under paragraph (1); and

(B) in the best interests of the agency.

(d) EXCEPTIONS.—The procedures and exemptions provided under subsection (c) shall not apply to personal services contracts entered into under subsection (a) with entities other than individuals or to any contract that is not an authorized personal services contract under subsection (a).

(Added Pub. L. 98–94, title IX, §932(a)(1), Sept. 24, 1983, 97 Stat. 649; amended Pub. L. 101–510, div. A, title VII, §714, Nov. 5, 1990, 104 Stat. 1584; Pub. L. 103–160, div. A, title VII, §712(a)(1), Nov. 30, 1993, 107 Stat. 1688; Pub. L. 104–106, div. A, title VII, §733(a), Feb. 10, 1996, 110 Stat. 381; Pub. L. 105–85, div. A, title VII, §736(a), Nov. 18, 1997, 111 Stat. 1814; Pub. L. 105–261, div. A, title VII, §733(a), Oct. 17, 1998, 112 Stat. 2072; Pub. L. 106–398, §1 [[div. A], title VII, §705], Oct. 30, 2000, 114 Stat. 1654, 1654A–175; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title VII, §707, Dec. 2, 2002, 116 Stat. 2585; Pub. L. 108–136, div. A, title VII, §721, Nov. 24, 2003, 117 Stat. 1531; Pub. L. 112–239, div. A, title VII, §713(b), Jan. 2, 2013, 126 Stat. 1803.)

#### AMENDMENTS

2013—Subsec. (c)(3). Pub. L. 112–239 added par. (3).

2003—Subsec. (a)(2). Pub. L. 108–136 struck out at end “The Secretary may not enter into a contract under this paragraph after December 31, 2003.”

2002—Subsec. (a). Pub. L. 107–296 substituted “of Homeland Security” for “of Transportation” in two places.

Subsec. (a)(2). Pub. L. 107–314 substituted “December 31, 2003” for “December 31, 2002”.

2000—Subsec. (a)(2). Pub. L. 106–398 substituted “December 31, 2002” for “December 31, 2000”.

1998—Subsec. (a)(2). Pub. L. 105–261 substituted “December 31, 2000” for “the end of the one-year period beginning on the date of the enactment of this paragraph”.

1997—Subsec. (a). Pub. L. 105–85 designated existing provisions as par. (1) and added par. (2).

1996—Subsec. (a). Pub. L. 104–106 inserted “, with respect to medical treatment facilities of the Department of Defense, and the Secretary of Transportation, with respect to medical treatment facilities of the Coast Guard when the Coast Guard is not operating as a service in the Navy,” after “Secretary of Defense” and substituted “such facilities” for “medical treatment facilities of the Department of Defense”.

1993—Pub. L. 103–160 substituted “Personal services contracts” for “Contracts for direct health care providers” in section catchline and amended text generally. Prior to amendment, text read as follows:

“(a) The Secretary concerned may contract with persons for services (including personal services) for the provision of direct health care services determined by the Secretary concerned to be required for the purposes of this chapter.

“(b) A person with whom the Secretary contracts under this section for the provision of direct health care services under this chapter may be compensated at a rate prescribed by the Secretary concerned, but at a rate not greater than the rate of basic pay, special and incentive pays and bonuses, and allowances authorized by chapters 3, 5, and 7 of title 37 for a commissioned officer with comparable professional qualifications in pay grade O-6 with 26 or more years of service computed under section 205 of such title.”

1990—Subsec. (b). Pub. L. 101–510 substituted “basic pay, special and incentive pays and bonuses, and allow-