

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-

ances authorized by chapters 3, 5, and 7 of title 37 for a commissioned officer with comparable professional qualifications” for “basic pay and allowances authorized by chapters 3 and 7 of title 37 for a commissioned officer”.

#### 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.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-106, div. A, title VII, §733(c), Feb. 10, 1996, 110 Stat. 381, provided that: “The amendments made by subsection (a) [amending this section] shall take effect as of October 1, 1995.”

#### EFFECTIVE DATE

Pub. L. 98-94, title IX, §932(f), Sept. 24, 1983, 97 Stat. 650, provided that: “The amendments made by this section [enacting this section, amending section 201 of Title 37, Pay and Allowances of the Uniformed Services, and repealing sections 4022 and 9022 of this title and section 421 of Title 37] shall take effect on October 1, 1983. Any contract of employment entered into under the authority of section 4022 or 9022 of title 10, United States Code, before the effective date of this section and which is in effect on such date shall remain in effect in accordance with the terms of such contract.”

#### TEST OF ALTERNATIVE PROCESS FOR CONDUCTING MEDICAL SCREENINGS FOR ENLISTMENT QUALIFICATION

Pub. L. 105-261, div. A, title VII, §733(b), Oct. 17, 1998, 112 Stat. 2072, as amended by Pub. L. 106-65, div. A, title X, §1067(3), Oct. 5, 1999, 113 Stat. 774, directed the Secretary of Defense to conduct a test to determine whether an alternative to the system used by the Department of Defense of employing fee-basis physicians for determining the medical qualifications for enlistment of applicants for military service would reduce the number of disqualifying medical conditions detected during the initial entry training of such applicants, and whether an alternative system would meet or exceed the cost, responsiveness, and timeliness standards of the system in use or achieve any savings or cost avoidance, and to submit to committees of Congress a report on the results and findings of the test not later than Mar. 1, 2000.

#### RATIFICATION OF EXISTING CONTRACTS

Pub. L. 104-106, div. A, title VII, §733(b), Feb. 10, 1996, 110 Stat. 381, provided that: “Any exercise of authority under section 1091 of title 10, United States Code, to enter into a personal services contract on behalf of the Coast Guard before the effective date of the amendments made by subsection (a) [Oct. 1, 1995] is hereby ratified.”

#### PERSONAL SERVICE CONTRACTS TO PROVIDE CARE

Pub. L. 103-337, div. A, title VII, §704(c), Oct. 5, 1994, 108 Stat. 2799, as amended by Pub. L. 108-375, div. A, title VII, §717(a), Oct. 28, 2004, 118 Stat. 1986, provided that:

“(1) The Secretary of Defense may enter into personal service contracts under the authority of section 1091 of title 10, United States Code, with persons described in paragraph (2) to provide the services of clinical counselors, family advocacy program staff, and victim’s services representatives to members of the Armed Forces and covered beneficiaries who require such services. Notwithstanding subsection (a) of such section, such services may be provided in medical treatment facilities of the Department of Defense or elsewhere as determined appropriate by the Secretary.

“(2) The persons with whom the Secretary may enter into a personal services contract under this subsection shall include clinical social workers, psychologists, marriage and family therapists certified as such by a

certification recognized by the Secretary of Defense, psychiatrists, and other comparable professionals who have advanced degrees in counseling or related academic disciplines and who meet all requirements for State licensure and board certification requirements, if any, within their fields of specialization.”

#### REPORT ON COMPENSATION BY MEDICAL SPECIALTY

Pub. L. 103-160, div. A, title VII, §712(b), Nov. 30, 1993, 107 Stat. 1689, directed the Secretary of Defense to submit to Congress a report, not later than 30 days after the end of the 180-day period beginning on the date on which the Secretary had first used the authority provided under this section, as amended by Pub. L. 103-160, specifying the compensation provided to medical specialists who had agreed to enter into personal services contracts under such section during that period, the extent to which amounts of compensation exceeded amounts previously provided, the total number and medical specialties of specialists serving during that period pursuant to such contracts, and the number of specialists who had received compensation in an amount in excess of the maximum which had been authorized under this section, as in effect on Nov. 29, 1993.

#### § 1092. Studies and demonstration projects relating to delivery of health and medical care

(a)(1) The Secretary of Defense, in consultation with the other administering Secretaries, shall conduct studies and demonstration projects on the health care delivery system of the uniformed services with a view to improving the quality, efficiency, convenience, and cost effectiveness of providing health care services (including dental care services) under this title to members and former members and their dependents. Such studies and demonstration projects may include the following:

(A) Alternative methods of payment for health and medical care services.

(B) Cost-sharing by eligible beneficiaries.

(C) Methods of encouraging efficient and economical delivery of health and medical care services.

(D) Innovative approaches to delivery and financing of health and medical care services.

(E) Alternative approaches to reimbursement for the administrative charges of health care plans.

(F) Prepayment for medical care services provided to maintain the health of a defined population.

(2) The Secretary of Defense shall include in the studies conducted under paragraph (1) alternative programs for the provision of dental care to the spouses and dependents of members of the uniformed services who are on active duty, including a program under which dental care would be provided to the spouses and dependents of such members under insurance or dental plan contracts. A demonstration project may not be conducted under this section that provides for the furnishing of dental care under an insurance or dental plan contract.

(3) The Secretary of Defense may include in the studies and demonstration projects conducted under paragraph (1) studies and demonstration projects to provide awards and incentives to members of the armed forces and covered beneficiaries who obtain health promotion and disease prevention health care services under the TRICARE program in accordance with terms and schedules prescribed by the Sec-