

Memorandum for the Secretary of Defense

Section 1093 of title 10 of the United States Code prohibits the use of Department of Defense (“DOD”) funds to perform abortions except where the life of a woman would be endangered if the fetus were carried to term. By memoranda of December 21, 1987, and June 21, 1988, DOD has gone beyond what I am informed are the requirements of the statute and has banned all abortions at U.S. military facilities, even where the procedure is privately funded. This ban is unwarranted. Accordingly, I hereby direct that you reverse the ban immediately and permit abortion services to be provided, if paid for entirely with non-DOD funds and in accordance with other relevant DOD policies and procedures.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 1094. Licensure requirement for health-care professionals

(a)(1) A person under the jurisdiction of the Secretary of a military department may not provide health care independently as a health-care professional under this chapter unless the person has a current license to provide such care. In the case of a physician, the physician may not provide health care as a physician under this chapter unless the current license is an unrestricted license that is not subject to limitation on the scope of practice ordinarily granted to other physicians for a similar specialty by the jurisdiction that granted the license.

(2) The Secretary of Defense may waive paragraph (1) with respect to any person in unusual circumstances. The Secretary shall prescribe by regulation the circumstances under which such a waiver may be granted.

(b) The commanding officer of each health care facility of the Department of Defense shall ensure that each person who provides health care independently as a health-care professional at the facility meets the requirement of subsection (a).

(c)(1) A person (other than a person subject to chapter 47 of this title) who provides health care in violation of subsection (a) is subject to a civil money penalty of not more than \$5,000.

(2) The provisions of subsections (c) and (e) through (h) of section 1128A of the Social Security Act (42 U.S.C. 1320a-7a) shall apply to the imposition of a civil money penalty under paragraph (1) in the same manner as they apply to the imposition of a civil money penalty under that section, except that for purposes of this subsection—

(A) a reference to the Secretary in that section is deemed a reference to the Secretary of Defense; and

(B) a reference to a claimant in subsection (e) of that section is deemed a reference to the person described in paragraph (1).

(d)(1) Notwithstanding any law regarding the licensure of health care providers, a health-care professional described in paragraph (2) or (3) may practice the health profession or professions of the health-care professional at any location in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States, regardless of where such health-care professional or the patient are located, so long as the practice is within the scope of the authorized Federal duties.

(2) A health-care professional referred to in paragraph (1) as being described in this paragraph is a member of the armed forces, civilian employee of the Department of Defense, personal services contractor under section 1091 of this title, or other health-care professional credentialed and privileged at a Federal health care institution or location specially designated by the Secretary for this purpose who—

(A) has a current license to practice medicine, osteopathic medicine, dentistry, or another health profession; and

(B) is performing authorized duties for the Department of Defense.

(3) A health-care professional referred to in paragraph (1) as being described in this paragraph is a member of the National Guard who—

(A) has a current license to practice medicine, osteopathic medicine, dentistry, or another health profession; and

(B) is performing training or duty under section 502(f) of title 32 in response to an actual or potential disaster.

(e) In this section:

(1) The term “license”—

(A) means a grant of permission by an official agency of a State, the District of Columbia, or a Commonwealth, territory, or possession of the United States to provide health care independently as a health-care professional; and

(B) includes, in the case of such care furnished in a foreign country by any person who is not a national of the United States, a grant of permission by an official agency of that foreign country for that person to provide health care independently as a health-care professional.

(2) The term “health-care professional” means a physician, dentist, clinical psychologist, marriage and family therapist certified as such by a certification recognized by the Secretary of Defense, or nurse and any other person providing direct patient care as may be designated by the Secretary of Defense in regulations.

(Added Pub. L. 99-145, title VI, § 653(a)(1), Nov. 8, 1985, 99 Stat. 657; amended Pub. L. 99-661, div. A, title XIII, § 1343(a)(5), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 101-189, div. A, title VI, § 653(e)(1), title XVI, § 1622(e)(3), Nov. 29, 1989, 103 Stat. 1463, 1605; Pub. L. 105-85, div. A, title VII, § 737, Nov. 18, 1997, 111 Stat. 1814; Pub. L. 105-261, div. A, title VII, § 734(a), Oct. 17, 1998, 112 Stat. 2072; Pub. L. 108-375, div. A, title VII, § 717(b), Oct. 28, 2004, 118 Stat. 1986; Pub. L. 111-383, div. A, title VII, § 713, Jan. 7, 2011, 124 Stat. 4247; Pub. L. 112-81, div. A, title VII, § 713(a), Dec. 31, 2011, 125 Stat. 1476.)

AMENDMENTS

2011—Subsec. (d)(1). Pub. L. 112-81, § 713(a)(1), inserted “at any location” before “in any State” and substituted “regardless of where such health-care professional or the patient are located, so long as the practice is within the scope of the authorized Federal duties.” for “regardless of whether the practice occurs in a health care facility of the Department of Defense, a civilian facility affiliated with the Department of Defense, or any other location authorized by the Secretary of Defense.”

Pub. L. 111-383, § 713(1), inserted “or (3)” after “paragraph (2)”.

Subsec. (d)(2). Pub. L. 112-81, § 713(a)(2), substituted “member of the armed forces, civilian employee of the Department of Defense, personal services contractor under section 1091 of this title, or other health-care professional credentialed and privileged at a Federal health care institution or location specially designated by the Secretary for this purpose” for “member of the armed forces”.

Pub. L. 111-383, § 713(2), inserted “as being described in this paragraph” after “paragraph (1)” in introductory provisions.

Subsec. (d)(3). Pub. L. 111-383, § 713(3), added par. (3).
2004—Subsec. (e)(2). Pub. L. 108-375 inserted “marriage and family therapist certified as such by a certification recognized by the Secretary of Defense,” after “psychologist.”

1998—Subsec. (a)(1). Pub. L. 105-261 inserted at end “In the case of a physician, the physician may not provide health care as a physician under this chapter unless the current license is an unrestricted license that is not subject to limitation on the scope of practice ordinarily granted to other physicians for a similar specialty by the jurisdiction that granted the license.”

1997—Subsecs. (d), (e). Pub. L. 105-85 added subsec. (d) and redesignated former subsec. (d) as (e).

1989—Subsec. (c)(2). Pub. L. 101-189, § 653(e)(1), substituted “subsections (c) and (e) through (h)” for “subsections (b) and (d) through (g)”.

Subsec. (d)(1). Pub. L. 101-189, § 1622(e)(3)(A), substituted “The term ‘license’” for “‘License’” in introductory provisions.

Subsec. (d)(2). Pub. L. 101-189, § 1622(e)(3)(B), substituted “The term ‘health-care’” for “‘Health-care’”.

1986—Subsec. (d)(2). Pub. L. 99-661 realigned margin of par. (2) to conform to margin of par. (1).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-261, div. A, title VII, § 734(c)(1), Oct. 17, 1998, 112 Stat. 2073, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1999.”

EFFECTIVE DATE

Pub. L. 99-145, title VI, § 653(b), Nov. 8, 1985, 99 Stat. 658, provided that: “Section 1094 of title 10, United States Code, as added by subsection (a), does not apply during the three-year period beginning on the date of the enactment of this Act [Nov. 8, 1985] with respect to the provision of health care by any person who on the date of the enactment of this Act is a member of the Armed Forces.”

REGULATIONS

Pub. L. 112-81, div. A, title VII, § 713(b), Dec. 31, 2011, 125 Stat. 1476, provided that: “The Secretary of Defense shall prescribe regulations to carry out the amendments made by this section [amending this section].”

§ 1094a. Continuing medical education requirements: system for monitoring physician compliance

The Secretary of Defense shall establish a mechanism for ensuring that each person under the jurisdiction of the Secretary of a military department who provides health care under this chapter as a physician satisfies the continuing medical education requirements applicable to the physician.

(Added Pub. L. 105-261, div. A, title VII, § 734(b)(1), Oct. 17, 1998, 112 Stat. 2073.)

IMPLEMENTATION

Pub. L. 105-261, div. A, title VII, § 734(c)(2), Oct. 17, 1998, 112 Stat. 2073, provided that: “The system required

by section 1094a of title 10, United States Code (as added by subsection (b)), shall take effect on the date that is three years after the date of the enactment of this Act [Oct. 17, 1998].”

JOINT PILOT PROGRAM FOR PROVIDING GRADUATE MEDICAL EDUCATION AND TRAINING FOR PHYSICIANS

Pub. L. 107-314, div. A, title VII, § 725(a)-(d), Dec. 2, 2002, 116 Stat. 2599, provided that:

“(a) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly carry out a pilot program under which graduate medical education and training is provided to military physicians and physician employees of the Department of Defense and the Department of Veterans Affairs through one or more programs carried out in military medical treatment facilities of the Department of Defense and medical centers of the Department of Veterans Affairs. The pilot program shall begin not later than January 1, 2003.

“(b) COST-SHARING AGREEMENT.—The Secretaries shall enter into an agreement for carrying out the pilot program. The agreement shall establish means for each Secretary to assist in paying the costs, with respect to individuals under the jurisdiction of that Secretary, incurred by the other Secretary in providing medical education and training under the pilot program.

“(c) USE OF EXISTING AUTHORITIES.—To carry out the pilot program, the Secretary of Defense and the Secretary of Veterans Affairs may use authorities provided to them under this subtitle [subtitle C (§§ 721-726) of title VII of div. A of Pub. L. 107-314, amending section 1104 of this title and sections 8110 and 8111 of Title 38, Veterans’ Benefits, enacting provisions set out as notes under section 1074g of this title and sections 8110 and 8111 of Title 38, and repealing provisions set out as a note under this section], section 8111 of title 38, United States Code (as amended by section 721(a)), and other laws relating to the furnishing or support of medical education and the cooperative use of facilities.

“(d) TERMINATION OF PROGRAM.—The pilot program under this section shall terminate on July 31, 2008.”

JOINT DOD-VA PILOT PROGRAM FOR PROVIDING GRADUATE MEDICAL EDUCATION AND TRAINING FOR PHYSICIANS

Pub. L. 107-107, div. A, title VII, § 738, Dec. 28, 2001, 115 Stat. 1173, authorized a pilot program providing graduate medical education and training for physicians to be carried out jointly by the Secretary of Defense and the Secretary of Veterans Affairs, prior to repeal by Pub. L. 107-314, div. A, title VII, § 725(e), Dec. 2, 2002, 116 Stat. 2599.

§ 1095. Health care services incurred on behalf of covered beneficiaries: collection from third-party payers

(a)(1) In the case of a person who is a covered beneficiary, the United States shall have the right to collect from a third-party payer reasonable charges for health care services incurred by the United States on behalf of such person through a facility of the uniformed services to the extent that the person would be eligible to receive reimbursement or indemnification from the third-party payer if the person were to incur such charges on the person’s own behalf. If the insurance, medical service, or health plan of that payer includes a requirement for a deductible or copayment by the beneficiary of the plan, then the amount that the United States may collect from the third-party payer is a reasonable charge for the care provided less the appropriate deductible or copayment amount.

(2) A covered beneficiary may not be required to pay an additional amount to the United