EFFECTIVE DATE

Section effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as a note under section 14401 of this title.

### § 238p. Recommendations and guidelines regarding automated external defibrillators for Federal buildings

#### (a) Guidelines on placement

The Secretary shall establish guidelines with respect to placing automated external defibrillator devices in Federal buildings. Such guidelines shall take into account the extent to which such devices may be used by lay persons, the typical number of employees and visitors in the buildings, the extent of the need for security measures regarding the buildings, buildings or portions of buildings in which there are special circumstances such as high electrical voltage or extreme heat or cold, and such other factors as the Secretary determines to be appropriate.

#### (b) Related recommendations

The Secretary shall publish in the Federal Register the recommendations of the Secretary on the appropriate implementation of the placement of automated external defibrillator devices under subsection (a), including procedures for the following:

(1) Implementing appropriate training courses in the use of such devices, including the role of cardiopulmonary resuscitation.

(2) Proper maintenance and testing of the devices.

(3) Ensuring coordination with appropriate licensed professionals in the oversight of training of the devices.

(4) Ensuring coordination with local emergency medical systems regarding the placement and incidents of use of the devices.

#### (c) Consultations; consideration of certain recommendations

In carrying out this section, the Secretary shall—

(1) consult with appropriate public and private entities;

(2) consider the recommendations of national and local public-health organizations for improving the survival rates of individuals who experience cardiac arrest in nonhospital settings by minimizing the time elapsing between the onset of cardiac arrest and the initial medical response, including defibrillation as necessary; and

(3) consult with and counsel other Federal agencies where such devices are to be used.

#### (d) Date certain for establishing guidelines and recommendations

The Secretary shall comply with this section not later than 180 days after November 13, 2000.

#### (e) Definitions

For purposes of this section:

(1) The term ''automated external defibrillator device'' has the meaning given such term in section 238q of this title.

(2) The term ''Federal building'' includes a building or portion of a building leased or rented by a Federal agency, and includes buildings on military installations of the United States.

(July 1, 1944, ch. 373, title II, § 247, as added Pub. L. 106–505, title IV, § 403, Nov. 13, 2000, 114 Stat. 2337.)

FINDINGS

Pub. L. 106–505, title IV, § 402, Nov. 13, 2000, 114 Stat. 2336, provided that: ''Congress makes the following findings:

''(1) Over 700 lives are lost every day to sudden cardiac arrest in the United States alone.

''(2) Two out of every three sudden cardiac deaths occur before a victim can reach a hospital.

''(3) More than 95 percent of these cardiac arrest victims will die, many because of lack of readily available life saving medical equipment.

''(4) With current medical technology, up to 30 percent of cardiac arrest victims could be saved if victims had access to immediate medical response, including defibrillation and cardiopulmonary resuscitation.

''(5) Once a victim has suffered a cardiac arrest, every minute that passes before returning the heart to a normal rhythm decreases the chance of survival by 10 percent.

''(6) Most cardiac arrests are caused by abnormal heart rhythms called ventricular fibrillation. Ventricular fibrillation occurs when the heart's electrical system malfunctions, causing a chaotic rhythm that prevents the heart from pumping oxygen to the victim's brain and body.

''(7) Communities that have implemented programs ensuring widespread public access to defibrillators, combined with appropriate training, maintenance, and coordination with local emergency medical systems, have dramatically improved the survival rates from cardiac arrest.

''(8) Automated external defibrillator devices have been demonstrated to be safe and effective, even when used by lay people, since the devices are designed not to allow a user to administer a shock until after the device has analyzed a victim's heart rhythm and determined that an electric shock is required.

''(9) Increasing public awareness regarding automated external defibrillator devices and encouraging their use in Federal buildings will greatly facilitate their adoption.

''(10) Limiting the liability of Good Samaritans and acquirers of automated external defibrillator devices in emergency situations may encourage the use of automated external defibrillator devices, and result in saved lives.''

CERTAIN TECHNOLOGIES AND PRACTICES REGARDING SURVIVAL RATES FOR CARDIAC ARREST

Pub. L. 106–129, § 7, Dec. 6, 1999, 113 Stat. 1676, provided that: ''The Secretary of Health and Human Services shall, in consultation with the Administrator of the General Services Administration and other appropriate public and private entities, develop recommendations regarding the placement of automatic external defibrillators in Federal buildings as a means of improving the survival rates of individuals who experience cardiac arrest in such buildings, including recommendations on training, maintenance, and medical oversight, and on coordinating with the system for emergency medical services.''

### § 238q. Liability regarding emergency use of automated external defibrillators

#### (a) Good Samaritan protections regarding AEDs

Except as provided in subsection (b), any person who uses or attempts to use an automated

external defibrillator device on a victim of a perceived medical emergency is immune from civil liability for any harm resulting from the use or attempted use of such device; and in addition, any person who acquired the device is immune from such liability, if the harm was not due to the failure of such acquirer of the device—

(1) to notify local emergency response personnel or other appropriate entities of the most recent placement of the device within a reasonable period of time after the device was placed;

(2) to properly maintain and test the device; or

(3) to provide appropriate training in the use of the device to an employee or agent of the acquirer when the employee or agent was the person who used the device on the victim, except that such requirement of training does not apply if—

(A) the employee or agent was not an employee or agent who would have been reasonably expected to use the device; or

(B) the period of time elapsing between the engagement of the person as an employee or agent and the occurrence of the harm (or between the acquisition of the device and the occurrence of the harm, in any case in which the device was acquired after such engagement of the person) was not a reasonably sufficient period in which to provide the training.

**(b) Inapplicability of immunity**

Immunity under subsection (a) does not apply to a person if—

(1) the harm involved was caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed;

(2) the person is a licensed or certified health professional who used the automated external defibrillator device while acting within the scope of the license or certification of the professional and within the scope of the employment or agency of the professional;

(3) the person is a hospital, clinic, or other entity whose purpose is providing health care directly to patients, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent; or

(4) the person is an acquirer of the device who leased the device to a health care entity (or who otherwise provided the device to such entity for compensation without selling the device to the entity), and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent.

**(c) Rules of construction**

**(1) In general**

The following applies with respect to this section:

(A) This section does not establish any cause of action, or require that an automated external defibrillator device be placed at any building or other location.

(B) With respect to a class of persons for which this section provides immunity from civil liability, this section supersedes the law of a State only to the extent that the State has no statute or regulations that provide persons in such class with immunity for civil liability arising from the use by such persons of automated external defibrillator devices in emergency situations (within the meaning of the State law or regulation involved).

(C) This section does not waive any protection from liability for Federal officers or employees under—

(i) section 233 of this title; or

(ii) sections 1346(b), 2672, and 2679 of title 28 or under alternative benefits provided by the United States where the availability of such benefits precludes a remedy under section 1346(b) of title 28.

**(2) Civil actions under Federal law**

**(A) In general**

The applicability of subsections (a) and (b) includes applicability to any action for civil liability described in subsection (a) that arises under Federal law.

**(B) Federal areas adopting State law**

If a geographic area is under Federal jurisdiction and is located within a State but out of the jurisdiction of the State, and if, pursuant to Federal law, the law of the State applies in such area regarding matters for which there is no applicable Federal law, then an action for civil liability described in subsection (a) that in such area arises under the law of the State is subject to subsections (a) through (c) in lieu of any related State law that would apply in such area in the absence of this subparagraph.

**(d) Federal jurisdiction**

In any civil action arising under State law, the courts of the State involved have jurisdiction to apply the provisions of this section exclusive of the jurisdiction of the courts of the United States.

**(e) Definitions**

**(1) Perceived medical emergency**

For purposes of this section, the term ''perceived medical emergency'' means circumstances in which the behavior of an individual leads a reasonable person to believe that the individual is experiencing a life-threatening medical condition that requires an immediate medical response regarding the heart or other cardiopulmonary functioning of the individual.

**(2) Other definitions**

For purposes of this section:

(A) The term ''automated external defibrillator device'' means a defibrillator device that—

(i) is commercially distributed in accordance with the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];

(ii) is capable of recognizing the presence or absence of ventricular fibrillation, and

is capable of determining without intervention by the user of the device whether defibrillation should be performed;

(iii) upon determining that defibrillation should be performed, is able to deliver an electrical shock to an individual; and

(iv) in the case of a defibrillator device that may be operated in either an automated or a manual mode, is set to operate in the automated mode.

(B)(i) The term ''harm'' includes physical, nonphysical, economic, and noneconomic losses.

(ii) The term ''economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(iii) The term ''noneconomic losses'' means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature.

(July 1, 1944, ch. 373, title II, § 248, as added Pub. L. 106–505, title IV, § 404, Nov. 13, 2000, 114 Stat. 2338.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (e)(2)(A)(i), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

## PART C—SMALLPOX EMERGENCY PERSONNEL PROTECTION

### § 239. General provisions

#### (a) Definitions

For purposes of this part:

**(1) Covered countermeasure**

The term ''covered countermeasure'' means a covered countermeasure as specified in a Declaration made pursuant to section 233(p) of this title.

**(2) Covered individual**

The term ''covered individual'' means an individual—

(A) who is a health care worker, law enforcement officer, firefighter, security personnel, emergency medical personnel, other public safety personnel, or support personnel for such occupational specialities[1];

(B) who is or will be functioning in a role identified in a State, local, or Department of Health and Human Services smallpox emergency response plan (as defined in paragraph (7)) approved by the Secretary;

(C) who has volunteered and been selected to be a member of a smallpox emergency response plan described in subparagraph (B) prior to the time at which the Secretary publicly announces that an active case of smallpox has been identified either within or outside of the United States; and

(D) to whom a smallpox vaccine is administered pursuant to such approved plan during the effective period of the Declaration (including the portion of such period before April 30, 2003).

**(3) Covered injury**

The term ''covered injury'' means an injury, disability, illness, condition, or death (other than a minor injury such as minor scarring or minor local reaction) determined, pursuant to the procedures established under section 239a of this title, to have been sustained by an individual as the direct result of—

(A) administration to the individual of a covered countermeasure during the effective period of the Declaration; or

(B) accidental vaccinia inoculation of the individual in circumstances in which—

(i) the vaccinia is contracted during the effective period of the Declaration or within 30 days after the end of such period;

(ii) smallpox vaccine has not been administered to the individual; and

(iii) the individual has been in contact with an individual who is (or who was accidentally inoculated by) a covered individual.

**(4) Declaration**

The term ''Declaration'' means the Declaration Regarding Administration of Smallpox Countermeasures issued by the Secretary on January 24, 2003, and published in the Federal Register on January 28, 2003.

**(5) Effective period of the Declaration**

The term ''effective period of the Declaration'' means the effective period specified in the Declaration, unless extended by the Secretary.

**(6) Eligible individual**

The term ''eligible individual'' means an individual who is (as determined in accordance with section 239a of this title)—

(A) a covered individual who sustains a covered injury in the manner described in paragraph (3)(A); or

(B) an individual who sustains a covered injury in the manner described in paragraph (3)(B).

**(7) Smallpox emergency response plan**

The term ''smallpox emergency response plan'' or ''plan'' means a response plan detailing actions to be taken in preparation for a possible smallpox-related emergency during the period prior to the identification of an active case of smallpox either within or outside the United States.

#### (b) Voluntary program

The Secretary shall ensure that a State, local, or Department of Health and Human Services plan to vaccinate individuals that is approved

[1] So in original. Probably should be ''specialties''.