

Secretary of Defense and based upon realistic projections of the number of physicians and other health-care providers that it can reasonably be expected will be assigned to or will otherwise be available to the facility.

(2) In addition, a determination made for the purpose of clause (2) of subsection (a) shall be made in accordance with an economic analysis (including a life-cycle cost analysis) of the facility and consideration of all reasonable and available medical care treatment alternatives (including treatment provided under a contract under section 1086 of this title or under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.)).

(Added Pub. L. 89-614, §2(7), Sept. 30, 1966, 80 Stat. 866; amended Pub. L. 97-337, §1, Oct. 15, 1982, 96 Stat. 1631; Pub. L. 98-525, title XIV, §1405(24), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99-661, div. A, title XIII, §1343(a)(4), Nov. 14, 1986, 100 Stat. 3992.)

#### REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Part A of title XVIII of the Social Security Act, is classified generally to Part A (§1395c et seq.) of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

#### AMENDMENTS

1986—Subsec. (b)(2). Pub. L. 99-661 substituted “Act (42 U.S.C. 1395c et seq.)” for “Act. (42 U.S.C. 1395c et seq.)”.

1984—Subsec. (b)(2). Pub. L. 98-525 which directed that “(42 U.S.C. 1395c et seq.)” be inserted after “the Social Security Act.”, was executed by inserting parenthetical after “the Social Security Act” to reflect the probable intent of Congress. See 1986 Amendment note above.

1982—Subsec. (a). Pub. L. 97-337, §1(1), designated existing provisions as subsec. (a).

Pub. L. 97-337, §1(2), substituted provisions limiting the maximum amount of space to be programed as the greater of the amounts of space described in par. (1) or (2) for provisions limiting the amount of space to be programed to that amount needed to support teaching and training requirements, except that space may be programed in areas having large concentrations of retired members where there is a critical shortage of facilities.

Subsec. (b). Pub. L. 97-337, §1(2), added subsec. (b).

#### EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-337, §2, Oct. 15, 1982, 96 Stat. 1632, provided that: “The amendment made by paragraph (2) of the first section of this Act [amending this section] shall apply only with respect to a facility for which funds for construction (or a major alteration) are first appropriated for a fiscal year after fiscal year 1983.”

#### EFFECTIVE DATE

For effective date of section, see section 3 of Pub. L. 89-614, set out as a note under section 1071 of this title.

### § 1088. Air evacuation patients: furnished subsistence

Notwithstanding any other provision of law, and under regulations to be prescribed by the Secretary concerned, a person entitled to medical and dental care under this chapter may be furnished subsistence without charge while

being evacuated as a patient by military aircraft of the United States.

(Added Pub. L. 91-481, §2(1), Oct. 21, 1970, 84 Stat. 1081.)

### § 1089. Defense of certain suits arising out of medical malpractice

(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for personal injury, including death, caused by the negligent or wrongful act or omission of any physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists) of the armed forces, the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32, the Department of Defense, the Armed Forces Retirement Home, or the Central Intelligence Agency in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of his duties or employment therein or therefor shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) whose act or omission gave rise to such action or proceeding. This subsection shall also apply to such a physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) serving under a personal services contract entered into under section 1091 of this title or a subcontract at any tier under such a contract that is authorized in accordance with the requirements of such section 1091.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or the estate of such person) for any such injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the action or proceeding is brought, to the Attorney General and to the head of the agency concerned.

(c) Upon a certification by the Attorney General that any person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a