

## PUBLIC HEALTH SERVICE ACT

[As Amended Through P.L. 117–328, Enacted December 29, 2022]

[Currency: This publication is a compilation of the text of title II of Chapter 373 of the 78th Congress. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>]

[Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).]

[References in brackets [] are to title 42, United States Code]

### TITLE II—ADMINISTRATION AND MISCELLANEOUS PROVISIONS

#### PART A—ADMINISTRATION

##### PUBLIC HEALTH SERVICE

SEC. 201. [202] The Public Health Service in the Department of Health and Human Services shall be administered by the Assistant Secretary for Health under the supervision and direction of the Secretary.

##### ORGANIZATION

SEC. 202.<sup>1</sup> [203] The Service shall consist of (1) the Office of the Surgeon General, (2) the National Institutes of Health, (3) the Bureau of Medical Services, and (4) the Bureau of State Services, and the Agency for Health Care Policy and Research.<sup>2</sup> The Sec-

<sup>1</sup>The organizational units specified in this section, other than the Agency for Health Care Policy and Research, were all abolished as *statutory* entities by Reorganization Plan No. 3 of 1966. Although the Reorganization Plan abolished the National Institutes of Health as an agency, it did not abolish the individual research institutes. Reorganization Plan No. 3 of 1966 also transferred the authorities of the Surgeon General over the Public Health Service to the Secretary of Health, Education, and Welfare (subsequently renamed the Secretary of Health and Human Services).

In 1985, Public Law 99–158 added title IV of this Act, which provides that the National Institutes of Health is an agency of the Public Health Service. See section 401(a).

Other laws have established additional agencies within the Service. Section 501(a) of this Act provides that the Substance Abuse and Mental Health Services Administration is an agency of the Service. Section 901(a) establishes the Agency for Healthcare Research and Quality within the Service (formerly designated as the Agency for Health Care Policy and Research).

Although not established in this Act, the Centers for Disease Control and Prevention, the Health Resources and Services Administration, and the Agency for Toxic Substances and Disease Registry are agencies of the Service.

The Food and Drug Administration is also an agency of the Service.

<sup>2</sup>So in law. See section 2008(g)(2) of Public Law 103–43 (107 Stat. 212). The term “the Agency” probably should be preceded by “(5)”, and the “and” before “(4)” probably should be struck.

Continued

retary is authorized and directed to assign to the Office of the Secretary, to the National Institutes of Health, to the Bureau of Medical Services, and to the Bureau of State Services, respectively, the several functions of the Service, and to establish within them such divisions, sections and other units as he may find necessary; and from time to time, abolish, transfer, and consolidate divisions, sections, and other units and assign their functions and personnel in such manner as he may find necessary for efficient operation of the Service. No division shall be established, abolished, or transferred, and no divisions shall be consolidated, except with the approval of the Secretary. The National Institutes of Health shall be administered as a part of the field service. The Secretary may delegate to any officer or employee of the Service such of his powers and duties under this Act, except the making of regulations, as he may deem necessary or expedient.

**SEC. 203. [204] COMMISSIONED CORPS AND READY RESERVE CORPS.**

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There shall be in the Service a commissioned Regular Corps and, for service in time of a public health or national emergency, a Ready Reserve Corps.

(2) REQUIREMENT.—All commissioned officers shall be citizens of the United States and shall be appointed without regard to the civil-service laws and compensated without regard to the Classification Act of 1923,<sup>3</sup> as amended.

(3) APPOINTMENT.—Commissioned officers of the Ready Reserve Corps shall be appointed by the President and commissioned officers of the Regular Corps shall be appointed by the President.

(4) ACTIVE DUTY.—Commissioned officers of the Ready Reserve Corps shall at all times be subject to call to active duty by the Surgeon General, including active duty for the purpose of training.

(5) WARRANT OFFICERS.—Warrant officers may be appointed to the Service for the purpose of providing support to the health and delivery systems maintained by the Service and any warrant officer appointed to the Service shall be considered for purposes of this Act and title 37, United States Code, to be a commissioned officer within the Commissioned Corps of the Service.

(b) ASSIMILATING RESERVE CORP OFFICERS INTO THE REGULAR CORPS.—Effective on the date of enactment of the Patient Protection and Affordable Care Act, all individuals classified as officers in the Reserve Corps under this section (as such section existed on the day before the date of enactment of such Act) and serving on active duty shall be deemed to be commissioned officers of the Regular Corps.

(c) PURPOSE AND USE OF READY RESERVE CORPS.—

(1) PURPOSE.—The purpose of the Ready Reserve Corps is to fulfill the need to have additional Commissioned Corps personnel available on short notice (similar to the uniformed serv-

Further, Public Law 106–129 redesignated the Agency for Health Care Policy and Research as the Agency for Healthcare Research and Quality (see 113 Stat. 1653).

<sup>3</sup> Civil service and classification laws are now codified to title 5, United States Code.

ice's reserve program) to assist regular Commissioned Corps personnel to meet both routine public health and emergency response missions during public health or national emergencies.

(2) USES.—The Ready Reserve Corps shall, consistent with paragraph (1)—

(A) participate in routine training to meet the general and specific needs of the Commissioned Corps;

(B) be available and ready for involuntary calls to active duty during national emergencies and public health crises, similar to the uniformed service reserve personnel;

(C) be available for backfilling critical positions left vacant during deployment of active duty Commissioned Corps members during such emergencies, as well as for deployment to respond to public health emergencies, both foreign and domestic; and

(D) be available for service assignment in isolated, hardship, and medically underserved communities (as defined in section 799B) to improve access to health services, consistent with subparagraph (C).

(3) STATUTORY REFERENCES TO RESERVE.—A reference in any Federal statute, except in the case of subsection (b), to the “Reserve Corps” of the Public Health Service or to the “reserve” of the Public Health Service shall be deemed to be a reference to the Ready Reserve Corps.

(d) FUNDING.—For the purpose of carrying out the duties and responsibilities of the Commissioned Corps under this section, there are authorized to be appropriated \$5,000,000 for each of fiscal years 2010 through 2014 for recruitment and training and \$12,500,000 for each of fiscal years 2010 through 2014 for the Ready Reserve Corps.

#### SEC. 203A. [204a] DEPLOYMENT READINESS.

(a) READINESS REQUIREMENTS FOR COMMISSIONED CORPS OFFICERS.—

(1) IN GENERAL.—The Secretary, with respect to members of the following Corps components, shall establish requirements, including training and medical examinations, to ensure the readiness of such components to respond to urgent or emergency public health care needs that cannot otherwise be met at the Federal, State, and local levels:

(A) Active duty Regular Corps.

(B) Ready Reserve Corps.

(2) ANNUAL ASSESSMENT OF MEMBERS.—The Secretary shall annually determine whether each member of the Corps meets the applicable readiness requirements established under paragraph (1).

(3) FAILURE TO MEET REQUIREMENTS.—A member of the Corps who fails to meet or maintain the readiness requirements established under paragraph (1) or who fails to comply with orders to respond to an urgent or emergency public health care need shall, except as provided in paragraph (4), in accordance with procedures established by the Secretary, be subject to disciplinary action as prescribed by the Secretary.

## (4) WAIVER OF REQUIREMENTS.—

(A) IN GENERAL.—The Secretary may waive one or more of the requirements established under paragraph (1) for an individual who is not able to meet such requirements because of—

- (i) a disability;
- (ii) a temporary medical condition; or
- (iii) any other extraordinary limitation as determined by the Secretary.

(B) REGULATIONS.—The Secretary shall promulgate regulations under which a waiver described in subparagraph (A) may be granted.

(5) URGENT OR EMERGENCY PUBLIC HEALTH CARE NEED.—For purposes of this section and section 214, the term “urgent or emergency public health care need” means a health care need, as determined by the Secretary, arising as the result of—

(A) a national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.);

(B) an emergency or major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.);

(C) a public health emergency declared by the Secretary under section 319 of this Act; or

(D) any emergency that, in the judgment of the Secretary, is appropriate for the deployment of members of the Corps.

(b) CORPS MANAGEMENT FOR DEPLOYMENT.—The Secretary shall—

(1) organize members of the Corps into units for rapid deployment by the Secretary to respond to urgent or emergency public health care needs;

(2) establish appropriate procedures for the command and control of units or individual members of the Corps that are deployed at the direction of the President or the Secretary in response to an urgent or emergency public health care need of national, State or local significance;

(3) ensure that members of the Corps are trained, equipped and otherwise prepared to fulfill their public health and emergency response roles; and

(4) ensure that deployment planning takes into account—

(A) any deployment exemptions that may be granted by the Secretary based on the unique requirements of an agency and an individual’s functional role in such agency; and

(B) the nature of the urgent or emergency public health care need.

(c) DEPLOYMENT OF DETAILED OR ASSIGNED OFFICERS.—For purposes of pay, allowances, and benefits of a Commissioned Corps officer who is detailed or assigned to a Federal entity, the deployment of such officer by the Secretary in response to an urgent or emergency public health care need shall be deemed to be an authorized activity of the Federal entity to which the officer is detailed or assigned.

## SURGEON GENERAL

SEC. 204. **[205]** The Surgeon General shall be appointed from the Regular Corps for a four-year term by the President by and with the advice and consent of the Senate. The Surgeon General shall be appointed from individuals who (1) are members of the Regular Corps, and (2) have specialized training or significant experience in public health programs. Upon the expiration of such term, the Surgeon General, unless reappointed, shall revert to the grade and number in the Regular Corps or Ready Reserve Corps that he would have occupied had he not served as Surgeon General.

## DEPUTY SURGEON GENERAL AND ASSISTANT SURGEONS GENERAL

SEC. 205. **[206]** (a) The Surgeon General shall assign one commissioned officer from the Regular Corps to administer the Office of the Surgeon General, to act as Surgeon General during the absence or disability of the Surgeon General or in the event of a vacancy in that office, and to perform such other duties as the Surgeon General may prescribe, and while so assigned he shall have the title of Deputy Surgeon General.

(b) The Surgeon General shall assign eight commissioned officers from the Regular Corps to be, respectively, the Director of the National Institutes of Health, the Chief of the Bureau of State Services, the Chief of the Bureau of Medical Services, the Chief Medical Officer of the United States Coast Guard, the Chief Dental Officer of the Service, the Chief Nurse Officer of the Service, the Chief Pharmacist Officer of the Service, and the Chief Sanitary Engineering Officer of the Service, and while so serving they shall each have the title of Assistant Surgeon General.

(c)(1) The Surgeon General, with the approval of the Secretary, is authorized to create special temporary positions in the grade of Assistant Surgeons General when necessary for the proper staffing of the Service. The Surgeon General may assign officers of either the Regular Corps or the Ready Reserve Corps to any such temporary position, and while so serving they shall each have the title of Assistant Surgeon General.

(2) Except as provided in this paragraph, the number of special temporary positions created by the Surgeon General under paragraph (1) shall not on any day exceed 1 per centum of the highest number, during the ninety days preceding such day, of officers of the Regular Corps on active duty and officers of the Ready Reserve Corps on active duty for more than thirty days. If on any day the number of such special temporary positions exceeds such 1 per centum limitations, for a period of not more than one year after such day, the number of such special temporary positions shall be reduced for purposes of complying with such 1 per centum limitation only by the resignation, retirement, death, or transfer to a position of a lower grade, of any officer holding any such temporary position.

(d) The Surgeon General shall designate the Assistant Surgeon General who shall serve as Surgeon General in case of absence or disability, or vacancy in the offices, of both the Surgeon General and the Deputy Surgeon General.

## GRADES, RANKS, AND TITLES OF THE COMMISSIONED CORPS

SEC. 206. [207] (a) The Surgeon General during the period of his appointment as such, shall be of the same grade as the Surgeon General of the army; the Deputy Surgeon General and the Chief Medical Officer of the United States Coast Guard, while assigned as such, shall have the grade corresponding with the grade of major general; and the Chief Dental Officer, while assigned as such, shall have the grade as is prescribed by law for the officer of the Dental Corps selected and appointed as Assistant Surgeon General of the Army. During the period of appointment to the position of Assistant Secretary for Health, a commissioned officer of the Public Health Service shall have the grade corresponding to the grade of General of the Army. Assistant Surgeons General, while assigned as such, shall have the grade corresponding with either the grade of brigadier general or the grade of major general, as may be determined by the Secretary after considering the importance of the duties to be performed: *Provided*, That the number of Assistant Surgeons General having a grade higher than that corresponding to the grade of brigadier general shall at no time exceed one-half of the number of positions created by subsection (b) of section 205 or pursuant to subsection (c) of such section. The grades of commissioned officers of the Service shall correspond with grades of officers of the Army as follows:

- (1) Officers of the director grade—colonel;
- (2) Officers of the senior grade—lieutenant colonel;
- (3) Officers of the full grade—major;
- (4) Officers of the senior assistant grade—captain;
- (5) Officers of the assistant grade—first lieutenant;
- (6) Officers of the junior assistant grade—second lieutenant;
- (7) Chief warrant officers of (W-4) grade—chief warrant officer (W-4);
- (8) Chief warrant officers of (W-3) grade—chief warrant officer (W-3);
- (9) Chief warrant officers of (W-2) grade—chief warrant officer (W-2); and
- (10) Warrant officers of (W-1) grade—warrant officer (W-1).

(b) The titles of medical officers of the foregoing grades shall be respectively (1) medical director, (2) senior surgeon, (3) surgeon, (4) senior assistant surgeon, (5) assistant surgeon and (6) junior assistant surgeon. The President is authorized to prescribe titles, appropriate to the several grades, for commissioned officers of the Service other than medical officers. All titles of the officers of the Reserve Corps<sup>4</sup> shall have the suffix “Reserve”.

(c) [Repealed]

(d) Within the total number of officers of the Regular Corps authorized by the appropriation Act or Acts for each fiscal year to be on active duty, the Secretary shall by regulation prescribe the maximum number of officers authorized to be in each of the grades

<sup>4</sup>The reference in subsection (b) to “the Reserve Corps” probably should be “the Ready Reserve Corps”. The amendment in section 3214(e)(3) of P.L. 116-136 was directed to subsection (c) and should have been made to subsection (b).

from the warrant officer (W-1) grade to the director grade, inclusive. Such numbers shall be determined after considering the anticipated needs of the Service during the fiscal year, the funds available, the number of officers in each grade at the beginning of the fiscal year, and the anticipated appointments, the anticipated promotions based on years of service, and the anticipated retirements during the fiscal year. The number so determined for any grade for a fiscal year may not exceed the number limitation (if any) contained in the appropriation Act or Acts for such year. Such regulations for each fiscal year shall be prescribed as promptly as possible after the appropriation Act fixing the authorized strength of the corps for that year, and shall be subject to amendment only if such authorized strength or such number limitation is thereafter changed. The maxima established by such regulations shall not require (apart from action pursuant to other provisions of this Act) any officer to be separated from the Service or reduced in grade.

(e) In computing the maximum number of commissioned officers of the Public Health Service authorized by law to hold a grade which corresponds to the grade of brigadier general or major general, there may be excluded from such computation not more than three officers who hold such a grade so long as such officers are assigned to duty and are serving in a policymaking position in the Department of Defense.

(f) In computing the maximum number of commissioned officers of the Public Health Service authorized by law or administrative determination to serve on active duty, there may be excluded from such computation officers who are assigned to duty in the Department of Defense.

#### APPOINTMENT OF PERSONNEL

SEC. 207. [209] (a)(1) Except as provided in subsections (b) and (e) of this section, original appointments to the Regular Corps may be made only in the warrant officer (W-1), chief warrant officer (W-2), chief warrant officer (W-3), chief warrant officer (W-4), junior assistant, assistant, and senior assistant grades and original appointments to a grade above junior assistant shall be made only after passage of an examination, given in accordance with regulations of the President, in one or more of the several branches of medicine, dentistry, hygiene, sanitary engineering, pharmacy, psychology, nursing, or related scientific specialties in the field of public health.

(2) Original appointments to the Ready Reserve Corps may be made to any grade up to and including the director grade but only after passage of an examination given in accordance with regulations of the President. Reserve commissions shall be for an indefinite period and may be terminated at any time, as the President may direct.

(3) No individual who has attained the age of forty-four shall be appointed to the Regular Corps, or called to active duty in the Ready Reserve Corps for a period in excess of one year, unless (A) he has had a number of years of active service (as defined in section 211(d)) equal to the number of years by which his age exceeds forty-four, or (B) the Surgeon General determines that he possesses

exceptional qualifications, not readily available elsewhere in the Commissioned Corps of the Public Health Service, for the performance of special duties with the Service, or (C) in the case of an officer of the Ready Reserve Corps, the Commissioned Corps of the Service has been declared by the President to be a military service.

(b)(1) Not more than 10 per centum of the original appointments to the Regular Corps authorized to be made during any fiscal year may be made to grades above that of senior assistant, but no such appointment (other than an appointment under section 204) may be made to a grade above that of director. For the purpose of this subsection the number of original appointments authorized to be made during a fiscal year shall be (1) the excess of the number of officers of the Regular Corps authorized by the appropriation Act or Acts for such year over the number of officers on active duty in the Regular Corps on the first day of such year, plus (2) the number of such officers of the Regular Corps who, during such fiscal year, have been or will be retired upon attainment of age sixty-four or have for any other reason ceased to be on active duty. In determining the number of appointments authorized by this subsection an appointment shall be deemed to be made in the fiscal year in which the nomination is transmitted by the President to the Senate.

(2) In addition to the number of original appointments to the Regular Corps authorized by paragraph (1) to be made to grades above that of senior assistant, original appointments authorized to be made to the Regular Corps in any year may be made to grades above that of senior assistant, but not above that of director, in the case of any individual who—

(A)(i) was on active duty in the Regular Corps on July 1, 1960, (ii) was on such active duty continuously for not less than one year immediately prior to such date, and (iii) applies for appointment to the Regular Corps prior to July 1, 1962; or

(B) does not come within clause (A)(i) and (ii) but was on active duty in the Ready Reserve Corps continuously for not less than one year immediately prior to his appointment to the Regular Corps and has not served on active duty continuously for a period, occurring after June 30, 1960, of more than three and one-half years prior to applying for such appointment.

(3) No person shall be appointed pursuant to this subsection unless he meets standards established in accordance with regulations of the President.

(c) Commissions evidencing the appointment by the President of officers of the Regular Corps or Ready Reserve Corps shall be issued by the Secretary under the seal of the Department of Health, Education, and Welfare.

(d)(1) For purposes of basic pay and for purposes of promotion, any person appointed under subsection (a) to the grade of senior assistant in the Regular Corps and any person appointed under subsection (b), shall, except as provided in paragraphs (2) and (3) of this subsection, be considered as having had on the date of appointment the following length of service: Three years if appointed to the senior assistant grade, ten years if appointed to the full grade, seventeen years if appointed to the senior grade, and eighteen years if appointed to the director grade.



(2) For purposes of basic pay, any person appointed under subsection (a) to the grade of senior assistant in the Regular Corps, and any person appointed under subsection (b), shall, in lieu of the credit provided in paragraph (1), be credited with the service for which he is entitled to credit under any other provision of law if such service exceeds that to which he would be entitled under such paragraph.

(3) For purposes of promotion, any person originally appointed in the Regular Corps to the senior assistant grade or above who has had active service in the Ready Reserve Corps shall be considered as having had on the date of appointment the length of service provided for in paragraph (1), plus whichever of the following is greater: (A) The excess of his total active service in the Ready Reserve Corps (above the grade of junior assistant) over the length of service provided in such paragraph, to the extent that such excess is on account of service in the Ready Reserve Corps in or above the grade to which he is appointed in the Regular Corps or (B) his active service in the same or any higher grade in the Ready Reserve Corps after the first day on which, under regulations in effect on the date of his appointment to the Regular Corps, he would have had the training and experience necessary for such appointment.

(4) For purposes of promotion, any person whose original appointment is to the assistant grade in the Regular Corps shall be considered as having had on the date of appointment service equal to his total active service in the Ready Reserve Corps in and above the assistant grade.

(e)(1) A former officer of the Regular Corps may, if application for appointment is made within two years after the date of the termination of his prior commission in the Regular Corps, be reappointed to the Regular Corps without examination, except as the Surgeon General may otherwise prescribe, and without regard to the numerical limitations of subsection (b).

(2) Reappointments pursuant to this subsection may be made to the permanent grade held by the former officer at the time of the termination of his prior commission, or to the next higher grade if such officer meets the eligibility requirements prescribed by regulation for original appointment to such higher grade. For purposes of pay, promotion, and seniority in grade, such reappointed officer shall receive the credits for service to which he would be entitled if such appointment were an original appointment, but in no event less than the credits he held at the time his prior commission was terminated, except that if such officer is reappointed to the next higher grade he shall receive no credit for seniority in grade.

(3) No former officer shall be reappointed pursuant to this subsection unless he shall meet such standards as the Secretary may prescribe.

(f) In accordance with regulations, special consultants may be employed to assist and advise in the operations of the Service. Such consultants may be appointed without regard to the civil-service

laws and their compensation may be fixed without regard to the Classification Act of 1923, as amended.<sup>5</sup>

(g) In accordance with regulations, individual scientists, other than commissioned officers of the Service, may be designated by the Surgeon General to receive fellowships, appointed for duty with the Service without regard to the civil-service laws and compensated without regard to the Classification Act of 1923, as amended,<sup>5</sup> may hold their fellowships under conditions prescribed therein, and may be assigned for studies or investigations either in this country or abroad during the terms of their fellowships.

(h) Persons who are not citizens may be employed as consultants pursuant to subsection (e) and may be appointed to fellowships pursuant to subsection (f). Unless otherwise specifically provided, any prohibition in any other Act against the employment of aliens, or against the payment of compensation to them, shall not be applicable in the case of persons employed or appointed pursuant to such subsections.

(i) The appointment of any officer or employee of the Service made in accordance with the civil-service laws shall be made by the Secretary, and may be made effective as of the date on which such officer or employee enters upon duty.

#### PAY AND ALLOWANCES

SEC. 208. [210] (a)(1) Commissioned officers of the Regular Corps and Ready Reserve Corps shall be entitled to receive such pay and allowances as are now or may hereafter be authorized by law.

(2) For provisions relating to the receipt of special pay by commissioned officers of the Regular Corps and Ready Reserve Corps while on active duty, see section 303a(b) or 373 of title 37, United States Code.

(b) Commissioned officers on active duty, and retired officers entitled to retired pay pursuant to section 210(g)(3), section 211 or section 221(a), shall be permitted to purchase supplies from the Army, Navy, Air Force, and Marine Corps at the same price as is charged officers thereof.

(c) Members of the National Advisory Health Council and members of other national advisory or review councils or committees established under this Act, including members of the Technical Electronic Product Radiation Safety Standards Committee and the Board of Regents of the National Library of Medicine, but excluding ex officio members, while attending conferences or meetings of their respective councils or committees or while otherwise serving at the request of the Secretary shall be entitled to receive compensation at rates to be fixed by the Secretary, but at rates not exceeding the daily equivalent of the rate specified at the time of such service for grade GS-18 of the General Schedule, including traveltime; and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently.

<sup>5</sup> See footnote for the second sentence of section 203.

(d) Field employees of the Service, except those employed on a per diem or fee basis, who render part-time duty and are also subject to call at any time for services not contemplated in their regular part-time employment, may be paid annual compensation for such part-time duty and, in addition, such fees for such other services as the Surgeon General may determine; but in no case shall the total paid to any such employee for any fiscal year exceed the amount of the minimum annual salary rate of the classification grade of the employee.

(e) Any civilian employee of the Service who is employed at the Gillis W. Long Hansen's Disease Center on the date of the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 shall be entitled to receive, in addition to any compensation to which the employee may otherwise be entitled and for so long as the employee remains employed at the Center, an amount equal to one-fourth of such compensation.

(f) Individuals appointed under subsection (g) shall have included in their fellowships such stipends or allowances, including travel and subsistence expenses, as the Surgeon General may deem necessary to procure qualified fellows.

(g) The Secretary is authorized to establish and fix the compensation for, within the Public Health Service, not more than one hundred and seventy-nine positions, of which not less than one hundred and fifteen shall be for the National Institutes of Health, not less than five shall be for the National Institute on Alcohol Abuse and Alcoholism for individuals engaged in research on alcohol and alcoholism, not less than ten shall be for the National Center for Health Services Research, not less than twelve shall be for the National Center for Health Statistics, and not less than seven shall be for the National Center for Health Care Technology, in the professional, scientific, and executive service, each such position being established to effectuate those research and development activities of the Public Health Service which require the services of specially qualified scientific, professional, and administrative personnel: *Provided*, That the rates of compensation for positions established pursuant to the provisions of this subsection shall not be less than the minimum rate of grade 16 of the General Schedule of the Classification Act of 1949, as amended,<sup>6</sup> nor more than (1) the highest rate of grade 18 of the General Schedule of such Act, or (2) in the case of two such positions, the rate specified, at the time the service in the position is performed, for level II of the Executive Schedule (5 U.S.C. 5313); and such rates of compensation for all positions included in this proviso shall be subject to the approval of the Civil Service Commission. Positions created pursuant to this subsection shall be included in the classified civil service of the United States, but appointments to such positions shall be made without competitive examination upon approval of the proposed appointee's qualifications by the Civil Service Commission or such officers or agents as it may designate for this purpose.

<sup>6</sup> See footnote for the second sentence of section 203.

## PROFESSIONAL CATEGORIES

SEC. 209. [210b] (a) For the purpose of establishing eligibility of officers of the Regular Corps for promotions, the Surgeon General shall by regulation divide the corps into professional categories. Each category shall, as far as practicable, be based upon one of the subjects of examination set forth in section 207(a)(1) or upon a subdivision of such subject, and the categories shall be designed to group officers by fields of training in such manner that officers in any one grade in any one category will be available for similar duty in the discharge of the several functions of the Service.

(b) Each officer of the Regular Corps on active duty shall, on the basis of his training and experience, be assigned by the Surgeon General to one of the categories established by regulations under subsection (a). Except upon amendment of such regulations, no assignment so made shall be changed unless the Surgeon General finds (1) that the original assignment was erroneous, or (2) that the officer is equally well qualified to serve in another category to which he has requested to be transferred, and that such transfer is in the interests of the Service.

(c) Within the limits fixed by the Secretary in regulations under section 206(d) for any fiscal year, the Surgeon General shall determine for each category in the Regular Corps the maximum number of officers authorized to be in each of the grades from the warrant officer (W-1) grade to the director grade, inclusive.

(d) The excess of the number so fixed for any grade in any category over the number of officers of the Regular Corps on active duty in such grade in such category (including, in the case of the director grade, officers holding such grade in accordance with section 206(c)) shall for the purpose of promotions constitute vacancies in such grade in such category. For purposes of this subsection, an officer who has been temporarily promoted or who is temporarily holding the grade of director in accordance with section 206(c) shall be deemed to hold the grade to which so promoted or which he is temporarily holding; but while he holds such promotion or grade, and while any officer is temporarily assigned to a position pursuant to section 205(c), the number fixed under subsection (c) of this section for the grade of his permanent rank shall be reduced by one.

(e) The absence of a vacancy in a grade in a category shall not prevent an appointment to such grade pursuant to section 207, a permanent length of service promotion, or the recall of a retired officer to active duty; but the making of such an appointment, promotion, or recall shall be deemed to fill a vacancy if one exists.

(f) Whenever a vacancy exists in any grade in a category the Surgeon General may increase by one the number fixed by him under subsection (c) for the next lower grade in the same category, without regard to the numbers fixed in regulations under section 206(d); and in that event the vacancy in the higher grade shall not be filled except by a permanent promotion, and upon the making of such promotion the number for the next lower grade shall be reduced by one.

PROMOTIONS AND SEPARATION OF COMMISSIONED OFFICERS IN THE  
REGULAR CORPS

SEC. 210. [211] (a) Promotions of officers of the Regular Corps to any grade up to and including the director grade shall be either permanent promotions based on length of service, other permanent promotions to fill vacancies, or temporary promotions. Permanent promotions shall be made by the President, and temporary promotions shall be made by the President. Each permanent promotion shall be to the next higher grade, and shall be made only after examination given in accordance with regulations of the President.

(b) The President may by regulation provide that in a specified professional category permanent promotions to the senior grade, or to both the full grade and the senior grade, shall be made only if there are vacancies in such grade. A grade in any category with respect to which such regulations have been issued is referred to in this section as a "restricted grade".

(c) Examinations to determine qualification for permanent promotions may be either noncompetitive or competitive, as the Surgeon General shall in each case determine; except that examinations for promotions to the assistant or senior assistant grade shall in all cases be noncompetitive. The officers to be examined shall be selected by the Surgeon General from the professional category, and in the order of seniority in the grade, from which promotion is to be recommended. In the case of a competitive examination the Surgeon General shall determine in advance of the examination the number (which may be one or more) of officers who, after passing the examination, will be recommended to the President for promotion; but if the examination is one for promotions based on length of service, or is one for promotions to fill vacancies other than vacancies in the director grade or in a restricted grade, such number shall not be less than 80 per centum of the number of officers to be examined.

(d) Officers of the Regular Corps, found pursuant to subsection (c) to be qualified, shall be given permanent promotions based on length of service, as follows:

(1) Officers in the warrant officer (W-1) grade, chief warrant officer (W-2) grade, chief warrant officer (W-3) grade, chief warrant officer (W-4) grade, and junior assistant grade shall be promoted at such times as may be prescribed in regulations of the President.

(2) Officers with permanent rank in the assistant grade, the senior assistant grade, and the full grade shall (except as provided in regulations under subsection (b)) be promoted after completion of three, ten, and seventeen years, respectively, of service in grades above the junior assistant grade; and such promotions, when made, shall be effective, for purposes of pay and seniority in grade, as of the day following the completion of such years of service. An officer with permanent rank in the assistant, senior assistant, or full grade who has not completed such years of service shall be promoted at the same time, and his promotion shall be effective as of the same day, as any officer junior to him in the same grade in the same professional category who is promoted under this paragraph.

(e) Officers in a professional category of the Regular Corps, found pursuant to subsection (c) to be qualified may be given permanent promotions to fill any or all vacancies in such category in the senior assistant grade, the full grade, the senior grade, or the director grade; but no officer who has not had one year of service with permanent or temporary rank in the next lower grade shall be promoted to any restricted grade or to the director grade.

(f) If an officer who has completed the years of service required for promotion to a grade under paragraph (2) of subsection (d) fails to receive such promotion, he shall (unless he has already been twice examined for promotion to such grade) be once reexamined for promotion to such grade. If he is thereupon promoted (otherwise than under subsection (e)), the effective date of such promotion shall be one year later than it would have been but for such failure. Upon the effective date of any permanent promotion of such officer to such grade, he shall be considered as having had only the length of service required for such promotion which he previously failed to receive.

(g) If, for reasons other than physical disability, an officer of the Regular Corps in the warrant officer (W-1) grade or junior assistant grade is found pursuant to subsection (c) not to be qualified for promotion he shall be separated from the Service. If, for reasons other than physical disability, an officer of the Regular Corps in the chief warrant officer (W-2), chief warrant officer (W-3), assistant, senior assistant, or full grade, after having been twice examined for promotion (other than promotion to a restricted grade), fails to be promoted—

(1) if in the chief warrant officer (W-2) or assistant grade he shall be separated from the Service and paid six months' basic pay and allowances;

(2) if in the chief warrant officer (W-3) or senior assistant grade he shall be separated from the Service and paid one year's basic pay and allowances;

(3) if in the full grade he shall be considered as not in line for promotion and shall, at such time thereafter as the Surgeon General may determine, be retired from the Service with retired pay (unless he is entitled to a greater amount by reason of another provision of law)—

(A) in the case of an officer who first became a member of a uniformed service before September 8, 1980, at the rate of 2½ percent of the retired pay base determined under section 1406(h) of title 10, United States Code, for each year, not in excess of 30, of his active commissioned service in the Service; or

(B) in the case of an officer who first became a member of a uniformed service on or after September 8, 1980, at the rate determined by multiplying—

(i) the retired pay base determined under section 1407 of title 10, United States Code; by

(ii) the retired pay multiplier determined under section 1409 of such title for the number of years of his active commissioned service in the Service.

(h) If an officer of the Regular Corps, eligible to take an examination for promotion, refuses to take such examination, he may be

separated from the Service in accordance with regulations of the President.

(i) At the end of his first three years of service, the record of each officer of the Regular Corps, originally appointed to the senior assistant grade or above, shall be reviewed in accordance with regulations of the President and, if found not qualified for further service, he shall be separated from the Service and paid six months' pay and allowances.

(j)(1) The order of seniority of officers in a grade in the Regular Corps shall be determined, subject to the provisions of paragraph (2), by the relative length of time spent in active service after the effective date of each such officer's original appointment or permanent promotion in that grade. When permanent promotions of two or more officers to the same grade are effective on the same day, their relative seniority shall be the same as it was in the grade from which promoted. In all other cases of original appointments or permanent promotions (or both) to the same grade effective on the same day, relative seniority shall be determined in accordance with regulations of the President.

(2) In the case of an officer originally appointed in the Regular Corps to the grade of assistant or above, his seniority in the grade to which appointed shall be determined after inclusion, as service in such grade, of any active service in such grade or in any higher grade in the Ready Reserve Corps, but (if the appointment is to the grade of senior assistant or above) only to the extent of whichever of the following is greater: (A) His active service in such grade or any higher grade in the Ready Reserve Corps after the first day on which, under regulations in effect on the date of his appointment to the Regular Corps, he had the training and experience necessary for such appointment, or (B) the excess of his total active service in the Ready Reserve Corps (above the grade of junior assistant) over three years if his appointment in the Regular Corps is to the senior assistant grade, over ten years if the appointment is to the full grade, or over seventeen years if the appointment is to the senior grade.

(k) Any commissioned officer of the Regular Corps in any grade in any professional category may be recommended to the President for temporary promotion to fill a vacancy in any higher grade in such category, up to and including the director grade. In time of war, or of national emergency proclaimed by the President, any commissioned officer of the Regular Corps in any grade in any professional category may be recommended to the President for promotion to any higher grade in such category, up to and including the director grade, whether or not a vacancy exists in such grade. The selection of officers to be recommended for temporary promotions shall be made in accordance with regulations of the President. Promotion of an officer recommended pursuant to this subsection may be made without regard to length of service, without examination, and without vacating his permanent appointment, and shall carry with it the pay and allowances of the grade to which promoted. Such promotions may be terminated at any time, as may be directed by the President.

(l) Whenever the number of officers of the Regular Corps on active duty, plus the number of officers of the Ready Reserve Corps

who have been on active duty for thirty days or more, exceeds the authorized strength of the Regular Corps, the Secretary shall determine the requirements of the Service in each grade in each category, based upon the total number of officers so serving on active duty and the tasks being performed by the Service; and the Surgeon General shall thereupon assign each officer of the Ready Reserve Corps on active duty to a professional category. If the Secretary finds that the number of officers fixed under section 209(c) for any grade and category (or the number of officers, including officers of the Ready Reserve Corps, on active duty in such grade in such category, if such number is greater than the number fixed under section 209(c)) is insufficient to meet such requirements of the Service, officers of either the Regular Corps or the Ready Reserve Corps may be recommended for temporary promotion to such grade in such category. Any such promotion may be terminated at any time, as may be directed by the President.

(m) Any officer of the Regular Corps, or any officer of the Ready Reserve Corps on active duty, who is promoted to a higher grade shall, unless he expressly declines such promotion, be deemed for all purposes to have accepted such promotion; and shall not be required to renew his oath of office, or to execute a new affidavit as required by the Act of December 11, 1926, as amended (5 U.S.C. 21a).<sup>7</sup>

#### RETIREMENT OF COMMISSIONED OFFICERS

SEC. 211. [212] (a)(1) A commissioned officer of the Regular Corps shall, if he applies for retirement, be retired on or after the first day of the month following the month in which he attains the age of sixty-four years. This paragraph does not permit or require the involuntary retirement of any individual because of the age of the individual.

(2) A commissioned officer of the Regular Corps may be retired by the Secretary, and shall be retired if he applies for retirement, on the first day of any month after completion of thirty years of active service.

(3) Any commissioned officer of the Regular Corps who has had less than thirty years of active service may be retired by the Secretary, with or without application by the officer, on the first day of any month after completion of twenty or more years of active service of which not less than ten are years of active commissioned service in any of the uniformed services.

(4) Except as provided in paragraph (6), a commissioned officer retired pursuant to paragraph (1), (2), or (3) who was on active duty with the Service on the day preceding such retirement shall be entitled to receive retired pay calculated by multiplying the retired pay base determined under section 1406 of title 10, United States Code, by the retired pay multiplier determined under section 1409 of such title for the numbers of years of service credited to the officer under this paragraph and in which, in the case of a temporary promotion to such grade, he has performed active duty for not less than six months, (A) for each year of active service, or

<sup>7</sup> That Act has been codified to section 3332 of title 5, United States Code.



(B) if it results in higher retired pay, for each of the following years:

(i) his years of active service (determined without regard to subsection (d)) as a member of a uniformed service; plus

(ii) in the case of a medical or dental officer, four years and, in the case of a medical officer, who has completed one year of medical internship or the equivalent thereof, one additional year, the four years and the one year to be reduced by the period of active service performed during such officer's attendance at medical school or dental school or during his medical internship; plus

(iii) the number of years of service with which he was entitled to be credited for purposes of basic pay on May 31, 1958, or (if higher) on any date prior thereto, reduced by any such year included under clause (i) and further reduced by any such year with which he was entitled to be credited under paragraphs (7) and (8) of section 205(a) of title 37, United States Code, on any date before June 1, 1958;

except that (C) in the case of any officer whose retired pay, so computed, is less than 50 per centum of such basic pay, who retires pursuant to paragraph (1) of this subsection, who has not less than twelve whole years of active service (computed without the application of subsection (e)), and who does not use, for purposes of a retirement annuity under the Civil Service Retirement Act, any service which is also creditable in computing his retired pay from the Regular Corps, it shall, instead, be 50 per centum of such pay, (D) the retired pay of an officer shall in no case be more than 75 per centum of such basic pay, and (E) in the case of any officer who participates in the modernized retirement system by reason of section 1409(b) of title 10, United States Code (including pursuant to an election under subparagraph (B) of that section), subparagraph (C) shall be applied by substituting "40 per centum" for "50 per centum" each place the term appears.

(5) With the approval of the President, a commissioned officer whose service as Surgeon General, Deputy Surgeon General, or Assistant Surgeon General has totaled four years or more and who has had not less than twenty-five years of active service in the Regular Corps may retire voluntarily at any time; and except as provided in paragraph (6), his retired pay shall be at the rate of 75 per centum of the basic pay of the highest grade held by him as such officer.

(6) The retired pay of a commissioned officer retired under this subsection who first became a member of a uniformed service after September 7, 1980, is determined by multiplying—

(A) the retired pay base determined under section 1407 of title 10, United States Code; by

(B) the retired pay multiplier determined under section 1409 of such title for the number of years of service credited to the officer under paragraph (4).

(7) Retired pay computed under section 210(g)(3) or under paragraph (4) or (5) of this subsection, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

(b) For purposes of subsection (a), the basic pay of the highest grade to which a commissioned officer has received a temporary

promotion means the basic pay to which he would be entitled if serving on active duty in such grade on the date of his retirement.

(c) A commissioned officer, retired for reasons other than for failure of promotion to the senior grade, may (1) if an officer of the Regular Corps entitled to retired pay under subsection (a) or under section 221(a)(19), be involuntarily recalled to active duty during such times as the Commissioned Corps constitutes a branch of the land or naval forces of the United States, and (2) if an officer of either the Regular Corps or Ready Reserve Corps, be recalled to active duty at any time with his consent.

(d) The term “active service”, as used in subsection (a), includes:

- (1) all active service in any of the uniformed services;
- (2) active service with the Public Health Service, other than as a commissioned officer, which the Surgeon General determines is comparable to service performed by commissioned officers of the Regular Corps, except that, if there are more than five years of such service only the last five years thereof may be included;
- (3) all active service (other than service included under the preceding provisions of this subsection) which is creditable for retirement purposes under laws governing the retirement of members of any of the uniformed services; and
- (4) service performed as a member of the Senior Biomedical Research Service established by section 228, except that, if there are more than 5 years of such service, only the last 5 years thereof may be included.

(e) For the purpose of determining the number of years by which a percentage of the basic pay of an officer is to be multiplied in computing the amount of his retired pay pursuant to section 210(g)(3) or paragraph (4) of subsection (a) of this section, each full month of service that is in addition to the number of full years of service credited to an officer is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(f) For purposes of retirement or separation for physical disability under chapter 61 of title 10, United States Code, a commissioned officer of the Regular Corps shall be credited, in addition to the service described in section 1208(a)(2) of that title, with active service with the Public Health Service, other than as a commissioned officer, which the Surgeon General determines is comparable to service performed by commissioned officers of the Regular Corps, except that, if there are more than five years of such service, only the last five years thereof may be so credited. For such purposes, such section 1208(a)(2) shall be applicable to officers of the Regular Corps.

#### MILITARY BENEFITS

SEC. 212. [213] (a) Except as provided in subsection (b), commissioned officers of the Service and their surviving beneficiaries shall, with respect to active service performed by such officers—

- (1) in time of war;
- (2) on detail for duty with the Army, Navy, Air Force, Marine Corps, or Coast Guard; or

(3) while the Service is part of the military forces of the United States pursuant to Executive order of the President; be entitled to all rights, privileges, immunities, and benefits now or hereafter provided under any law of the United States in the case of commissioned officers of the Army or their surviving beneficiaries on account of active military service, except retired pay and uniform allowances.

(b) The President may prescribe the conditions under which commissioned officers of the Service may be awarded military ribbons, medals, and decorations.

(c) The authority vested by law in the Department of the Army, the Secretary of the Army, or other officers of the Department of the Army with respect to rights, privileges, immunities, and benefits referred to in subsection (a) shall be exercised, with respect to commissioned officers of the Service, by the Surgeon General.

(d) Active service of commissioned officers of the Service shall be deemed to be active military service in the Armed Forces of the United States for the purposes of all laws administered by the Secretary of Veterans Affairs (except the Servicemen's Indemnity Act of 1951) and section 217 of the Social Security Act.

(e) Active service of commissioned officers of the Service shall be deemed to be active military service in the Armed Forces of the United States for the purposes of all rights, privileges, immunities, and benefits now or hereafter provided under the Servicemembers Civil Relief Act (50 App. U.S.C. 501 et seq.).

(f) Active service of commissioned officers of the Service shall be deemed to be active military service in the Armed Forces of the United States for purposes of all laws related to discrimination on the basis of race, color, sex, ethnicity, age, religion, and disability.

#### PRESENTATION OF UNITED STATES FLAG UPON RETIREMENT

SEC. 213. **[214]** (a) **PRESENTATION OF FLAG.**—Upon the release of an officer of the commissioned corps of the Service from active commissioned service for retirement, the Secretary of Health and Human Services shall present a United States flag to the officer.

(b) **MULTIPLE PRESENTATIONS NOT AUTHORIZED.**—An officer is not eligible for presentation of a flag under subsection (a) if the officer has previously been presented a flag under this section or any other provision of law providing for the presentation of a United States flag incident to release from active service for retirement.

(c) **NO COST TO RECIPIENT.**—The presentation of a flag under this section shall be at no cost to the recipient.

#### DETAIL OF PERSONNEL

SEC. 214. **[215]** (a) The Secretary is authorized, upon the request of the head of an executive department, to detail officers or employees of the Service to such department for duty as agreed upon by the Secretary and the head of such department in order to cooperate in, or conduct work related to, the functions of such department or of the Service. When officers or employees are so detailed their salaries and allowances may be paid from working funds established as provided by law or may be paid by the Service

from applicable appropriation and reimbursement may be made as agreed upon by the Secretary and the head of the executive department concerned. Officers detailed for duty with the Army, Navy, or Coast Guard shall be subject to the laws for the government of the service to which detailed.

(b) Upon the request of any State health authority or, in the case of work relating to mental health, any State mental health authority, personnel of the Service may be detailed by the Surgeon General for the purpose of assisting such State or political subdivision thereof in work related to the functions of the Service.

(c) The Surgeon General may detail personnel of the Service to any appropriate committee of the Congress or to nonprofit educational research or other institutions engaged in health activities for special studies of scientific problems and for the dissemination of information relating to public health.

(d) Personnel detailed under subsections (b) and (c) shall be paid from applicable appropriations of the Service except that, in accordance with regulations such personnel may be placed on leave without pay and paid by the State, subdivision, or institution to which they are detailed. In the case of detail of personnel under subsections (b) or (c) to be paid from applicable Service appropriations, the Secretary may condition such detail on an agreement by the State, subdivision, or institution concerned that such State, subdivision, or institution concerned shall reimburse the United States for the amount of such payments made by the Service. The services of personnel while detailed pursuant to this section shall be considered as having been performed in the Service for purposes of the computation of basic pay, promotion, retirement, compensation for injury or death, and the benefits provided by section 212.

(e) Except with respect to the United States Coast Guard and the Department of Defense, and except as provided in agreements negotiated with officials at agencies where officers of the Commissioned Corps may be assigned, the Secretary shall have the sole authority to deploy any Commissioned Corps officer assigned under this section to an entity outside of the Department of Health and Human Services for service under the Secretary's direction in response to an urgent or emergency public health care need (as defined in section 203A(a)(5)).

#### REGULATIONS

SEC. 215. [216] (a) The President shall from time to time prescribe regulations with respect to the appointment, promotion, retirement, termination of commission, title, pay, uniforms, allowances (including increased allowances for foreign service), and discipline of the commissioned corps of the Service.

(b) The Surgeon General, with the approval of the Secretary, unless specifically otherwise provided, shall promulgate all other regulations necessary to the administration of the Service, including regulations with respect to uniforms for employees, and regulations with respect to the custody, use, and preservation of the records, papers, and property of the Service.

(c) No regulations relating to qualifications for appointment of medical officers or employees shall give preference to any school of medicine.

#### USE OF SERVICE IN TIME OF WAR OR EMERGENCY

SEC. 216. [217] In time of war, or of emergency proclaimed by the President, he may utilize the Service to such extent and in such manner as shall in his judgment promote the public interest. In time of war, or of emergency involving the national defense proclaimed by the President, he may by Executive order declare the commissioned corps of the Service to be a military service. Upon such declaration, and during the period of such war or such emergency or such part thereof as the President shall prescribe, the commissioned corps (a) shall constitute a branch of the land and naval forces of the United States, (b) shall, to the extent prescribed by regulations of the President, be subject to the Uniform Code of Military Justice, and (c) shall continue to operate as part of the Service except to the extent that the President may direct as Commander in Chief.

#### NATIONAL ADVISORY COUNCILS

SEC. 217. [218] (a) Within 120 days of the date of the enactment of this subsection, the Secretary shall appoint and organize a National Advisory Council on Migrant Health (hereinafter in this subsection referred to as the Council) which shall advise, consult with, and make recommendations to, the Secretary on matters concerning the organization, operation, selection, and funding of migrant health centers and other entities under grants and contracts under section 329.<sup>8</sup>

(b) The Council shall consist of fifteen members, at least twelve of whom shall be members of the governing boards of migrant health centers or other entities assisted under section 329.<sup>8</sup> Of such twelve members who are members of such governing boards, at least nine shall be chosen from among those members of such governing boards who are being served by such centers or grantees and who are familiar with the delivery of health care to migratory agricultural workers and seasonal agricultural workers. The remaining three Council members shall be individuals qualified by training and experience in the medical sciences or in the administration of health programs.

(c) Each member of the Council shall hold office for a term of four years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (2) the terms of the members first taking office after the date of enactment of this subsection shall expire as follows: four shall expire four years after such date, four shall expire three years after such date, four shall expire two years after such date, and

<sup>8</sup>As a result of the amendments made by Public Law 104-299 (110 Stat. 3626), the Public Health Service Act no longer contained a section 329, 340, or 340A, and section 330 of such Act was substantially revised. Section 330 now includes provisions that relate to medically underserved populations, to migratory and seasonal agricultural workers, to homeless individuals, and to residents of public housing. Section 402 of Public Law 107-251 (116 Stat. 1655) added a new section 340 that relates to a healthy communities access program.

three shall expire one year after such date, as designated by the Secretary at the time of appointment.

(d) Section 1013(a) of title 5, United States Code, shall not apply to the Council.

#### TRAINING OF OFFICERS

SEC. 218. [218a] (a) Appropriations available for the pay and allowances of commissioned officers of the Service shall also be available for the pay and allowances of any such officer on active duty while attending any Federal or non-Federal educational institution or training program and, subject to regulations of the President and to the limitation prescribed in such appropriations, for payment of his tuition, fees, and other necessary expenses incident to such attendance.

(b) Any officer whose tuition, fees, and other necessary expenses are paid pursuant to subsection (a) while attending an educational institution or training program for a period in excess of thirty days shall be obligated to pay to the Service an amount equal to two times the total amount of such tuition, fees, and other necessary expenses received by such officer during such period, and two times the total amount of any compensation received by, and any allowance paid to, such officer during such period, if after return to active service such officer voluntarily leaves the Service within (1) six months, or (2) twice the period of such attendance, whichever is greater. Such subsequent period of service shall commence upon the cessation of such attendance and of any further continuous period of training duty for which no tuition and fees are paid by the Service and which is part of the officer's prescribed formal training program, whether such further training is at Service facility or otherwise. The Surgeon General may waive, in whole or in part, any payment which may be required by this subsection upon a determination that such payment would be inequitable or would not be in public interest.

(c) A commissioned officer may be placed in leave without pay status while attending an educational institution or training program whenever the Secretary determines that such status is in the best interest of the Service. For purposes of computation of basic pay, promotion, retirement, compensation for injury or death, and the benefits provided by sections 212 and 224, an officer in such status pursuant to the preceding sentence shall be considered as performing service in the Service and shall have an active service obligation as set forth in subsection (b) of this section.

#### ANNUAL AND SICK LEAVE

SEC. 219. [210–1] (a) In accordance with regulations of the President, commissioned officers of the Regular Corps and officers of the Ready Ready<sup>9</sup> Reserve Corps on active duty may be granted annual leave and sick leave without any deductions from their pay and allowances.

<sup>9</sup>The reference to "Ready Ready Reserve Corps" in subsection (a) is so in law. See amendments made by section 3214(e)(3) of P.L. 116–136 (134 Stat. 373) and section 2225(a) of P.L. 117–328 (136 Stat. 5750).

(b) The regulations described in subsection (a) may authorize accumulated annual leave of not more than 120 days for any commissioned officer of the Regular Corps or officer of the Ready Reserve Corps on active duty.

(c) For purposes of this section the term “accumulated annual leave” means unused accrued annual leave carried forward from one leave year into a succeeding leave year, and the term “accrued annual leave” means the annual leave accruing to an officer during one leave year.

#### PROMOTION CREDIT—ASSISTANT GRADE

SEC. 220. [211c] Any medical officer of the Regular Corps of the Public Health Service who—

(1)(A) was appointed to the assistant grade in the Regular Corps and whose service in such Corps has been continuous from the date of appointment or (B) may hereafter be appointed to the assistant grade in the Regular Corps, and

(2) had or will have completed a medical internship on the date of such appointment, shall be credited with one year for purposes of promotion and seniority in grade, except that no such credit shall be authorized if the officer has received or will receive similar credit for his internship under other provisions of law. In the case of an officer on active duty on the effective date of this section who is entitled to the credit authorized herein, the one year shall be added to the promotion and seniority-in-grade credits with which he is credited on such date.

#### RIGHTS, PRIVILEGES, ETC. OF OFFICERS AND SURVIVING BENEFICIARIES

SEC. 221. [213a] (a) Commissioned officers of the Service or their surviving beneficiaries are entitled to all the rights, benefits, privileges, and immunities now or hereafter provided for commissioned officers of the Army or their surviving beneficiaries under the following provisions of title 10, United States Code:

(1) Section 1036, Escorts for dependents of members: transportation and travel allowances.

(2) Chapter 61, Retirement or Separation for Physical Disability, except that sections 1201, 1202, and 1203 do not apply to commissioned officers of the Public Health Service who have been ordered to active duty for training for a period of more than 30 days.

(3) Chapter 69, Retired Grade, except sections 1370, 1374, 1375, and 1376(a).

(4) Chapter 71, Computation of Retired Pay, except formula No. 3 of section 1401.

(5) Chapter 73, Retired Serviceman’s Family Protection Plan, Survivor Benefit Plan.

(6) Chapter 75, Death Benefits.

(7) Section 2771, Final settlement of accounts: deceased members.

(8) Chapter 163, Military Claims, but only when commissioned officers of the Service are entitled to military benefits under section 212 of this Act.

(9) Section 2603, Acceptance of fellowships, scholarships, or grants.

(10) Section 2634 Motor vehicles: for members on permanent change of station.

(11) Section 1035, Deposit of savings.

(12) Section 1552, Correction of military records: claims incident thereto.

(13) Section 1553, Review of discharge or dismissal.

(14) Section 1554, Review of retirement or separation without pay for physical disability.

(15) Section 1124, Cash awards for suggestions, inventions, or scientific achievements.

(16) Section 1052, Reimbursement for adoption expenses.

(17) Section 1059, Transitional compensation and commissary and exchange benefits for dependents of members separated for dependent abuse.

(18) Section 1034, Protected Communications; Prohibition of Retaliatory Personnel Actions.

(19) Chapter 1223, Retired Pay for Non-Regular Service.

(20) Section 12601, Compensation: Reserve on active duty accepting from any person.

(21) Section 12684, Reserves: separation for absence without authority or sentence to imprisonment.

(b)(1) The authority vested by title 10, United States Code, in the “military departments”, “the Secretary concerned”, or “the Secretary of Defense” with respect to the rights, privileges, immunities, and benefits referred to in subsection (a) shall be exercised, with respect to commissioned officers of the Service, by the Secretary of Health and Human Services or the designee of such secretary.

(2) For purposes of paragraph (18) of subsection (a), the term “Inspector General” in section 1034 of such title 10 shall mean the Inspector General of the Department of Health and Human Services.

(3) For purposes of paragraph (19) of subsection (a), the terms “Military department”, “Secretary concerned”, and “Armed forces” in such title 10 shall be deemed to include, respectively, the Department of Health and Human Services, the Secretary of Health and Human Services, and the Commissioned Corps.

#### ADVISORY COUNCILS OR COMMITTEES

SEC. 222. [217a] (a) The Secretary may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, from time to time, appoint such advisory councils or committees (in addition to those authorized to be established under other provisions of law), for such periods of time, as he deems desirable with such period com-



mening on a date specified by the Secretary for the purpose of advising him in connection with any of his functions.

(b) Members of any advisory council or committee appointed under this section who are not regular full-time employees of the United States shall, while attending meetings or conferences of such council or committee or otherwise engaged on business of such council or committee receive compensation and allowances as provided in section 208(c) for members of national advisory councils established under this Act.

(c) Upon appointment of any such council or committee, the Secretary may delegate to such council or committee such advisory functions relating to grants-in-aid for research or training projects or programs, in the areas or fields with which such council or committee is concerned, as the Secretary determines to be appropriate.

#### VOLUNTEER SERVICES

SEC. 223. **[217b]** Subject to regulations, volunteer and uncompensated services may be accepted by the Secretary, or by any other officer or employee of the Department of Health and Human Services designated by him, for use in the operation of any health care facility or in the provision of health care.

#### DEFENSE OF CERTAIN MALPRACTICE AND NEGLIGENCE SUITS

SEC. 224. **[233]** (a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28, or by alternative benefits provided by the United States where the availability of such benefits precludes a remedy under section 1346(b) of title 28, for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigation, by any commissioned officer or employee of the Public Health Service while acting within the scope of his office or employment, shall be exclusive of any other civil action or proceeding by reason of the same subject-matter against the officer or employee (or his estate) whose act or omission gave rise to the claim.

(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 his estate) for any such damage or 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 him or an attested true copy thereof to his immediate superior or to whomever was designated by the Secretary to receive such papers and such persons shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

(c) Upon a certification by the Attorney General that the defendant was acting in the scope of his 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 embrac-

ing 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 United States district court determine on a hearing on a motion to remand held before a trial on the merit that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State Court: *Provided*, That where such a remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in the event the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28 and with the same effect.

(e) For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to assault or battery arising out of negligence in the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations.

(f) The Secretary or his designee may, to the extent that he deems appropriate, hold harmless or provide liability insurance for any officer or employee of the Public Health Service for damage for personal injury, including death, negligently caused by such officer or employee while acting within the scope of his office or employment and as a result of the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations, if such employee is assigned to a foreign country or detailed to a State or political subdivision thereof or to a non-profit institution, and if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 2679(b) of title 28, for such damage or injury.

(g)(1)(A) For purposes of this section and subject to the approval by the Secretary of an application under subparagraph (D), an entity described in paragraph (4), and any officer, governing board member, or employee of such an entity, and any contractor of such an entity who is a physician or other licensed or certified health care practitioner (subject to paragraph (5)), shall be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer was made under subsection (k)(3) (subject to paragraph (3)). The remedy against the United States for an entity described in paragraph (4) and any officer, governing board member, employee, or contractor (subject to paragraph (5)) of such an entity who is deemed to be an employee of the Public Health Service pursuant to this paragraph shall be exclusive of any other civil action or proceeding to the same extent as the remedy against the United States is exclusive pursuant to subsection (a).

(B) The deeming of any entity or officer, governing board member, employee, or contractor of the entity to be an employee of the

Public Health Service for purposes of this section shall apply with respect to services provided—

- (i) to all patients of the entity, and
- (ii) subject to subparagraph (C), to individuals who are not patients of the entity.

(C) Subparagraph (B)(ii) applies to services provided to individuals who are not patients of an entity if the Secretary determines, after reviewing an application submitted under subparagraph (D), that the provision of the services to such individuals—

- (i) benefits patients of the entity and general populations that could be served by the entity through community-wide intervention efforts within the communities served by such entity;
- (ii) facilitates the provision of services to patients of the entity; or
- (iii) are otherwise required under an employment contract (or similar arrangement) between the entity and an officer, governing board member, employee, or contractor of the entity.

(D) The Secretary may not under subparagraph (A) deem an entity or an officer, governing board member, employee, or contractor of the entity to be an employee of the Public Health Service for purposes of this section, and may not apply such deeming to services described in subparagraph (B)(ii), unless the entity has submitted an application for such deeming to the Secretary in such form and such manner as the Secretary shall prescribe. The application shall contain detailed information, along with supporting documentation, to verify that the entity, and the officer, governing board member, employee, or contractor of the entity, as the case may be, meets the requirements of subparagraphs (B) and (C) of this paragraph and that the entity meets the requirements of paragraphs (1) through (4) of subsection (h).

(E) The Secretary shall make a determination of whether an entity or an officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section within 30 days after the receipt of an application under subparagraph (D). The determination of the Secretary that an entity or an officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section shall apply for the period specified by the Secretary under subparagraph (A).

(F) Once the Secretary makes a determination that an entity or an officer, governing board member, employee, or contractor of an entity is deemed to be an employee of the Public Health Service for purposes of this section, the determination shall be final and binding upon the Secretary and the Attorney General and other parties to any civil action or proceeding. Except as provided in subsection (i), the Secretary and the Attorney General may not determine that the provision of services which are the subject of such a determination are not covered under this section.

(G) In the case of an entity described in paragraph (4) that has not submitted an application under subparagraph (D):

- (i) The Secretary may not consider the entity in making estimates under subsection (k)(1).

(ii) This section does not affect any authority of the entity to purchase medical malpractice liability insurance coverage with Federal funds provided to the entity under section 329, 330, or 340A.

(H) In the case of an entity described in paragraph (4) for which an application under subparagraph (D) is in effect, the entity may, through notifying the Secretary in writing, elect to terminate the applicability of this subsection to the entity. With respect to such election by the entity:

(i) The election is effective upon the expiration of the 30-day period beginning on the date on which the entity submits such notification.

(ii) Upon taking effect, the election terminates the applicability of this subsection to the entity and each officer, governing board member, employee, and contractor of the entity.

(iii) Upon the effective date for the election, clauses (i) and (ii) of subparagraph (G) apply to the entity to the same extent and in the same manner as such clauses apply to an entity that has not submitted an application under subparagraph (D).

(iv) If after making the election the entity submits an application under subparagraph (D), the election does not preclude the Secretary from approving the application (and<sup>10</sup> thereby restoring the applicability of this subsection to the entity and each officer, governing board member, employee, and contractor of the entity, subject to the provisions of this subsection and the subsequent provisions of this section.

(2) If, with respect to an entity or person deemed to be an employee for purposes of paragraph (1), a cause of action is instituted against the United States pursuant to this section, any claim of the entity or person for benefits under an insurance policy with respect to medical malpractice relating to such cause of action shall be subrogated to the United States.

(3) This subsection shall apply with respect to a cause of action arising from an act or omission which occurs on or after January 1, 1993.

(4) An entity described in this paragraph is a public or non-profit private entity receiving Federal funds under section 330.

(5) For purposes of paragraph (1), an individual may be considered a contractor of an entity described in paragraph (4) only if—

(A) the individual normally performs on average at least 32½ hours of service per week for the entity for the period of the contract; or

(B) in the case of an individual who normally performs an average of less than 32½ hours of services per week for the entity for the period of the contract, the individual is a licensed or certified provider of services in the fields of family practice, general internal medicine, general pediatrics, or obstetrics and gynecology.

(h) The Secretary may not approve an application under subsection (g)(1)(D) unless the Secretary determines that the entity—

<sup>10</sup>So in law. See section 5(a) of Public Law 104–73 (109 Stat. 779). There is no closing parenthesis.

(1) has implemented appropriate policies and procedures to reduce the risk of malpractice and the risk of lawsuits arising out of any health or health-related functions performed by the entity;

(2) has reviewed and verified the professional credentials, references, claims history, fitness, professional review organization findings, and license status of its physicians and other licensed or certified health care practitioners, and, where necessary, has obtained the permission from these individuals to gain access to this information;

(3) has no history of claims having been filed against the United States as a result of the application of this section to the entity or its officers, employees, or contractors as provided for under this section, or, if such a history exists, has fully cooperated with the Attorney General in defending against any such claims and either has taken, or will take, any necessary corrective steps to assure against such claims in the future; and

(4) will fully cooperate with the Attorney General in providing information relating to an estimate described under subsection (k).

(i)(1) Notwithstanding subsection (g)(1), the Attorney General, in consultation with the Secretary, may on the record determine, after notice and opportunity for a full and fair hearing, that an individual physician or other licensed or certified health care practitioner who is an officer, employee, or contractor of an entity described in subsection (g)(4) shall not be deemed to be an employee of the Public Health Service for purposes of this section, if treating such individual as such an employee would expose the Government to an unreasonably high degree of risk of loss because such individual—

(A) does not comply with the policies and procedures that the entity has implemented pursuant to subsection (h)(1);

(B) has a history of claims filed against him or her as provided for under this section that is outside the norm for licensed or certified health care practitioners within the same specialty;

(C) refused to reasonably cooperate with the Attorney General in defending against any such claim;

(D) provided false information relevant to the individual's performance of his or her duties to the Secretary, the Attorney General, or an applicant for or recipient of funds under this Act; or

(E) was the subject of disciplinary action taken by a State medical licensing authority or a State or national professional society.

(2) A final determination by the Attorney General under this subsection that an individual physician or other licensed or certified health care professional shall not be deemed to be an employee of the Public Health Service shall be effective upon receipt by the entity employing such individual of notice of such determination, and shall apply only to acts or omissions occurring after the date such notice is received.

(j) In the case of a health care provider who is an officer, employee, or contractor of an entity described in subsection (g)(4), section 335(e) shall apply with respect to the provider to the same extent and in the same manner as such section applies to any member of the National Health Service Corps.

(k)(1)(A) For each fiscal year, the Attorney General, in consultation with the Secretary, shall estimate by the beginning of the year the amount of all claims which are expected to arise under this section (together with related fees and expenses of witnesses) for which payment is expected to be made in accordance with section 1346 and chapter 171 of title 28, United States Code, from the acts or omissions, during the calendar year that begins during that fiscal year, of entities described in subsection (g)(4) and of officers, employees, or contractors (subject to subsection (g)(5)) of such entities.

(B) The estimate under subparagraph (A) shall take into account—

(i) the value and frequency of all claims for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by entities described in subsection (g)(4) or by officers, employees, or contractors (subject to subsection (g)(5)) of such entities who are deemed to be employees of the Public Health Service under subsection (g)(1) that, during the preceding 5-year period, are filed under this section or, with respect to years occurring before this subsection takes effect, are filed against persons other than the United States,

(ii) the amounts paid during that 5-year period on all claims described in clause (i), regardless of when such claims were filed, adjusted to reflect payments which would not be permitted under section 1346 and chapter 171 of title 28, United States Code, and

(iii) amounts in the fund established under paragraph (2) but unspent from prior fiscal years.

(2) Subject to appropriations, for each fiscal year, the Secretary shall establish a fund of an amount equal to the amount estimated under paragraph (1) that is attributable to entities receiving funds under each of the grant programs described in paragraph (4) of subsection (g), but not to exceed a total of \$10,000,000 for each such fiscal year. Appropriations for purposes of this paragraph shall be made separate from appropriations made for purposes of sections 329, 330 and 340A.

(3) In order for payments to be made for judgments against the United States (together with related fees and expenses of witnesses) pursuant to this section arising from the acts or omissions of entities described in subsection (g)(4) and of officers,<sup>11</sup> employees, or contractors (subject to subsection (g)(5)) of such entities, the total amount contained within the fund established by the Secretary under paragraph (2) for a fiscal year shall be transferred not

<sup>11</sup>Section 3(2) of Public Law 104-73 (109 Stat. 778) provides that subsection (k)(3) is amended by inserting “governing board member,” after “officer.” The amendment cannot be executed because the latter term does not appear. (Compare “officer,” and “officers.”)

later than the December 31 that occurs during the fiscal year to the appropriate accounts in the Treasury.

(1)(1) If a civil action or proceeding is filed in a State court against any entity described in subsection (g)(4) or any officer, governing board member, employee, or any contractor of such an entity for damages described in subsection (a), the Attorney General, within 15 days after being notified of such filing, shall make an appearance in such court and advise such court as to whether the Secretary has determined under subsections (g) and (h), that such entity, officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section with respect to the actions or omissions that are the subject of such civil action or proceeding. Such advice shall be deemed to satisfy the provisions of subsection (c) that the Attorney General certify that an entity, officer, governing board member, employee, or contractor of the entity was acting within the scope of their employment or responsibility.

(2) If the Attorney General fails to appear in State court within the time period prescribed under paragraph (1), upon petition of any entity or officer, governing board member, employee, or contractor of the entity named, the civil action or proceeding shall be removed to the appropriate United States district court. The civil action or proceeding shall be stayed in such court until such court conducts a hearing, and makes a determination, as to the appropriate forum or procedure for the assertion of the claim for damages described in subsection (a) and issues an order consistent with such determination.

(m)(1) An entity or officer, governing board member, employee, or contractor of an entity described in subsection (g)(1) shall, for purposes of this section, be deemed to be an employee of the Public Health Service with respect to services provided to individuals who are enrollees of a managed care plan if the entity contracts with such managed care plan for the provision of services.

(2) Each managed care plan which enters into a contract with an entity described in subsection (g)(4) shall deem the entity and any officer, governing board member, employee, or contractor of the entity as meeting whatever malpractice coverage requirements such plan may require of contracting providers for a calendar year if such entity or officer, governing board member, employee, or contractor of the entity has been deemed to be an employee of the Public Health Service for purposes of this section for such calendar year. Any plan which is found by the Secretary on the record, after notice and an opportunity for a full and fair hearing, to have violated this subsection shall upon such finding cease, for a period to be determined by the Secretary, to receive and to be eligible to receive any Federal funds under titles XVIII or XIX of the Social Security Act.

(3) For purposes of this subsection, the term “managed care plan” shall mean health maintenance organizations and similar entities that contract at-risk with payors for the provision of health services or plan enrollees and which contract with providers (such as entities described in subsection (g)(4)) for the delivery of such services to plan enrollees.

(n)(1) Not later than one year after the date of the enactment of the Federally Supported Health Centers Assistance Act of 1995, the Comptroller General of the United States shall submit to the Congress a report on the following:

(A) The medical malpractice liability claims experience of entities that have been deemed to be employees for purposes of this section.

(B) The risk exposure of such entities.

(C) The value of private sector risk-management services, and the value of risk-management services and procedures required as a condition of receiving a grant under section 329, 330, or 340A.

(D) A comparison of the costs and the benefits to taxpayers of maintaining medical malpractice liability coverage for such entities pursuant to this section, taking into account—

(i) a comparison of the costs of premiums paid by such entities for private medical malpractice liability insurance with the cost of coverage pursuant to this section; and

(ii) an analysis of whether the cost of premiums for private medical malpractice liability insurance coverage is consistent with the liability claims experience of such entities.

(2) The report under paragraph (1) shall include the following:

(A) A comparison of—

(i) an estimate of the aggregate amounts that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) would have directly or indirectly paid in premiums to obtain medical malpractice liability insurance coverage if this section were not in effect; with

(ii) the aggregate amounts by which the grants received by such entities under this Act were reduced pursuant to subsection (k)(2).

(B) A comparison of—

(i) an estimate of the amount of privately offered such insurance that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) purchased during the three-year period beginning on January 1, 1993; with

(ii) an estimate of the amount of such insurance that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) will purchase after the date of the enactment of the Federally Supported Health Centers Assistance Act of 1995.

(C) An estimate of the medical malpractice liability loss history of such entities for the 10-year period preceding October 1, 1996, including but not limited to the following:

(i) Claims that have been paid and that are estimated to be paid, and legal expenses to handle such claims that have been paid and that are estimated to be paid, by the



Federal Government pursuant to deeming entities as employees for purposes of this section.

(ii) Claims that have been paid and that are estimated to be paid, and legal expenses to handle such claims that have been paid and that are estimated to be paid, by private medical malpractice liability insurance.

(D) An analysis of whether the cost of premiums for private medical malpractice liability insurance coverage is consistent with the liability claims experience of entities that have been deemed as employees for purposes of this section.

(3) In preparing the report under paragraph (1), the Comptroller General of the United States shall consult with public and private entities with expertise on the matters with which the report is concerned.

(o)(1) For purposes of this section, a free clinic health professional shall in providing a qualifying health service to an individual, or an officer, governing board member, employee, or contractor of a free clinic shall in providing services for the free clinic, be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer was made under paragraph (6)(D). The preceding sentence is subject to the provisions of this subsection.

(2) In providing a health service to an individual, a health care practitioner shall for purposes of this subsection be considered to be a free clinic health professional if the following conditions are met:

(A) The service is provided to the individual at a free clinic, or through offsite programs or events carried out by the free clinic.

(B) The free clinic is sponsoring the health care practitioner pursuant to paragraph (5)(C).

(C) The service is a qualifying health service (as defined in paragraph (4)).

(D) Neither the health care practitioner nor the free clinic receives any compensation for the service from the individual or from any third-party payor (including reimbursement under any insurance policy or health plan, or under any Federal or State health benefits program). With respect to compliance with such condition:

(i) The health care practitioner may receive repayment from the free clinic for reasonable expenses incurred by the health care practitioner in the provision of the service to the individual.

(ii) The free clinic may accept voluntary donations for the provision of the service by the health care practitioner to the individual.

(E) Before the service is provided, the health care practitioner or the free clinic provides written notice to the individual of the extent to which the legal liability of the health care practitioner is limited pursuant to this subsection (or in the case of an emergency, the written notice is provided to the individual as soon after the emergency as is practicable). If the individual is a minor or is otherwise legally incompetent, the condition under this subparagraph is that the written notice be

provided to a legal guardian or other person with legal responsibility for the care of the individual.

(F) At the time the service is provided, the health care practitioner is licensed or certified in accordance with applicable law regarding the provision of the service.

(3)(A) For purposes of this subsection, the term “free clinic” means a health care facility operated by a nonprofit private entity meeting the following requirements:

(i) The entity does not, in providing health services through the facility, accept reimbursement from any third-party payor (including reimbursement under any insurance policy or health plan, or under any Federal or State health benefits program).

(ii) The entity, in providing health services through the facility, either does not impose charges on the individuals to whom the services are provided, or imposes a charge according to the ability of the individual involved to pay the charge.

(iii) The entity is licensed or certified in accordance with applicable law regarding the provision of health services.

(B) With respect to compliance with the conditions under subparagraph (A), the entity involved may accept voluntary donations for the provision of services.

(4) For purposes of this subsection, the term “qualifying health service” means any medical assistance required or authorized to be provided in the program under title XIX of the Social Security Act, without regard to whether the medical assistance is included in the plan submitted under such program by the State in which the health care practitioner involved provides the medical assistance. References in the preceding sentence to such program shall as applicable be considered to be references to any successor to such program.

(5) Subsection (g) (other than paragraphs (3) through (5)) and subsections (h), (i), and (l) apply to a health care practitioner for purposes of this subsection to the same extent and in the same manner as such subsections apply to an officer, governing board member, employee, or contractor of an entity described in subsection (g)(4), subject to paragraph (6) and subject to the following:

(A) The first sentence of paragraph (1) applies in lieu of the first sentence of subsection (g)(1)(A).

(B) This subsection may not be construed as deeming any free clinic to be an employee of the Public Health Service for purposes of this section.

(C) With respect to a free clinic, a health care practitioner is not a free clinic health professional unless the free clinic sponsors the health care practitioner. For purposes of this subsection, the free clinic shall be considered to be sponsoring the health care practitioner if—

(i) with respect to the health care practitioner, the free clinic submits to the Secretary an application meeting the requirements of subsection (g)(1)(D); and

(ii) the Secretary, pursuant to subsection (g)(1)(E), determines that the health care practitioner is deemed to be an employee of the Public Health Service.

(D) In the case of a health care practitioner who is determined by the Secretary pursuant to subsection (g)(1)(E) to be a free clinic health professional, this subsection applies to the health care practitioner (with respect to the free clinic sponsoring the health care practitioner pursuant to subparagraph (C)) for any cause of action arising from an act or omission of the health care practitioner occurring on or after the date on which the Secretary makes such determination.

(E) Subsection (g)(1)(F) applies to a health care practitioner for purposes of this subsection only to the extent that, in providing health services to an individual, each of the conditions specified in paragraph (2) is met.

(6)(A) For purposes of making payments for judgments against the United States (together with related fees and expenses of witnesses) pursuant to this section arising from the acts or omissions of free clinic health professionals, there is authorized to be appropriated \$10,000,000 for each fiscal year.

(B) The Secretary shall establish a fund for purposes of this subsection. Each fiscal year amounts appropriated under subparagraph (A) shall be deposited in such fund.

(C) Not later than May 1 of each fiscal year, the Attorney General, in consultation with the Secretary, shall submit to the Congress a report providing an estimate of the amount of claims (together with related fees and expenses of witnesses) that, by reason of the acts or omissions of free clinic health professionals, will be paid pursuant to this section during the calendar year that begins in the following fiscal year. Subsection (k)(1)(B) applies to the estimate under the preceding sentence regarding free clinic health professionals to the same extent and in the same manner as such subsection applies to the estimate under such subsection regarding officers, governing board members, employees, and contractors of entities described in subsection (g)(4).

(D) Not later than December 31 of each fiscal year, the Secretary shall transfer from the fund under subparagraph (B) to the appropriate accounts in the Treasury an amount equal to the estimate made under subparagraph (C) for the calendar year beginning in such fiscal year, subject to the extent of amounts in the fund.

(7)(A) This subsection takes effect on the date of the enactment of the first appropriations Act that makes an appropriation under paragraph (6)(A), except as provided in subparagraph (B)(i).

(B)(i) Effective on the date of the enactment of the Health Insurance Portability and Accountability Act of 1996—

(I) the Secretary may issue regulations for carrying out this subsection, and the Secretary may accept and consider applications submitted pursuant to paragraph (5)(C); and

(II) reports under paragraph (6)(C) may be submitted to the Congress.

(ii) For the first fiscal year for which an appropriation is made under subparagraph (A) of paragraph (6), if an estimate under subparagraph (C) of such paragraph has not been made for the calendar year beginning in such fiscal year, the transfer under subparagraph (D) of such paragraph shall be made notwithstanding

the lack of the estimate, and the transfer shall be made in an amount equal to the amount of such appropriation.

(p) ADMINISTRATION OF SMALLPOX COUNTERMEASURES BY HEALTH PROFESSIONALS.—

(1) IN GENERAL.—For purposes of this section, and subject to other provisions of this subsection, a covered person shall be deemed to be an employee of the Public Health Service with respect to liability arising out of administration of a covered countermeasure against smallpox to an individual during the effective period of a declaration by the Secretary under paragraph (2)(A).

(2) DECLARATION BY SECRETARY CONCERNING COUNTERMEASURE AGAINST SMALLPOX.—

(A) AUTHORITY TO ISSUE DECLARATION.—

(i) IN GENERAL.—The Secretary may issue a declaration, pursuant to this paragraph, concluding that an actual or potential bioterrorist incident or other actual or potential public health emergency makes advisable the administration of a covered countermeasure to a category or categories of individuals.

(ii) COVERED COUNTERMEASURE.—The Secretary shall specify in such declaration the substance or substances that shall be considered covered countermeasures (as defined in paragraph (7)(A)) for purposes of administration to individuals during the effective period of the declaration.

(iii) EFFECTIVE PERIOD.—The Secretary shall specify in such declaration the beginning and ending dates of the effective period of the declaration, and may subsequently amend such declaration to shorten or extend such effective period, provided that the new closing date is after the date when the declaration is amended.

(iv) PUBLICATION.—The Secretary shall promptly publish each such declaration and amendment in the Federal Register.

(B) LIABILITY OF UNITED STATES ONLY FOR ADMINISTRATIONS WITHIN SCOPE OF DECLARATION.—Except as provided in paragraph (5)(B)(ii), the United States shall be liable under this subsection with respect to a claim arising out of the administration of a covered countermeasure to an individual only if—

(i) the countermeasure was administered by a qualified person, for a purpose stated in paragraph (7)(A)(i), and during the effective period of a declaration by the Secretary under subparagraph (A) with respect to such countermeasure; and

(ii)(I) the individual was within a category of individuals covered by the declaration; or

(II) the qualified person administering the countermeasure had reasonable grounds to believe that such individual was within such category.

(C) PRESUMPTION OF ADMINISTRATION WITHIN SCOPE OF DECLARATION IN CASE OF ACCIDENTAL VACCINIA INOCULATION.—

(i) IN GENERAL.—If vaccinia vaccine is a covered countermeasure specified in a declaration under subparagraph (A), and an individual to whom the vaccinia vaccine is not administered contracts vaccinia, then, under the circumstances specified in clause (ii), the individual—

(I) shall be rebuttably presumed to have contracted vaccinia from an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B); and

(II) shall (unless such presumption is rebutted) be deemed for purposes of this subsection to be an individual to whom a covered countermeasure was administered by a qualified person in accordance with the terms of such declaration and as described by subparagraph (B).

(ii) CIRCUMSTANCES IN WHICH PRESUMPTION APPLIES.—The presumption and deeming stated in clause (i) shall apply if—

(I) the individual contracts vaccinia during the effective period of a declaration under subparagraph (A) or by the date 30 days after the close of such period; or

(II) the individual has resided with, or has had contact with, an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B) and contracts vaccinia after such date.

(D) ACTS AND OMISSIONS DEEMED TO BE WITHIN SCOPE OF EMPLOYMENT.—

(i) IN GENERAL.—In the case of a claim arising out of alleged transmission of vaccinia from an individual described in clause (ii), acts or omissions by such individual shall be deemed to have been taken within the scope of such individual's office or employment for purposes of—

(I) subsection (a); and

(II) section 1346(b) and chapter 171 of title 28, United States Code.

(ii) INDIVIDUALS TO WHOM DEEMING APPLIES.—An individual is described by this clause if—

(I) vaccinia vaccine was administered to such individual as provided by subparagraph (B); and

(II) such individual was within a category of individuals covered by a declaration under subparagraph (A)(i).

(3) EXHAUSTION; EXCLUSIVITY; OFFSET.—

(A) EXHAUSTION.—

(i) IN GENERAL.—A person may not bring a claim under this subsection unless such person has exhausted such remedies as are available under part C

of this title, except that if the Secretary fails to make a final determination on a request for benefits or compensation filed in accordance with the requirements of such part within 240 days after such request was filed, the individual may seek any remedy that may be available under this section.

(ii) TOLLING OF STATUTE OF LIMITATIONS.—The time limit for filing a claim under this subsection, or for filing an action based on such claim, shall be tolled during the pendency of a request for benefits or compensation under part C of this title.

(iii) CONSTRUCTION.—This subsection shall not be construed as superseding or otherwise affecting the application of a requirement, under chapter 171 of title 28, United States Code, to exhaust administrative remedies.

(B) EXCLUSIVITY.—The remedy provided by subsection (a) shall be exclusive of any other civil action or proceeding for any claim or suit this subsection encompasses, except for a proceeding under part C of this title.

(C) OFFSET.—The value of all compensation and benefits provided under part C of this title for an incident or series of incidents shall be offset against the amount of an award, compromise, or settlement of money damages in a claim or suit under this subsection based on the same incident or series of incidents.

(4) CERTIFICATION OF ACTION BY ATTORNEY GENERAL.—Subsection (c) applies to actions under this subsection, subject to the following provisions:

(A) NATURE OF CERTIFICATION.—The certification by the Attorney General that is the basis for deeming an action or proceeding to be against the United States, and for removing an action or proceeding from a State court, is a certification that the action or proceeding is against a covered person and is based upon a claim alleging personal injury or death arising out of the administration of a covered countermeasure.

(B) CERTIFICATION OF ATTORNEY GENERAL CONCLUSIVE.—The certification of the Attorney General of the facts specified in subparagraph (A) shall conclusively establish such facts for purposes of jurisdiction pursuant to this subsection.

(5) COVERED PERSON TO COOPERATE WITH UNITED STATES.—

(A) IN GENERAL.—A covered person shall cooperate with the United States in the processing and defense of a claim or action under this subsection based upon alleged acts or omissions of such person.

(B) CONSEQUENCES OF FAILURE TO COOPERATE.—Upon the motion of the United States or any other party and upon finding that such person has failed to so cooperate—

(i) the court shall substitute such person as the party defendant in place of the United States and, upon motion, shall remand any such suit to the court

in which it was instituted if it appears that the court lacks subject matter jurisdiction;

(ii) the United States shall not be liable based on the acts or omissions of such person; and

(iii) the Attorney General shall not be obligated to defend such action.

(6) RECOURSE AGAINST COVERED PERSON IN CASE OF GROSS MISCONDUCT OR CONTRACT VIOLATION.—

(A) IN GENERAL.—Should payment be made by the United States to any claimant bringing a claim under this subsection, either by way of administrative determination, settlement, or court judgment, the United States shall have, notwithstanding any provision of State law, the right to recover for that portion of the damages so awarded or paid, as well as interest and any costs of litigation, resulting from the failure of any covered person to carry out any obligation or responsibility assumed by such person under a contract with the United States or from any grossly negligent, reckless, or illegal conduct or willful misconduct on the part of such person.

(B) VENUE.—The United States may maintain an action under this paragraph against such person in the district court of the United States in which such person resides or has its principal place of business.

(7) DEFINITIONS.—As used in this subsection, terms have the following meanings:

(A) COVERED COUNTERMEASURE.—The term “covered countermeasure” or “covered countermeasure against smallpox”, means a substance that is—

(i)(I) used to prevent or treat smallpox (including the vaccinia or another vaccine); or

(II)<sup>12</sup> used to control or treat the adverse effects of vaccinia inoculation or of administration of another covered countermeasure; and

(ii) specified in a declaration under paragraph (2).

(B) COVERED PERSON.—The term “covered person”, when used with respect to the administration of a covered countermeasure, means a person who is—

(i) a manufacturer or distributor of such countermeasure;

(ii) a health care entity under whose auspices—

(I) such countermeasure was administered;

(II) a determination was made as to whether, or under what circumstances, an individual should receive a covered countermeasure;

(III) the immediate site of administration on the body of a covered countermeasure was monitored, managed, or cared for; or

(IV) an evaluation was made of whether the administration of a countermeasure was effective;

(iii) a qualified person who administered such countermeasure;

<sup>12</sup>Indentation is so in law. See section 3(e) of Public Law 108–20 (117 Stat. 647).

(iv) a State, a political subdivision of a State, or an agency or official of a State or of such a political subdivision, if such State, subdivision, agency, or official has established requirements, provided policy guidance, supplied technical or scientific advice or assistance, or otherwise supervised or administered a program with respect to administration of such countermeasures;

(v) in the case of a claim arising out of alleged transmission of vaccinia from an individual—

(I) the individual who allegedly transmitted the vaccinia, if vaccinia vaccine was administered to such individual as provided by paragraph (2)(B) and such individual was within a category of individuals covered by a declaration under paragraph (2)(A)(i); or

(II) an entity that employs an individual described by clause (I) or where such individual has privileges or is otherwise authorized to provide health care;

(vi) an official, agent, or employee of a person described in clause (i), (ii), (iii), or (iv);

(vii) a contractor of, or a volunteer working for, a person described in clause (i), (ii), or (iv), if the contractor or volunteer performs a function for which a person described in clause (i), (ii), or (iv) is a covered person; or

(viii) an individual who has privileges or is otherwise authorized to provide health care under the auspices of an entity described in clause (ii) or (v)(II).

(C) QUALIFIED PERSON.—The term “qualified person”, when used with respect to the administration of a covered countermeasure, means a licensed health professional or other individual who—

(i) is authorized to administer such countermeasure under the law of the State in which the countermeasure was administered; or

(ii) is otherwise authorized by the Secretary to administer such countermeasure.

(D) ARISING OUT OF ADMINISTRATION OF A COVERED COUNTERMEASURE.—The term “arising out of administration of a covered countermeasure”, when used with respect to a claim or liability, includes a claim or liability arising out of—

(i) determining whether, or under what conditions, an individual should receive a covered countermeasure;

(ii) obtaining informed consent of an individual to the administration of a covered countermeasure;

(iii) monitoring, management, or care of an immediate site of administration on the body of a covered countermeasure, or evaluation of whether the administration of the countermeasure has been effective; or



(iv) transmission of vaccinia virus by an individual to whom vaccinia vaccine was administered as provided by paragraph (2)(B).

(q)(1) For purposes of this section, a health professional volunteer at a deemed entity described in subsection (g)(4) shall, in providing a health professional service eligible for funding under section 330 to an individual, be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer was made under paragraph (4)(C). The preceding sentence is subject to the provisions of this subsection.

(2) In providing a health service to an individual, a health care practitioner shall for purposes of this subsection be considered to be a health professional volunteer at an entity described in subsection (g)(4) if the following conditions are met:

(A) The service is provided to the individual at the facilities of an entity described in subsection (g)(4), or through off-site programs or events carried out by the entity.

(B) The entity is sponsoring the health care practitioner pursuant to paragraph (3)(B).

(C) The health care practitioner does not receive any compensation for the service from the individual, the entity described in subsection (g)(4), or any third-party payer (including reimbursement under any insurance policy or health plan, or under any Federal or State health benefits program), except that the health care practitioner may receive repayment from the entity described in subsection (g)(4) for reasonable expenses incurred by the health care practitioner in the provision of the service to the individual, which may include travel expenses to or from the site of services.

(D) Before the service is provided, the health care practitioner or the entity described in subsection (g)(4) posts a clear and conspicuous notice at the site where the service is provided of the extent to which the legal liability of the health care practitioner is limited pursuant to this subsection.

(E) At the time the service is provided, the health care practitioner is licensed or certified in accordance with applicable Federal and State laws regarding the provision of the service.

(F) At the time the service is provided, the entity described in subsection (g)(4) maintains relevant documentation certifying that the health care practitioner meets the requirements of this subsection.

(3) Subsection (g) (other than paragraphs (3) and (5)) and subsections (h), (i), and (l) apply to a health care practitioner for purposes of this subsection to the same extent and in the same manner as such subsections apply to an officer, governing board member, employee, or contractor of an entity described in subsection (g)(4), subject to paragraph (4), and subject to the following:

(A) The first sentence of paragraph (1) applies in lieu of the first sentence of subsection (g)(1)(A).

(B) With respect to an entity described in subsection (g)(4), a health care practitioner is not a health professional volunteer at such entity unless the entity sponsors the health care prac-

tioner. For purposes of this subsection, the entity shall be considered to be sponsoring the health care practitioner if—

(i) with respect to the health care practitioner, the entity submits to the Secretary an application meeting the requirements of subsection (g)(1)(D); and

(ii) the Secretary, pursuant to subsection (g)(1)(E), determines that the health care practitioner is deemed to be an employee of the Public Health Service.

(C) In the case of a health care practitioner who is determined by the Secretary pursuant to subsection (g)(1)(E) to be a health professional volunteer at such entity, this subsection applies to the health care practitioner (with respect to services performed on behalf of the entity sponsoring the health care practitioner pursuant to subparagraph (B)) for any cause of action arising from an act or omission of the health care practitioner occurring on or after the date on which the Secretary makes such determination.

(D) Subsection (g)(1)(F) applies to a health care practitioner for purposes of this subsection only to the extent that, in providing health services to an individual, each of the conditions specified in paragraph (2) is met.

(4)(A) Amounts in the fund established under subsection (k)(2) shall be available for transfer under subparagraph (C) for purposes of carrying out this subsection.

(B)(i) Not later than May 1 of each fiscal year, the Attorney General, in consultation with the Secretary, shall submit to the Congress a report providing an estimate of the amount of claims (together with related fees and expenses of witnesses) that, by reason of the acts or omissions of health professional volunteers, will be paid pursuant to this section during the calendar year that begins in the following fiscal year.

(ii) Subsection (k)(1)(B) applies to the estimate under clause (i) regarding health professional volunteers to the same extent and in the same manner as such subsection applies to the estimate under such subsection regarding officers, governing board members, employees, and contractors of entities described in subsection (g)(4).

(iii) The report shall include a summary of the data relied upon for the estimate in clause (i), including the number of claims filed and paid from the previous calendar year.

(C) Not later than December 31 of each fiscal year, the Secretary shall transfer from the fund under subsection (k)(2) to the appropriate accounts in the Treasury an amount equal to the estimate made under subparagraph (B) for the calendar year beginning in such fiscal year, subject to the extent of amounts in the fund.

(5)(A) This subsection shall take effect on October 1, 2017, except as provided in subparagraph (B) and paragraph (6).

(B) Effective on the date of the enactment of this subsection—

(i) the Secretary may issue regulations for carrying out this subsection, and the Secretary may accept and consider applications submitted pursuant to paragraph (3)(B); and

(ii) reports under paragraph (4)(B) may be submitted to Congress.

(6) Beginning on October 1, 2022, this subsection shall cease to have any force or effect.

**SEC. 225. [234] HEALTH CARE PROFESSIONALS ASSISTING DURING A PUBLIC HEALTH EMERGENCY.**

(a) **LIMITATION ON LIABILITY.**—Notwithstanding any other provision of law, a health care professional who is a member of the Medical Reserve Corps under section 2813 or who is included in the Emergency System for Advance Registration of Volunteer Health Professionals under section 319I and who—

(1) is responding—

(A) to a public health emergency determined under section 319(a), during the initial period of not more than 90 days (as determined by the Secretary) of the public health emergency determination (excluding any period covered by a renewal of such determination); or

(B) to a major disaster or an emergency as declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) or under section 201 of the National Emergencies Act (50 U.S.C. 1621) during the initial period of such declaration;

(2) is alleged to be liable for an act or omission—

(A) during the initial period of a determination or declaration described in paragraph (1) and related to the treatment of individuals in need of health care services due to such public health emergency, major disaster, or emergency;

(B) in the State or States for which such determination or declaration is made;

(C) in the health care professional's capacity as a member of the Medical Reserve Corps or a professional included in the Emergency System for Advance Registration of Volunteer Health Professionals under section 319I; and

(D) in the course of providing services that are within the scope of the license, registration, or certification of the professional, as defined by the State of licensure, registration, or certification; and

(3) prior to the rendering of such act or omission, was authorized by the State's authorization of deploying such State's Emergency System for Advance Registration of Volunteer Health Professionals described in section 319I or the Medical Reserve Corps established under section 2813, to provide health care services,

shall be subject only to the State liability laws of the State in which such act or omission occurred, in the same manner and to the same extent as a similar health care professional who is a resident of such State would be subject to such State laws, except with respect to the licensure, registration, and certification of such individual.

(b) **VOLUNTEER PROTECTION ACT.**—Nothing in this section shall be construed to affect an individual's right to protections under the Volunteer Protection Act of 1997.

(c) **PREEMPTION.**—This section shall supersede the laws of any State that would subject a health care professional described in

subsection (a) to the liability laws of any State other than the State liability laws to which such individual is subject pursuant to such subsection.

(d) DEFINITIONS.—In this section:

(1) The term “health care professional” means an individual licensed, registered, or certified under Federal or State laws or regulations to provide health care services.

(2) The term “health care services” means any services provided by a health care professional, or by any individual working under the supervision of a health care professional, that relate to—

(A) the diagnosis, prevention, or treatment of any human disease or impairment; or

(B) the assessment or care of the health of human beings.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—This section shall take effect 90 days after the date of the enactment of the Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2019.

(2) APPLICATION.—This section shall apply to a claim for harm only if the act or omission that caused such harm occurred on or after the effective date described in paragraph (1).

#### ADMINISTRATION OF GRANTS IN CERTAIN MULTIGRANT PROJECTS

SEC. 226. [235] For the purpose of facilitating the administration of, and expediting the carrying out of the purposes of, the programs established by titles VII, VIII, and IX, and sections 304, 314(a), 314(b), 314(c), 314(d), and 314(e) of this Act in situations in which grants are sought or made under two or more of such programs with respect to a single project, the Secretary is authorized to promulgate regulations—

(1) under which the administrative functions under such programs with respect to such project will be performed by a single administrative unit which is the administrative unit charged with the administration of any of such programs or is the administrative unit charged with the supervision of two or more of such programs;

(2) designed to reduce the number of applications, reports, and other materials required under such programs to be submitted with respect to such project, and otherwise to simplify, consolidate, and make uniform (to the extent feasible), the data and information required to be contained in such applications, reports, and other materials; and

(3) under which inconsistent or duplicative requirements imposed by such programs will be revised and made uniform with respect to such project;

except that nothing in this section shall be construed to authorize the Secretary to waive or suspend, with respect to any such project, any requirement with respect to any of such programs if such requirement is imposed by law or by any regulation required by law.

## ORPHAN PRODUCTS BOARD

SEC. 227. [236] (a) There is established in the Department of Health and Human Services a board for the development of drugs (including biologics) and devices (including diagnostic products) for rare diseases or conditions to be known as the Orphan Products Board. The Board shall be comprised of the Assistant Secretary for Health of the Department of Health and Human Services and representatives, selected by the Secretary, of the Food and Drug Administration, the National Institutes of Health, the Centers for Disease Control and Prevention, and any other Federal department or agency which the Secretary determines has activities relating to drugs and devices for rare diseases or conditions. The Assistant Secretary for Health shall chair the Board.

(b) The function of the Board shall be to promote the development of drugs and devices for rare diseases or conditions and the coordination among Federal, other public, and private agencies in carrying out their respective functions relating to the development of such articles, such diseases or conditions.

(c) In the case of drugs for rare diseases or conditions the Board shall—

(1) evaluate—

(A) the effect of subchapter B of the Federal Food, Drug, and Cosmetic Act on the development of such drugs, and

(B) the implementation of such subchapter;<sup>13</sup>

(2) evaluate the activities of the National Institutes of Health for the development of drugs for such diseases or conditions,

(3) assure appropriate coordination among the Food and Drug Administration, the National Institutes of Health and the Centers for Disease Control and Prevention in the carrying out of their respective functions relating to the development of drugs for such diseases or conditions to assure that the activities of each agency are complementary.

(4) assure appropriate coordination among all interested Federal agencies, manufacturers, and organizations representing patients, in their activities relating to such drugs,

(5) with the consent of the sponsor of a drug for a rare disease or condition exempt under section 505(i) of the Federal Food, Drug, and Cosmetic Act or regulations issued under such section, inform physicians and the public respecting the availability of such drug for such disease or condition and inform physicians and the public respecting the availability of drugs approved under section 505(c) of such Act or licensed under section 351 of this Act for rare diseases or conditions,

(6) seek business entities and others to undertake the sponsorship of drugs for rare diseases or conditions, seek investigators to facilitate the development of such drugs, and seek business entities to participate in the distribution of such drugs, and

<sup>13</sup> So in law. The semicolon probably should be a comma.

(7) recognize the efforts of public and private entities and individuals in seeking the development of drugs for rare diseases or conditions and in developing such drugs.

(d) The Board shall consult with interested persons respecting the activities of the Board under this section and as part of such consultation shall provide the opportunity for the submission of oral views.

(e) The Board shall submit to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives an annual report—

(1) identifying the drugs which have been designated under section 526 of the Federal Food, Drug, and Cosmetic Act for a rare disease or condition,

(2) describing the activities of the Board, and

(3) containing the results of the evaluations carried out by the Board.

The Director of the National Institutes of Health shall submit to the Board for inclusion in the annual report a report on the rare disease and condition research activities of the Institutes of the National Institutes of Health; the Secretary of the Treasury shall submit to the Board for inclusion in the annual report a report on the use of the credit against tax provided by section 44H of the Internal Revenue Code of 1954; and the Secretary of Health and Human Services shall submit to the Board for inclusion in the annual report a report on the program of assistance under section 5 of the Orphan Drug Act for the development of drugs for rare diseases and conditions. Each annual report shall be submitted by June 1 of each year for the preceding calendar year.

SILVIO O. CONTE SENIOR BIOMEDICAL RESEARCH AND BIOMEDICAL  
PRODUCT ASSESSMENT SERVICE

SEC. 228. [237] (a)(1) There shall be in the Public Health Service a Silvio O. Conte Senior Biomedical Research and Biomedical Product Assessment Service (in this section referred to as the “Service”), not to exceed 2,000 members, the purpose of which is to recruit and retain outstanding and qualified scientific and technical experts in the fields of biomedical research, clinical research evaluation, and biomedical product assessment.

(2) The authority established in paragraph (1) may not be construed to require the Secretary to reduce the number of employees serving under any other employment system in order to offset the number of members serving in the Service.

(3) The Secretary shall assign experts under this section to agencies within the Department of Health and Human Services taking into account the need for the expertise of such expert.

(b) The Service shall be appointed by the Secretary without regard to the provisions of title 5, United States Code, regarding appointment, and shall consist of individuals outstanding in the field of biomedical research, clinical research evaluation, or biomedical product assessment. No individual may be appointed to the Service unless such individual (1) has earned a doctoral level degree in biomedicine or a related field, or a doctoral or master’s level degree in engineering, bioinformatics, or a related or emerging field, and

(2) meets the qualification standards prescribed by the Office of Personnel Management for appointment to a position at GS-15 of the General Schedule. Notwithstanding any previous applicability to an individual who is a member of the Service, the provisions of subchapter I of chapter 35 (relating to retention preference), chapter 43 (relating to performance appraisal and performance actions), chapter 51 (relating to classification), subchapter III of chapter 53 (relating to General Schedule pay rates), and chapter 75 (relating to adverse actions) of title 5, United States Code, shall not apply to any member of the Service.

(c) The Secretary shall develop a performance appraisal system designed to—

(1) provide for the systematic appraisal of the performance of members, and

(2) encourage excellence in performance by members.

(d)(1) The Secretary shall determine, subject to the provisions of this subsection, the pay of members of the Service.

(2) The pay of a member of the Service shall not be less than the minimum rate payable for GS-15 of the General Schedule and shall not exceed the amount of annual compensation (excluding expenses) specified in section 102 of title 3, United States Code.

(e) Subject to the following sentence, the Secretary may, notwithstanding the provisions of title 5, United States Code, regarding appointment, appoint an individual who is separated from the Service involuntarily and without cause to a position in the competitive civil service at GS-15 of the General Schedule, and such appointment shall be a career appointment. In the case of such an individual who immediately prior to his appointment to the Service was not a career appointee in the civil service or the Senior Executive Service, such appointment shall be in the excepted civil service and may not exceed a period of 2 years.

(f) The Secretary shall promulgate such rules and regulations, not inconsistent with this section, as may be necessary for the efficient administration of the Service.

**SEC. 229.<sup>14</sup> [237a] HEALTH AND HUMAN SERVICES OFFICE ON WOMEN'S HEALTH.**

(a) **ESTABLISHMENT OF OFFICE.**—There is established within the Office of the Secretary, an Office on Women's Health (referred to in this section as the "Office"). The Office shall be headed by a Deputy Assistant Secretary for Women's Health who may report to the Secretary.

(b) **DUTIES.**—The Secretary, acting through the Office, with respect to the health concerns of women, shall—

(1) establish short-range and long-range goals and objectives within the Department of Health and Human Services and, as relevant and appropriate, coordinate with other appropriate offices on activities within the Department that relate to disease prevention, health promotion, service delivery, re-

<sup>14</sup> Section 3509 of the Patient Protection and Affordable Care Act (Public Law 111-148, enacted March 23, 2010) established offices of women's health in the Office of the Secretary of HHS (this section), the Centers for Disease Control and Prevention (section 310A of this Act), the Agency for Healthcare Research and Quality (section 925 of this Act), the Health Resources and Services Administration (section 713 of the Social Security Act), and the Food and Drug Administration (section 1011 of the Federal Food, Drug, and Cosmetic Act).

search, and public and health care professional education, for issues of particular concern to women throughout their life-span;

(2) provide expert advice and consultation to the Secretary concerning scientific, legal, ethical, and policy issues relating to women's health;

(3) monitor the Department of Health and Human Services' offices, agencies, and regional activities regarding women's health and identify needs regarding the coordination of activities, including intramural and extramural multidisciplinary activities;

(4) establish a Department of Health and Human Services Coordinating Committee on Women's Health, which shall be chaired by the Deputy Assistant Secretary for Women's Health and composed of senior level representatives from each of the agencies and offices of the Department of Health and Human Services;

(5) establish a National Women's Health Information Center to—

(A) facilitate the exchange of information regarding matters relating to health information, health promotion, preventive health services, research advances, and education in the appropriate use of health care;

(B) facilitate access to such information;

(C) assist in the analysis of issues and problems relating to the matters described in this paragraph; and

(D) provide technical assistance with respect to the exchange of information (including facilitating the development of materials for such technical assistance);

(6) coordinate efforts to promote women's health programs and policies with the private sector; and

(7) through publications and any other means appropriate, provide for the exchange of information between the Office and recipients of grants, contracts, and agreements under subsection (c), and between the Office and health professionals and the general public.

(c) GRANTS AND CONTRACTS REGARDING DUTIES.—

(1) AUTHORITY.—In carrying out subsection (b), the Secretary may make grants to, and enter into cooperative agreements, contracts, and interagency agreements with, public and private entities, agencies, and organizations.

(2) EVALUATION AND DISSEMINATION.—The Secretary shall directly or through contracts with public and private entities, agencies, and organizations, provide for evaluations of projects carried out with financial assistance provided under paragraph (1) and for the dissemination of information developed as a result of such projects.

(d) REPORTS.—Not later than 1 year after the date of enactment of this section, and every second year thereafter, the Secretary shall prepare and submit to the appropriate committees of Congress a report describing the activities carried out under this section during the period for which the report is being prepared.

(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated



such sums as may be necessary for each of the fiscal years 2010 through 2014.

#### PART B—MISCELLANEOUS PROVISIONS

##### GIFTS

SEC. 231. [238] (a) The Secretary is authorized to accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Service or for the carrying out of any of its functions. Conditional gifts may be so accepted if recommended by the Surgeon General, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, but no gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from the income thereof unless such expenditure has been approved by Act of Congress.

(b) Any unconditional gift of money accepted, pursuant to the authority granted in subsection (a) of this section, the net proceeds from the liquidation (pursuant to subsection (c) or subsection (d) of this section) of any other property so accepted, and the proceeds of insurance on any such gift property not used for its restoration, shall be deposited in the Treasury of the United States and are hereby appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of the Service, and he may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Such gifts and the income from such investments shall be available for expenditure in the operation of the Service and the performance of its functions, subject to the same examination and audit as is provided for appropriations made for the Service by Congress.

(c) The evidences of any unconditional gift of intangible personal property, other than money, accepted pursuant to the authority granted in subsection (a) of this section shall be deposited with the Secretary of the Treasury and he, in his discretion, may hold them, or liquidate them except that they shall be liquidated upon the request of the Secretary, whenever necessary to meet payments required in the operation of the Service or the performance of its functions. The proceeds and income from any such property held by the Secretary of the Treasury shall be available for expenditure as is provided in subsection (b) of this section.

(d) The Secretary shall hold any real property or any tangible personal property accepted unconditionally pursuant to the authority granted in subsection (a) of this section and he shall permit such property to be used for the operation of the Service and the performance of its functions or he may lease or hire such property, and may insure such property, and deposit the income thereof with the Secretary of the Treasury to be available for expenditure as provided in subsection (b) of this section: *Provided*, That the income from any such real property or tangible personal property shall be available for expenditure in the discretion of the Secretary for the maintenance, preservation, or repair and insurance of such property and that any proceeds from insurance may be used to restore the property insured. Any such property when not required

for the operation of the Service or the performance of its functions may be liquidated by the Secretary, and the proceeds thereof deposited with the Secretary of the Treasury, whenever in his judgment the purposes of the gifts will be served thereby.

#### USE OF IMMIGRATION STATION HOSPITALS

SEC. 232. [238a] The Immigration and Naturalization Service may, by agreement of the heads of the departments concerned, permit the Public Health Service to use hospitals at immigration stations for the care of Public Health Service patients. The Surgeon General shall reimburse the Immigration and Naturalization Service for the actual cost of furnishing fuel, light, water, telephone, and similar supplies and services, which reimbursement shall be covered into the proper Immigration and Naturalization Service appropriation, or such costs may be paid from working funds established as provided by law, but no charge shall be made for the expense of physical upkeep of the hospitals. The Immigration and Naturalization Service shall reimburse the Surgeon General for the care and treatment of persons detained in hospitals of the Public Health Service at the request of the Immigration and Naturalization Service unless such persons are entitled to care and treatment under section 322(a).<sup>15</sup>

#### MONEY COLLECTED FOR CARE OF PATIENTS

SEC. 233. [238b] Money collected as provided by law for expenses incurred in the care and treatment of foreign seamen, and money received for the care and treatment of pay patients, including any amounts received from any executive department on account of care and treatment of pay patients, shall be covered into the appropriation from which the expenses of such care and treatment were paid.

#### TRANSPORTATION OF REMAINS OF OFFICERS

SEC. 234. [238c] Appropriations available for traveling expenses of the Service shall be available for meeting the cost of preparation for burial and of transportation to the place of burial of remains of commissioned officers, and of personnel specified in regulations, who die in line of duty. Appropriations available for carrying out the provisions of this Act shall also be available for the payment of such expenses relating to the recovery, care, and disposition of the remains of personnel or their dependents as may be authorized under other provisions of law.

#### GRANTS TO FEDERAL INSTITUTIONS

SEC. 235. [238d] Appropriations to the Public Health Service available under this Act for research, training, or demonstration project grants or for grants to expand existing treatment and research programs and facilities for alcoholism, narcotic addiction,

<sup>15</sup> Subsection (a) of section 322 was repealed by section 986 of Public Law 97-35, and the Public Law redesignated former subsection (c) as subsection (a). Section 232 (above) was enacted before this repeal and redesignation. Current section 322(a) authorizes the treatment and care of certain persons. (Section 232 was originally enacted as section 502, and was subsequently redesignated by Public Laws 98-24, 99-660, 100-690, and 103-43.)

drug abuse, and drug dependence and appropriations under title VI of the Mental Health Systems Act shall also be available, on the same terms and conditions as apply to non-Federal institutions, for grants for the same purpose to Federal institutions, except that grants to such Federal institutions may be funded at 100 per centum of the costs.

#### TRANSFER OF FUNDS

SEC. 236. [238e] For the purpose of any reorganization under section 202, the Secretary, with the approval of the Director of the Bureau of the Budget,<sup>16</sup> is authorized to make such transfers of funds between appropriations as may be necessary for the continuance of transferred functions.

#### AVAILABILITY OF APPROPRIATIONS

SEC. 237. [238f] Appropriations for carrying out the purposes of this Act shall be available for expenditure for personal services and rent at the seat of Government; books of reference, periodicals, and exhibits; printing and binding; transporting in Government-owned automotive equipment, to and from school, children of personnel who have quarters for themselves and their families at stations determined by the Surgeon General to be isolated stations; expenses incurred in pursuing, identifying, and returning prisoners who escape from any hospital, institution, or station of the Service or from the custody of any officer or employee of the Service, including rewards for the capture of such prisoners; furnishing, repairing, and cleaning such wearing apparel as may be prescribed by the Surgeon General for use by employees in the performance of their official duties; reimbursing officers and employees, subject to regulations of the Administrator, for the cost of repairing or replacing their personal belongings damaged or destroyed by patients while such officers or employees are engaged in the performance of their official duties; and maintenance of buildings of the National Institutes of Health.

#### UNAUTHORIZED WEARING OF UNIFORMS

SEC. 238. [238g] Except as may be authorized by regulations of the President, the insignia and uniform of commissioned officers of the Service, or any distinctive part of such insignia or uniform, or any insignia or uniform any part of which is similar to a distinctive part thereof, shall not be worn, after the promulgation of such regulations, by any person other than a commissioned officer of the Service.

#### BIANNUAL REPORT

SEC. 239. [238h] The Surgeon General shall transmit to the Secretary, for submission to the Congress, on January 1, 1995, and on January 1, every 2 years thereafter, a full report of the administration of the functions of the Service under this Act, including a detailed statement of receipts and disbursements.

<sup>16</sup>Now the Office of Management and Budget.

## MEMORIALS AND OTHER ACKNOWLEDGMENTS

SEC. 240. [238i] The Secretary may provide for suitably acknowledging, within the Department (whether by memorials, designations, or other suitable acknowledgments), (1) efforts of persons who have contributed substantially to the health of the Nation and (2) gifts for use in activities of the Department related to health.

## EVALUATION OF PROGRAMS

SEC. 241. [238j] (a) IN GENERAL.—Such portion as the Secretary shall determine, but not less than 0.2 percent nor more than 1 percent, of any amounts appropriated for programs authorized under this Act shall be made available for the evaluation (directly, or by grants of contracts) of the implementation and effectiveness of such programs.

(b) REPORT ON EVALUATIONS.—Not later than February 1 of each year, the Secretary shall prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report summarizing the findings of the evaluations conducted under subsection (a).

## CONTRACT AUTHORITY

SEC. 242. [238k] The authority of the Secretary to enter into contracts under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

## RECOVERY

SEC. 243. [238l] (a) If any facility with respect to which funds have been paid under the Community Mental Health Centers Act (as such Act was in effect prior to October 1, 1981) is, at any time within twenty years after the completion of remodeling, construction, or expansion or after the date of its acquisition—

(1) sold or transferred to any entity (A) which would not have been qualified to file an application under section 222 of such Act (as such section was in effect prior to October 1, 1981) or (B) which is disapproved as a transferee by the State mental health agency or by another entity designated by the chief executive officer of the State, or

(2) ceases to be used by a community mental health center in the provision of comprehensive mental health services, the United States shall be entitled to recover from the transferor, transferee, or owner of the facility, the base amount prescribed by subsection (c)(1) plus the interest (if any) prescribed by subsection (c)(2).

(b) The transferor and transferee of a facility that is sold or transferred as described in subsection (a)(1), or the owner of a facility the use of which changes as described in subsection (a)(2), shall provide the Secretary written notice of such sale, transfer, or change within 10 days after the date on which such sale, transfer, or cessation of use occurs or within 30 days after the date of enactment of this subsection, whichever is later.

(c)(1) The base amount that the United States is entitled to recover under subsection (a) is the amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district in which the facility is situated) of so much of the facility as constituted an approved project or projects as the amount of the Federal participation bore to the cost of the remodeling, construction, expansion, or acquisition of the project or projects.

(2)(A) The interest that the United States is entitled to recover under subsection (a) is the interest for the period (if any) described in subparagraph (B) at a rate (determined by the Secretary) based on the average of the bond equivalent rates of ninety-one-day Treasury bills auctioned during that period.

(B) The period referred to in subparagraph (A) is the period beginning—

(i) if notice is provided as prescribed by subsection (b), 191 days after the date on which such sale, transfer, or cessation of use occurs, or

(ii) if notice is not provided as prescribed by subsection (b), 11 days after such sale, transfer, or cessation of use occurs, and ending on the date the amount the United States is entitled to recover is collected.

(d) The Secretary may waive the recovery rights of the United States under subsection (a) with respect to a facility (under such conditions as the Secretary may establish by regulation) if the Secretary determines that there is good cause for waiving such rights.

(e) The right of recovery of the United States under subsection (a) shall not, prior to judgment, constitute a lien on any facility.

#### USE OF FISCAL AGENTS

SEC. 244. [238m] (a) The Secretary may enter into contracts with fiscal agents—

(1)(A) to determine the amounts payable to persons who, on behalf of the Indian Health Service, furnish health services to eligible Indians,

(B) to determine the amounts payable to persons who, on behalf of the Public Health Service, furnish health services to individuals pursuant to section 319 or 322,

(2) to receive, disburse, and account for funds in making payments described in paragraph (1),

(3) to make such audits of records as may be necessary to assure that these payments are proper, and

(4) to perform such additional functions as may be necessary to carry out the functions described in paragraphs (1) through (3).

(b)(1) Contracts under subsection (a) may be entered into without regard to section 3709 of the Revised Statutes (41 U.S.C. 5) or any other provision of law requiring competition.

(2) No such contract shall be entered into with an entity unless the Secretary finds that the entity will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent.

(c) A contract under subsection (a) may provide for advances of funds to enable entities to make payments under the contract.

(d) Subsections (d) and (e) of section 1842 of the Social Security Act shall apply to contracts with entities under subsection (a) in the same manner as they apply to contracts with carriers under that section.

(e) In this section, the term “fiscal agent” means a carrier described in section 1842(f)(1) of the Social Security Act and includes, with respect to contracts under subsection (a)(1)(A), an Indian tribe or tribal organization acting under contract with the Secretary under the Indian Self-Determination Act (Public Law 93–638).

ABORTION-RELATED DISCRIMINATION IN GOVERNMENTAL ACTIVITIES  
REGARDING TRAINING AND LICENSING OF PHYSICIANS

SEC. 245. [238n] (a) IN GENERAL.—The Federal Government, and any State or local government that receives Federal financial assistance, may not subject any health care entity to discrimination on the basis that—

(1) the entity refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions;

(2) the entity refuses to make arrangements for any of the activities specified in paragraph (1); or

(3) the entity attends (or attended) a post-graduate physician training program, or any other program of training in the health professions, that does not (or did not) perform induced abortions or require, provide or refer for training in the performance of induced abortions, or make arrangements for the provision of such training.

(b) ACCREDITATION OF POSTGRADUATE PHYSICIAN TRAINING PROGRAMS.—

(1) IN GENERAL.—In determining whether to grant a legal status to a health care entity (including a license or certificate), or to provide such entity with financial assistance, services or other benefits, the Federal Government, or any State or local government that receives Federal financial assistance, shall deem accredited any postgraduate physician training program that would be accredited but for the accrediting agency’s reliance upon an accreditation standards<sup>17</sup> that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training, regardless of whether such standard provides exceptions or exemptions. The government involved shall formulate such regulations or other mechanisms, or enter into such agreements with accrediting agencies, as are necessary to comply with this subsection.

(2) RULES OF CONSTRUCTION.—

(A) IN GENERAL.—With respect to subclauses (I) and (II) of section 705(a)(2)(B)(i) (relating to a program of insured loans for training in the health professions), the requirements in such subclauses regarding accredited intern-

<sup>17</sup> So in law. Probably should read “standard”.

ship or residency programs are subject to paragraph (1) of this subsection.

(B) EXCEPTIONS.—This section shall not—

(i) prevent any health care entity from voluntarily electing to be trained, to train, or to arrange for training in the performance of, to perform, or to make referrals for induced abortions; or

(ii) prevent an accrediting agency or a Federal, State or local government from establishing standards of medical competency applicable only to those individuals who have voluntarily elected to perform abortions.

(c) DEFINITIONS.—For purposes of this section:

(1) The term “financial assistance”, with respect to a government program, includes governmental payments provided as reimbursement for carrying out health-related activities.

(2) The term “health care entity” includes an individual physician, a postgraduate physician training program, and a participant in a program of training in the health professions.

(3) The term “postgraduate physician training program” includes a residency training program.

**SEC. 246. [238o] RESTRICTION ON USE OF FUNDS FOR ASSISTED SUICIDE, EUTHANASIA, AND MERCY KILLING.**

Appropriations for carrying out the purposes of this Act shall not be used in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997.<sup>18</sup>

**RECOMMENDATIONS AND GUIDELINES REGARDING AUTOMATED EXTERNAL DEFIBRILLATORS FOR FEDERAL BUILDINGS**

**SEC. 247. [238p] (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.

<sup>18</sup>Public Law 105–12 (111 Stat. 23).

(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 the date of the enactment of the Cardiac Arrest Survival Act of 2000.

(e) DEFINITIONS.—For purposes of this section:

(1) The term “automated external defibrillator device” has the meaning given such term in section 248.

(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.

#### LIABILITY REGARDING EMERGENCY USE OF AUTOMATED EXTERNAL DEFIBRILLATORS

SEC. 248. [238q] (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 224; or

(ii) sections 1346(b), 2672, and 2679 of title 28, United States Code, 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 applica-

ble 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;

(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.

#### PART C—SMALLPOX EMERGENCY PERSONNEL PROTECTION

##### SEC. 261. [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 224(p).

(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 specialties;

(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 the enactment of this part).

(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 262, 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 262)—

(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 by the Secretary establishes procedures to ensure, consistent with the Declaration and any applicable guidelines of the Centers for Disease Control and Prevention, that—

(1) potential participants are educated with respect to contraindications, the voluntary nature of the program, and the availability of potential benefits and compensation under this part;

(2) there is voluntary screening provided to potential participants that can identify health conditions relevant to contraindications; and

(3) there is appropriate post-inoculation medical surveillance that includes an evaluation of adverse health effects that may reasonably appear to be due to such vaccine and prompt referral of, or the provision of appropriate information to, any individual requiring health care as a result of such adverse health event.

**SEC. 262. [239a] DETERMINATION OF ELIGIBILITY AND BENEFITS.**

(a) **IN GENERAL.**—The Secretary shall establish procedures for determining, as applicable with respect to an individual—

(1) whether the individual is an eligible individual;

(2) whether an eligible individual has sustained a covered injury or injuries for which medical benefits or compensation may be available under sections 264 and 265, and the amount of such benefits or compensation; and

(3) whether the covered injury or injuries of an eligible individual caused the individual’s death for purposes of benefits under section 266.

(b) **COVERED INDIVIDUALS.**—The Secretary may accept a certification, by a Federal, State, or local government entity or private health care entity participating in the administration of covered countermeasures under the Declaration, that an individual is a covered individual.

(c) **CRITERIA FOR REIMBURSEMENT.**—

(1) **INJURIES SPECIFIED IN INJURY TABLE.**—In any case where an injury or other adverse effect specified in the injury table established under section 263 as a known effect of a vaccine manifests in an individual within the time period specified in such table, such injury or other effect shall be presumed to have resulted from administration of such vaccine.

(2) **OTHER DETERMINATIONS.**—In making determinations other than those described in paragraph (1) as to the causation or severity of an injury, the Secretary shall employ a prepon-

derance of the evidence standard and take into consideration all relevant medical and scientific evidence presented for consideration, and may obtain and consider the views of qualified medical experts.

(d) DEADLINE FOR FILING REQUEST.—The Secretary shall not consider any request for a benefit under this part with respect to an individual, unless—

(1) in the case of a request based on the administration of the vaccine to the individual, the individual files with the Secretary an initial request for benefits or compensation under this part not later than one year after the date of administration of the vaccine; or

(2) in the case of a request based on accidental vaccinia inoculation, the individual files with the Secretary an initial request for benefits or compensation under this part not later than two years after the date of the first symptom or manifestation of onset of the adverse effect.

(e) STRUCTURED SETTLEMENTS AT SECRETARY'S OPTION.—In any case in which there is a reasonable likelihood that compensation or payment under section 264, 265, or 266(b) will be required for a period in excess of one year from the date an individual is determined eligible for such compensation or payment, the Secretary shall have the discretion to make a lump-sum payment, purchase an annuity or medical insurance policy, or execute an appropriate structured settlement agreement, provided that such payment, annuity, policy, or agreement is actuarially determined to have a value equal to the present value of the projected total amount of benefits or compensation that the individual is eligible to receive under such section or sections.

(f) REVIEW OF DETERMINATION.—

(1) SECRETARY'S REVIEW AUTHORITY.—The Secretary may review a determination under this section at any time on the Secretary's own motion or on application, and may affirm, vacate, or modify such determination in any manner the Secretary deems appropriate. The Secretary shall develop a process by which an individual may file a request for reconsideration of any determination made by the Secretary under this section.

(2) JUDICIAL AND ADMINISTRATIVE REVIEW.—No court of the United States, or of any State, District, territory or possession thereof, shall have subject matter jurisdiction to review, whether by mandamus or otherwise, any action by the Secretary under this section. No officer or employee of the United States shall review any action by the Secretary under this section (unless the President specifically directs otherwise).

#### **SEC. 263. [239b] SMALLPOX VACCINE INJURY TABLE.**

(a) <sup>19</sup> SMALLPOX VACCINE INJURY TABLE.—

(1) ESTABLISHMENT REQUIRED.—The Secretary shall establish by interim final regulation a table identifying adverse effects (including injuries, disabilities, illnesses, conditions, and

<sup>19</sup> Subsection (a) designation so in law. Section 263 does not contain a subsection (b). See the amendment made by section 2 of Public Law 108–20 (117 Stat. 638, 641), which added a new part C to title II.

deaths) that shall be presumed to result from the administration of (or exposure to) a smallpox vaccine, and the time period in which the first symptom or manifestation of onset of each such adverse effect must manifest in order for such presumption to apply.

(2) AMENDMENTS.—The Secretary may by regulation amend the table established under paragraph (1). An amendment to the table takes effect on the date of the promulgation of the final rule that makes the amendment, and applies to all requests for benefits or compensation under this part that are filed on or after such date or are pending as of such date. In addition, the amendment applies retroactively to an individual who was not with respect to the injury involved an eligible individual under the table as in effect before the amendment but who with respect to such injury is an eligible individual under the table as amended. With respect to a request for benefits or compensation under this part by an individual who becomes an eligible individual as described in the preceding sentence, the Secretary may not provide such benefits or compensation unless the request (or amendment to a request, as applicable) is filed before the expiration of one year after the effective date of the amendment to the table in the case of an individual to whom the vaccine was administered and before the expiration of two years after such effective date in the case of a request based on accidental vaccinia inoculation.

**SEC. 264. [239c] MEDICAL BENEFITS.**

(a) IN GENERAL.—Subject to the succeeding provisions of this section, the Secretary shall make payment or reimbursement for medical items and services as reasonable and necessary to treat a covered injury of an eligible individual, including the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.

(b) BENEFITS SECONDARY TO OTHER COVERAGE.—Payment or reimbursement for services or benefits under subsection (a) shall be secondary to any obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer) under any other provision of law or contractual agreement, to pay for or provide such services or benefits.

**SEC. 265. [239d] COMPENSATION FOR LOST EMPLOYMENT INCOME.**

(a) IN GENERAL.—Subject to the succeeding provisions of this section, the Secretary shall provide compensation to an eligible individual for loss of employment income (based on such income at the time of injury) incurred as a result of a covered injury, at the rate specified in subsection (b).

(b) AMOUNT OF COMPENSATION.—

(1) IN GENERAL.—Compensation under subsection (a) shall be at the rate of 66⅔ percent of the relevant pay period (weekly, monthly, or otherwise), except as provided in paragraph (2).

(2) AUGMENTED COMPENSATION FOR DEPENDENTS.—If an eligible individual has one or more dependents, the basic com-

pensation for loss of employment income as described in paragraph (1) shall be augmented at the rate of  $8\frac{1}{3}$  percent.

(3) CONSIDERATION OF OTHER PROGRAMS.—

(A) IN GENERAL.—The Secretary may consider the provisions of sections 8114, 8115, and 8146a of title 5, United States Code, and any implementing regulations, in determining the amount of payment under subsection (a) and the circumstances under which such payments are reasonable and necessary.

(B) MINORS.—With respect to an eligible individual who is a minor, the Secretary may consider the provisions of section 8113 of title 5, United States Code, and any implementing regulations, in determining the amount of payment under subsection (a) and the circumstances under which such payments are reasonable and necessary.

(4) TREATMENT OF SELF-EMPLOYMENT INCOME.—For purposes of this section, the term “employment income” includes income from self-employment.

(c) LIMITATIONS.—

(1) BENEFITS SECONDARY TO OTHER COVERAGE.—

(A) IN GENERAL.—Any compensation under subsection (a) shall be secondary to the obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer), under any other law or contractual agreement, to pay compensation for loss of employment income or to provide disability or retirement benefits.

(B) RELATION TO OTHER OBLIGATIONS.—Compensation under subsection (a) shall not be made to an eligible individual to the extent that the total of amounts paid to the individual under such subsection and under the other obligations referred to in subparagraph (A) is an amount that exceeds the rate specified in subsection (b)(1). If under any such other obligation a lump-sum payment is made, such payment shall, for purposes of this paragraph, be deemed to be received over multiple years rather than received in a single year. The Secretary may, in the discretion of the Secretary, determine how to apportion such payment over multiple years.

(2) NO BENEFITS IN CASE OF DEATH.—No payment shall be made under subsection (a) in compensation for loss of employment income subsequent to the receipt, by the survivor or survivors of an eligible individual, of benefits under section 266 for death.

(3) LIMIT ON TOTAL BENEFITS.—

(A) IN GENERAL.—Except as provided in subparagraph

(B)—

(i) total compensation paid to an individual under subsection (a) shall not exceed \$50,000 for any year; and

(ii) the lifetime total of such compensation for the individual may not exceed an amount equal to the amount authorized to be paid under section 266.

(B) **PERMANENT AND TOTAL DISABILITY.**—The limitation under subparagraph (A)(ii) does not apply in the case of an eligible individual who is determined to have a covered injury or injuries meeting the definition of disability in section 216(i) of the Social Security Act (42 U.S.C. 416(i)).

(4) **WAITING PERIOD.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), an eligible individual shall not be provided compensation under this section for the first 5 work days of loss of employment income.

(B) **EXCEPTION.**—Subparagraph (A) does not apply if the period of loss of employment income of an eligible individual is 10 or more work days.

(5) **TERMINATION OF BENEFITS.**—No payment shall be made under subsection (a) in compensation for loss of employment income once the eligible individual involved reaches the age of 65.

(d) **BENEFIT IN ADDITION TO MEDICAL BENEFITS.**—A benefit under subsection (a) shall be in addition to any amounts received by an eligible individual under section 264.

**SEC. 266. [239e] PAYMENT FOR DEATH.**

(a) **DEATH BENEFIT.**—

(1) **IN GENERAL.**—The Secretary shall pay, in the case of an eligible individual whose death is determined to have resulted from a covered injury or injuries, a death benefit in the amount determined under paragraph (2) to the survivor or survivors in the same manner as death benefits are paid pursuant to the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) with respect to an eligible deceased (except that in the case of an eligible individual who is a minor with no living parent, the legal guardian shall be considered the survivor in the place of the parent).

(2) **BENEFIT AMOUNT.**—

(A) **IN GENERAL.**—The amount of the death benefit under paragraph (1) in a fiscal year shall equal the amount of the comparable benefit calculated under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) in such fiscal year, without regard to any reduction attributable to a limitation on appropriations, but subject to subparagraph (B).

(B) **REDUCTION FOR PAYMENTS FOR LOST EMPLOYMENT INCOME.**—The amount of the benefit as determined under subparagraph (A) shall be reduced by the total amount of any benefits paid under section 265 with respect to lost employment income.

(3) **LIMITATIONS.**—

(A) **IN GENERAL.**—No benefit is payable under paragraph (1) with respect to the death of an eligible individual if—



(i) a disability benefit is paid with respect to such individual under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.); or

(ii) a death benefit is paid or payable with respect to such individual under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.).

(B) EXCEPTION IN THE CASE OF A LIMITATION ON APPROPRIATIONS FOR DISABILITY BENEFITS UNDER PSOB.—In the event that disability benefits available to an eligible individual under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) are reduced because of a limitation on appropriations, and such reduction would affect the amount that would be payable under subparagraph (A) without regard to this subparagraph, benefits shall be available under paragraph (1) to the extent necessary to ensure that the survivor or survivors of such individual receives a total amount equal to the amount described in paragraph (2).

(b) ELECTION IN CASE OF DEPENDENTS.—

(1) IN GENERAL.—In the case of an eligible individual whose death is determined to have resulted from a covered injury or injuries, if the individual had one or more dependents under the age of 18, the legal guardian of the dependents may, in lieu of the death benefit under subsection (a), elect to receive on behalf of the aggregate of such dependents payments in accordance with this subsection. An election under the preceding sentence is effective in lieu of a request under subsection (a) by an individual who is not the legal guardian of such dependents.

(2) AMOUNT OF PAYMENTS.—Payments under paragraph (1) with respect to an eligible individual described in such paragraph shall be made as if such individual were an eligible individual to whom compensation would be paid under subsection (a) of section 265, with the rate augmented in accordance with subsection (b)(2) of such section and with such individual considered to be an eligible individual described in subsection (c)(3)(B) of such section.

(3) LIMITATIONS.—

(A) AGE OF DEPENDENTS.—No payments may be made under paragraph (1) once the youngest of the dependents involved reaches the age of 18.

(B) BENEFITS SECONDARY TO OTHER COVERAGE.—

(i) IN GENERAL.—Any payment under paragraph (1) shall be secondary to the obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer), under any other law or contractual agreement, to pay compensation for loss of employment income or to provide disability benefits, retirement benefits, life

insurance benefits on behalf of dependents under the age of 18, or death benefits.

(ii) **RELATION TO OTHER OBLIGATIONS.**—Payments under paragraph (1) shall not be made to with respect to an eligible individual to the extent that the total of amounts paid with respect to the individual under such paragraph and under the other obligations referred to in clause (i) is an amount that exceeds the rate of payment that applies under paragraph (2). If under any such other obligation a lump-sum payment is made, such payment shall, for purposes of this subparagraph, be deemed to be received over multiple years rather than received in a single year. The Secretary may, in the discretion of the Secretary, determine how to apportion such payment over multiple years.

(c) **BENEFIT IN ADDITION TO MEDICAL BENEFITS.**—A benefit under subsection (a) or (b) shall be in addition to any amounts received by an eligible individual under section 264.

**SEC. 267. [239f] ADMINISTRATION.**

(a) **ADMINISTRATION BY AGREEMENT WITH OTHER AGENCY OR AGENCIES.**—The Secretary may administer any or all of the provisions of this part through Memorandum of Agreement with the head of any appropriate Federal agency.

(b) **REGULATIONS.**—The head of the agency administering this part or provisions thereof (including any agency head administering such Act or provisions through a Memorandum of Agreement under subsection (a)) may promulgate such implementing regulations as may be found necessary and appropriate. Initial implementing regulations may be interim final regulations.

**SEC. 268. [239g] AUTHORIZATION OF APPROPRIATIONS.**

For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2007, to remain available until expended, including administrative costs and costs of provision and payment of benefits. The Secretary's payment of any benefit under section 264, 265, or 266 shall be subject to the availability of appropriations under this section.

**SEC. 269. [239h] RELATIONSHIP TO OTHER LAWS.**

Except as explicitly provided herein, nothing in this part shall be construed to override or limit any rights an individual may have to seek compensation, benefits, or redress under any other provision of Federal or State law.

## **PART D—UNITED STATES PUBLIC HEALTH SCIENCES TRACK**

**SEC. 271. [239i] ESTABLISHMENT.**

(a) **UNITED STATES PUBLIC HEALTH SERVICES TRACK.**—

(1) **IN GENERAL.**—There is hereby authorized to be established a United States Public Health Sciences Track (referred to in this part as the "Track"), at sites to be selected by the

Secretary, with authority to grant appropriate advanced degrees in a manner that uniquely emphasizes team-based service, public health, epidemiology, and emergency preparedness and response. It shall be so organized as to graduate not less than—

(A) 150 medical students annually, 10 of whom shall be awarded studentships to the Uniformed Services University of Health Sciences;

(B) 100 dental students annually;

(C) 250 nursing students annually;

(D) 100 public health students annually;

(E) 100 behavioral and mental health professional students annually;

(F) 100 physician assistant or nurse practitioner students annually; and

(G) 50 pharmacy students annually.

(2) LOCATIONS.—The Track shall be located at existing and accredited, affiliated health professions education training programs at academic health centers located in regions of the United States determined appropriate by the Surgeon General, in consultation with the National Health Care Workforce Commission established in section 5101 of the Patient Protection and Affordable Care Act.

(b) NUMBER OF GRADUATES.—Except as provided in subsection (a), the number of persons to be graduated from the Track shall be prescribed by the Secretary. In so prescribing the number of persons to be graduated from the Track, the Secretary shall institute actions necessary to ensure the maximum number of first-year enrollments in the Track consistent with the academic capacity of the affiliated sites and the needs of the United States for medical, dental, and nursing personnel.

(c) DEVELOPMENT.—The development of the Track may be by such phases as the Secretary may prescribe subject to the requirements of subsection (a).

(d) INTEGRATED LONGITUDINAL PLAN.—The Surgeon General shall develop an integrated longitudinal plan for health professions continuing education throughout the continuum of health-related education, training, and practice. Training under such plan shall emphasize patient-centered, interdisciplinary, and care coordination skills. Experience with deployment of emergency response teams shall be included during the clinical experiences.

(e) FACULTY DEVELOPMENT.—The Surgeon General shall develop faculty development programs and curricula in decentralized venues of health care, to balance urban, tertiary, and inpatient venues.

#### **SEC. 272. [239I-1] ADMINISTRATION.**

(a) IN GENERAL.—The business of the Track shall be conducted by the Surgeon General with funds appropriated for and provided by the Department of Health and Human Services. The National Health Care Workforce Commission shall assist the Surgeon General in an advisory capacity.

(b) FACULTY.—

(1) IN GENERAL.—The Surgeon General, after considering the recommendations of the National Health Care Workforce Commission, shall obtain the services of such professors, instructors, and administrative and other employees as may be necessary to operate the Track, but utilize when possible, existing affiliated health professions training institutions. Members of the faculty and staff shall be employed under salary schedules and granted retirement and other related benefits prescribed by the Secretary so as to place the employees of the Track faculty on a comparable basis with the employees of fully accredited schools of the health professions within the United States.

(2) TITLES.—The Surgeon General may confer academic titles, as appropriate, upon the members of the faculty.

(3) NONAPPLICATION OF PROVISIONS.—The limitations in section 5373 of title 5, United States Code, shall not apply to the authority of the Surgeon General under paragraph (1) to prescribe salary schedules and other related benefits.

(c) AGREEMENTS.—The Surgeon General may negotiate agreements with agencies of the Federal Government to utilize on a reimbursable basis appropriate existing Federal medical resources located in the United States (or locations selected in accordance with section 271(a)(2)). Under such agreements the facilities concerned will retain their identities and basic missions. The Surgeon General may negotiate affiliation agreements with accredited universities and health professions training institutions in the United States. Such agreements may include provisions for payments for educational services provided students participating in Department of Health and Human Services educational programs.

(d) PROGRAMS.—The Surgeon General may establish the following educational programs for Track students:

(1) Postdoctoral, postgraduate, and technological programs.

(2) A cooperative program for medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, and nursing students.

(3) Other programs that the Surgeon General determines necessary in order to operate the Track in a cost-effective manner.

(e) CONTINUING MEDICAL EDUCATION.—The Surgeon General shall establish programs in continuing medical education for members of the health professions to the end that high standards of health care may be maintained within the United States.

(f) AUTHORITY OF THE SURGEON GENERAL.—

(1) IN GENERAL.—The Surgeon General is authorized—

(A) to enter into contracts with, accept grants from, and make grants to any nonprofit entity for the purpose of carrying out cooperative enterprises in medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, and nursing research, consultation, and education;

(B) to enter into contracts with entities under which the Surgeon General may furnish the services of such professional, technical, or clerical personnel as may be nec-

essary to fulfill cooperative enterprises undertaken by the Track;

(C) to accept, hold, administer, invest, and spend any gift, devise, or bequest of personal property made to the Track, including any gift, devise, or bequest for the support of an academic chair, teaching, research, or demonstration project;

(D) to enter into agreements with entities that may be utilized by the Track for the purpose of enhancing the activities of the Track in education, research, and technological applications of knowledge; and

(E) to accept the voluntary services of guest scholars and other persons.

(2) **LIMITATION.**—The Surgeon General may not enter into any contract with an entity if the contract would obligate the Track to make outlays in advance of the enactment of budget authority for such outlays.

(3) **SCIENTISTS.**—Scientists or other medical, dental, or nursing personnel utilized by the Track under an agreement described in paragraph (1) may be appointed to any position within the Track and may be permitted to perform such duties within the Track as the Surgeon General may approve.

(4) **VOLUNTEER SERVICES.**—A person who provides voluntary services under the authority of subparagraph (E) of paragraph (1) shall be considered to be an employee of the Federal Government for the purposes of chapter 81 of title 5, relating to compensation for work-related injuries, and to be an employee of the Federal Government for the purposes of chapter 171 of title 28, relating to tort claims. Such a person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purpose by reason of the provision of such services.

#### **SEC. 273. [2391-2] STUDENTS; SELECTION; OBLIGATION.**

(a) **STUDENT SELECTION.**—

(1) **IN GENERAL.**—Medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, and nursing students at the Track shall be selected under procedures prescribed by the Surgeon General. In so prescribing, the Surgeon General shall consider the recommendations of the National Health Care Workforce Commission.

(2) **PRIORITY.**—In developing admissions procedures under paragraph (1), the Surgeon General shall ensure that such procedures give priority to applicant medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, and nursing students from rural communities and underrepresented minorities.

(b) **CONTRACT AND SERVICE OBLIGATION.**—

(1) **CONTRACT.**—Upon being admitted to the Track, a medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, or nursing student shall enter into a written contract with the Surgeon General that shall contain—

(A) an agreement under which—

(i) subject to subparagraph (B), the Surgeon General agrees to provide the student with tuition (or tuition remission) and a student stipend (described in paragraph (2)) in each school year for a period of years (not to exceed 4 school years) determined by the student, during which period the student is enrolled in the Track at an affiliated or other participating health professions institution pursuant to an agreement between the Track and such institution; and

(ii) subject to subparagraph (B), the student agrees—

(I) to accept the provision of such tuition and student stipend to the student;

(II) to maintain enrollment at the Track until the student completes the course of study involved;

(III) while enrolled in such course of study, to maintain an acceptable level of academic standing (as determined by the Surgeon General);

(IV) if pursuing a degree from a school of medicine or osteopathic medicine, dental, public health, or nursing school or a physician assistant, pharmacy, or behavioral and mental health professional program, to complete a residency or internship in a specialty that the Surgeon General determines is appropriate; and

(V) to serve for a period of time (referred to in this part as the “period of obligated service”) within the Commissioned Corps of the Public Health Service equal to 2 years for each school year during which such individual was enrolled at the College, reduced as provided for in paragraph (3);

(B) a provision that any financial obligation of the United States arising out of a contract entered into under this part and any obligation of the student which is conditioned thereon, is contingent upon funds being appropriated to carry out this part;

(C) a statement of the damages to which the United States is entitled for the student’s breach of the contract; and

(D) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with the provisions of this part.

(2) TUITION AND STUDENT STIPEND.—

(A) TUITION REMISSION RATES.—The Surgeon General, based on the recommendations of the National Health Care Workforce Commission, shall establish Federal tuition remission rates to be used by the Track to provide reimbursement to affiliated and other participating health professions institutions for the cost of educational services provided by such institutions to Track students. The agreement entered into by such participating institutions under paragraph (1)(A)(i) shall contain an agreement to accept as

payment in full the established remission rate under this subparagraph.

(B) STIPEND.—The Surgeon General, based on the recommendations of the National Health Care Workforce Commission, shall establish and update Federal stipend rates for payment to students under this part.

(3) REDUCTIONS IN THE PERIOD OF OBLIGATED SERVICE.—The period of obligated service under paragraph (1)(A)(ii)(V) shall be reduced—

(A) in the case of a student who elects to participate in a high-needs speciality residency (as determined by the National Health Care Workforce Commission), by 3 months for each year of such participation (not to exceed a total of 12 months); and

(B) in the case of a student who, upon completion of their residency, elects to practice in a Federal medical facility (as defined in section 781(e)) that is located in a health professional shortage area (as defined in section 332), by 3 months for year of full-time practice in such a facility (not to exceed a total of 12 months).

(c) SECOND 2 YEARS OF SERVICE.—During the third and fourth years in which a medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, or nursing student is enrolled in the Track, training should be designed to prioritize clinical rotations in Federal medical facilities in health professional shortage areas, and emphasize a balance of hospital and community-based experiences, and training within interdisciplinary teams.

(d) DENTIST, PHYSICIAN ASSISTANT, PHARMACIST, BEHAVIORAL AND MENTAL HEALTH PROFESSIONAL, PUBLIC HEALTH PROFESSIONAL, AND NURSE TRAINING.—The Surgeon General shall establish provisions applicable with respect to dental, physician assistant, pharmacy, behavioral and mental health, public health, and nursing students that are comparable to those for medical students under this section, including service obligations, tuition support, and stipend support. The Surgeon General shall give priority to health professions training institutions that train medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, and nursing students for some significant period of time together, but at a minimum have a discrete and shared core curriculum.

(e) ELITE FEDERAL DISASTER TEAMS.—The Surgeon General, in consultation with the Secretary, the Director of the Centers for Disease Control and Prevention, and other appropriate military and Federal government agencies, shall develop criteria for the appointment of highly qualified Track faculty, medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, and nursing students, and graduates to elite Federal disaster preparedness teams to train and to respond to public health emergencies, natural disasters, bioterrorism events, and other emergencies.

(f) STUDENT DROPPED FROM TRACK IN AFFILIATE SCHOOL.—A medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, or nursing student who, under regu-

lations prescribed by the Surgeon General, is dropped from the Track in an affiliated school for deficiency in conduct or studies, or for other reasons, shall be liable to the United States for all tuition and stipend support provided to the student.

**SEC. 274. [239I-3] FUNDING.**

Beginning with fiscal year 2010, the Secretary shall transfer from the Public Health and Social Services Emergency Fund such sums as may be necessary to carry out this part.