

posed by such placement are warranted by the proposed plan of treatment.

(Added Pub. L. 112–81, div. A, title VII, § 711(a)(1), Dec. 31, 2011, 125 Stat. 1475, § 1090a; renumbered § 1090b and amended Pub. L. 117–81, div. A, title VII, §§ 701(c)(1)(A), 704, Dec. 27, 2021, 135 Stat. 1778, 1780; Pub. L. 118–31, div. A, title VII, § 705, title XVIII, § 1801(a)(14), Dec. 22, 2023, 137 Stat. 300, 684.)

### Editorial Notes

#### REFERENCES IN TEXT

The Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (e)(1)(C)(ii), is Pub. L. 104–191, Aug. 21, 1996, 110 Stat. 1936. For complete classification of this Act to the Code, see Short Title of 1996 Amendments note set out under section 201 of Title 42, The Public Health and Welfare, and Tables.

#### AMENDMENTS

2023—Subsec. (e)(1). Pub. L. 118–31, § 705(1), inserted “described in paragraph (3)” after “member of the armed forces” in introductory provisions.

Subsec. (e)(1)(B)(ii). Pub. L. 118–31, § 1801(a)(14), substituted “ensuring” for “ensure”.

Subsec. (e)(3). Pub. L. 118–31, § 705(2), added par. (3).

2021—Pub. L. 117–81, § 701(c)(1)(A), renumbered section 1090a of this title as this section.

Subsec. (c). Pub. L. 117–81, § 704(1), inserted “or is required to make such a referral pursuant to the process described in subsection (e)(1)(A)” after “mental health evaluation” in introductory provisions.

Subsecs. (e) to (g). Pub. L. 117–81, § 704(2), (3), added subsecs. (e) and (f) and redesignated former subsec. (e) as (g).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2021 AMENDMENT

Transfer of section by section 701(c)(1)(A) of Pub. L. 117–81 effective Oct. 1, 2022, see section 701(d) of Pub. L. 117–81, set out as a note under section 1079 of this title.

#### CONFIDENTIALITY REQUIREMENTS FOR MENTAL HEALTH CARE SERVICES FOR MEMBERS OF THE ARMED FORCES

Pub. L. 117–263, div. A, title VII, § 704, Dec. 23, 2022, 136 Stat. 2648, provided that:

“(a) IN GENERAL.—In order to reinforce the policies of eliminating stigma in obtaining mental health care services and further encouraging help-seeking behavior by members of the Armed Forces, not later than July 1, 2023, the Secretary of Defense shall—

“(1) update and reissue Department of Defense Instruction 6490.08, titled ‘Command Notification Requirements to Dispel Stigma in Providing Mental Health Care to Service Members’ and issued on August 17, 2011, taking into account—

“(A) experience implementing the Instruction; and

“(B) opportunities to more effectively dispel stigma in obtaining mental health care services and encourage help-seeking behavior; and

“(2) develop standards within the Department of Defense that—

“(A) ensure, except in a case in which there is an exigent circumstance, the confidentiality of mental health care services provided to members who voluntarily seek such services;

“(B) include a model for making determinations with respect to exigent circumstances that clarifies the responsibilities regarding the determination of the effect on military function and the prevention of self-harm by the individual; and

“(C) in a case in which there is an exigent circumstance, prevent health care providers from disclosing more than the minimum amount of infor-

mation necessary to address the exigent circumstance.

“(b) ELEMENTS.—The standards required by subsection (a)(2) shall include the following elements:

“(1) Requirements for confidentiality regarding the request and receipt by a member of the Armed Forces of mental health care services under the self-initiated referral process under section 1090a(e) [sic; probably should be “section 1090b(e)”] of title 10, United States Code.

“(2) Requirements for confidentiality regarding the results of any drug testing incident to such mental health care services.

“(3) Procedures that reflect best practices of the mental health profession with respect to suicide prevention.

“(4) A prohibition against retaliating against a member of the Armed Forces who requests mental health care services.

“(5) Such other elements as the Secretary determines will most effectively support the policies of—

“(A) eliminating stigma in obtaining mental health care services; and

“(B) encouraging help-seeking behavior by members of the Armed Forces.

“(c) JOINT POLICY WITH THE SECRETARY OF VETERANS AFFAIRS.—

“(1) IN GENERAL.—Not later than July 1, 2023, the Secretary of Defense and the Secretary of Veterans Affairs shall issue a joint policy that provides, except in a case in which there is an exigent circumstance, for the confidentiality of mental health care services provided by the Secretary of Veterans Affairs to members of the Armed Forces, including the reserve components, under section 1712A, 1720F, 1720H, or 1789 of title 38, United States Code, or other applicable law.

“(2) ELEMENTS.—The joint policy issued under paragraph (1) shall, to the extent practicable, include standards comparable to the standards developed under subsection (a)(2).

“(d) REPORT.—Not later than July 1, 2023, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a copy of the standards developed under subsection (a)(2) and the joint policy issued under subsection (c).

“(e) EXIGENT CIRCUMSTANCE DEFINED.—In this section, the term ‘exigent circumstance’ means a circumstance in which the Secretary of Defense determines the need to prevent serious harm to an individual or essential military function clearly outweighs the need for confidentiality of information obtained by a health care provider incident to mental health care services voluntarily sought by a member of the Armed Forces.”

### § 1091. Personal services contracts

(a) AUTHORITY.—(1) The Secretary of Defense, with respect to medical treatment facilities of the Department of Defense, and the Secretary of Homeland Security, with respect to medical treatment facilities of the Coast Guard when the Coast Guard is not operating as a service in the Navy, may enter into personal services contracts to carry out health care responsibilities in such facilities, as determined to be necessary by the Secretary. The authority provided in this subsection is in addition to any other contract authorities of the Secretary, including authorities relating to the management of such facilities and the administration of this chapter.

(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may also enter into personal services contracts to carry out other health care

responsibilities of the Secretary (such as the provision of medical screening examinations at Military Entrance Processing Stations) at locations outside medical treatment facilities, as determined necessary pursuant to regulations prescribed by the Secretary.

(b) **LIMITATION ON AMOUNT OF COMPENSATION.**—In no case may the total amount of compensation paid to an individual in any year under a personal services contract entered into under subsection (a) exceed the amount of annual compensation (excluding the allowances for expenses) specified in section 102 of title 3.

(c) **PROCEDURES.**—(1) The Secretary shall establish by regulation procedures for entering into personal services contracts with individuals under subsection (a). At a minimum, such procedures shall assure—

(A) the provision of adequate notice of contract opportunities to individuals residing in the area of the medical treatment facility involved; and

(B) consideration of interested individuals solely on the basis of the qualifications established for the contract and the proposed contract price.

(2) Upon the establishment of the procedures under paragraph (1), the Secretary may exempt contracts covered by this section from the competitive contracting requirements specified in section 2304<sup>1</sup> of this title or any other similar requirements of law.

(3) The procedures established under paragraph (1) may provide for a contracting officer to authorize a contractor to enter into a sub-contract for personal services on behalf of the agency upon a determination that the sub-contract is—

(A) consistent with the requirements of this section and the procedures established under paragraph (1); and

(B) in the best interests of the agency.

(d) **EXCEPTIONS.**—The procedures and exemptions provided under subsection (c) shall not apply to personal services contracts entered into under subsection (a) with entities other than individuals or to any contract that is not an authorized personal services contract under subsection (a).

(Added Pub. L. 98-94, title IX, §932(a)(1), Sept. 24, 1983, 97 Stat. 649; amended Pub. L. 101-510, div. A, title VII, §714, Nov. 5, 1990, 104 Stat. 1584; Pub. L. 103-160, div. A, title VII, §712(a)(1), Nov. 30, 1993, 107 Stat. 1688; Pub. L. 104-106, div. A, title VII, §733(a), Feb. 10, 1996, 110 Stat. 381; Pub. L. 105-85, div. A, title VII, §736(a), Nov. 18, 1997, 111 Stat. 1814; Pub. L. 105-261, div. A, title VII, §733(a), Oct. 17, 1998, 112 Stat. 2072; Pub. L. 106-398, §1 [div. A], title VII, §705], Oct. 30, 2000, 114 Stat. 1654, 1654A-175; Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107-314, div. A, title VII, §707, Dec. 2, 2002, 116 Stat. 2585; Pub. L. 108-136, div. A, title VII, §721, Nov. 24, 2003, 117 Stat. 1531; Pub. L. 112-239, div. A, title VII, §713(b), Jan. 2, 2013, 126 Stat. 1803; Pub. L. 116-283, div. A, title XVIII, §1883(b)(2), Jan. 1, 2021, 134 Stat. 4294.)

<sup>1</sup> See References in Text note below.

## Editorial Notes

### REFERENCES IN TEXT

Section 2304 of this title, referred to in subsec. (c)(2), was repealed by Pub. L. 116-283, div. A, title XVIII, §§1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law. Subsecs. (a) to (f) of section 2304 were transferred to various provisions in chapter 221 of this title, with the same effective date and conditions, by Pub. L. 116-283, div. A, title XVIII, §1811(c)(2)-(5), (d)(2)-(9), Jan. 1, 2021, 134 Stat. 4165-4170.

### AMENDMENTS

2021—Subsec. (c)(2). Pub. L. 116-283, which directed that each reference in the text of title 10 to a section that was redesignated by title XVIII of Pub. L. 116-283, as such section was in effect before the redesignation, be amended by striking such reference and inserting a reference to the appropriate redesignated section, was not executed with respect to “section 2304”, which was redesignated as multiple sections.

2013—Subsec. (c)(3). Pub. L. 112-239 added par. (3).

2003—Subsec. (a)(2). Pub. L. 108-136 struck out at end “The Secretary may not enter into a contract under this paragraph after December 31, 2003.”

2002—Subsec. (a). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation” in two places.

Subsec. (a)(2). Pub. L. 107-314 substituted “December 31, 2003” for “December 31, 2002”.

2000—Subsec. (a)(2). Pub. L. 106-398 substituted “December 31, 2002” for “December 31, 2000”.

1998—Subsec. (a)(2). Pub. L. 105-261 substituted “December 31, 2000” for “the end of the one-year period beginning on the date of the enactment of this paragraph”.

1997—Subsec. (a). Pub. L. 105-85 designated existing provisions as par. (1) and added par. (2).

1996—Subsec. (a). Pub. L. 104-106 inserted “, with respect to medical treatment facilities of the Department of Defense, and the Secretary of Transportation, with respect to medical treatment facilities of the Coast Guard when the Coast Guard is not operating as a service in the Navy,” after “Secretary of Defense” and substituted “such facilities” for “medical treatment facilities of the Department of Defense”.

1993—Pub. L. 103-160 substituted “Personal services contracts” for “Contracts for direct health care providers” in section catchline and amended text generally. Prior to amendment, text read as follows:

“(a) The Secretary concerned may contract with persons for services (including personal services) for the provision of direct health care services determined by the Secretary concerned to be required for the purposes of this chapter.

“(b) A person with whom the Secretary contracts under this section for the provision of direct health care services under this chapter may be compensated at a rate prescribed by the Secretary concerned, but at a rate not greater than the rate of basic pay, special and incentive pays and bonuses, and allowances authorized by chapters 3, 5, and 7 of title 37 for a commissioned officer with comparable professional qualifications in pay grade O-6 with 26 or more years of service computed under section 205 of such title.”

1990—Subsec. (b). Pub. L. 101-510 substituted “basic pay, special and incentive pays and bonuses, and allowances authorized by chapters 3, 5, and 7 of title 37 for a commissioned officer with comparable professional qualifications” for “basic pay and allowances authorized by chapters 3 and 7 of title 37 for a commissioned officer”.

## Statutory Notes and Related Subsidiaries

### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1883(b)(2) of Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for de-

layed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

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

#### EFFECTIVE DATE

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

#### ACQUISITION STRATEGY FOR HEALTH CARE PROFESSIONAL STAFFING SERVICES

Pub. L. 114-328, div. A, title VII, §727(a)-(c), Dec. 23, 2016, 130 Stat. 2232, 2233, provided that:

##### “(a) ACQUISITION STRATEGY.—

“(1) IN GENERAL.—The Secretary of Defense shall develop and carry out a performance-based, strategic sourcing acquisition strategy with respect to entering into contracts for the services of health care professional staff at military medical treatment facilities located in a State.

“(2) ELEMENTS.—The acquisition strategy under paragraph (1) shall include the following:

“(A) Except as provided by subparagraph (B), a requirement that all the military medical treatment facilities that provide direct care use contracts described under paragraph (1).

“(B) A process for a military medical treatment facility to obtain a waiver of the requirement under subparagraph (A) in order to use an acquisition strategy not described in paragraph (1).

“(C) Identification of the responsibilities of the military departments and the elements of the Department of Defense in carrying out such strategy.

“(D) Projection of the demand by covered beneficiaries for health care services, including with respect to primary care and expanded-hours urgent care services.

“(E) Estimation of the workload gaps at military medical treatment facilities for health care services, including with respect to primary care and expanded-hours urgent care services.

“(F) Methods to analyze, using reliable and detailed data covering the entire direct care component of the military health system, the amount of funds expended on contracts for the services of health care professional staff.

“(G) Methods to identify opportunities to consolidate requirements for such services and reduce cost.

“(H) Methods to measure cost savings that are realized by using such contracts instead of purchased care.

“(I) Metrics to determine the effectiveness of such strategy.

“(J) Metrics to evaluate the success of the strategy in achieving its objectives, including metrics to assess the effects of the strategy on the timeliness of beneficiary access to professional health care services in military medical treatment facilities.

“(K) Such other matters as the Secretary considers appropriate.

“(b) REPORT.—Not later than July 1, 2017, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the status of implementing the acquisition strategy under paragraph (1) of subsection (a), including how each element under subparagraphs (A) through (K) of paragraph (2) of such subsection is being carried out.

“(c) DEFINITIONS.—In this section:

“(1) The term ‘covered beneficiary’ has the meaning given that term in section 1072 of title 10, United States Code.

“(2) The term ‘State’ means the several States and the District of Columbia.”

#### ACQUISITION STRATEGY FOR HEALTH CARE PROFESSIONAL STAFFING SERVICES

Pub. L. 113-291, div. A, title VII, §725, Dec. 19, 2014, 128 Stat. 3418, required the Secretary of Defense to develop and carry out an acquisition strategy with respect to entering into contracts for the services of health care professional staff at military medical treatment facilities, prior to repeal by Pub. L. 114-328, div. A, title VII, §727(d), Dec. 23, 2016, 130 Stat. 2233.

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

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

#### RATIFICATION OF EXISTING CONTRACTS

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

#### PERSONAL SERVICE CONTRACTS TO PROVIDE CARE

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

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

“(2) The persons with whom the Secretary may enter into a personal services contract under this subsection shall include clinical social workers, psychologists, marriage and family therapists certified as such by a certification recognized by the Secretary of Defense, psychiatrists, and other comparable professionals who have advanced degrees in counseling or related academic disciplines and who meet all requirements for State licensure and board certification requirements, if any, within their fields of specialization.”

## REPORT ON COMPENSATION BY MEDICAL SPECIALTY

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

**§ 1091a. Identification in patient medical records of affiliation of certain non-Department of Defense health care providers**

(a) REQUIREMENT.—The Secretary of Defense shall ensure that medical records of the Department of Defense include the organizational affiliation of any independent health care contractor identified in such medical records.

(b) INDEPENDENT HEALTH CARE CONTRACTOR DEFINED.—In this section, the term “independent health care contractor” means a health care provider who meets the following criteria:

(1) The health care provider is a nonpersonal services contractor, or an employee of such a contractor, pursuant to subpart 37.4 of the Federal Acquisition Regulation, or other applicable regulation.

(2) The health care provider provides health care services under this chapter in any military medical treatment facility (as defined in section 1073c(i) of this title) or other location under the jurisdiction of the Secretary of Defense, including an operational clinic.

(Added Pub. L. 118-159, div. A, title VII, §711, Dec. 23, 2024, 138 Stat. 1947.)

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

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

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

(B) Cost-sharing by eligible beneficiaries.

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

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

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

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

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

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

(4)(A) The Secretary of Defense may, in consultation with the other administering Secretaries, include in the studies and demonstration projects conducted under paragraph (1) studies and demonstration projects to provide awards or incentives to individual health care professionals under the authority of such Secretaries, including members of the uniformed services, Federal civilian employees, and contractor personnel, to encourage and reward effective implementation of innovative health care programs designed to improve quality, cost-effectiveness, health promotion, medical readiness, and other priority objectives. Such awards and incentives may include cash awards and, in the case of members of the armed forces and Federal civilian employees, personnel incentives.

(B) Amounts available for the pay of members of the uniformed services shall be available for awards and incentives under this paragraph with respect to members of the uniformed services.

(5) The Secretary of Defense may include in the studies and demonstration projects conducted under paragraph (1) studies and demonstration projects to improve the medical and dental readiness of members of reserve components of the armed forces, including the provision of health care services to such members for which they are not otherwise entitled or eligible under this chapter.

(6) The Secretary of Defense may include in the studies and demonstration projects conducted under paragraph (1) studies and demonstration projects to improve the continuity of health care services for family members of mobilized members of the reserve components of the armed forces who are eligible for such services under this chapter, including payment of a stipend for continuation of employer-provided health coverage during extended periods of active duty.

(b) Subject to the availability of appropriations for that purpose, the Secretary of Defense may enter into contracts or transactions (other than contracts, cooperative agreements, and grants) with public or private agencies, institutions, and organizations to conduct studies and demonstration projects under subsection (a).