

(Added Pub. L. 102-40, title IV, § 401(a)(3), May 7, 1991, 105 Stat. 217; amended Pub. L. 102-83, § 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404; Pub. L. 102-405, title I, § 102, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1973, 1984; Pub. L. 103-446, title XII, §§ 1201(i)(9), 1202(b)(2), Nov. 2, 1994, 108 Stat. 4688, 4689; Pub. L. 107-330, title III, § 308(g)(13), Dec. 6, 2002, 116 Stat. 2829.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Veterans' Administration Health-Care Amendments of 1980, referred to in subsec. (b)(2), is Pub. L. 96-330, Aug. 26, 1980, 94 Stat. 1030. Title III of the Act amended former sections 4101 and 4103 of this title and enacted provisions set out as notes under former section 4101 of this title. For the purposes of title III, see section 301 of Pub. L. 96-330, set out as a note under section 7314 of this title. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of this title and Tables.

##### AMENDMENTS

2002—Subsec. (a). Pub. L. 107-330 inserted "Veterans Health" before "Administration" in first sentence.

1994—Subsec. (b)(2). Pub. L. 103-446, § 1201(i)(9), which directed substitution of "Veterans' Administration" for "Department", could not be executed because "Department" did not appear subsequent to execution of amendment by Pub. L. 103-446, § 1202(b)(2). See below.

Pub. L. 103-446, § 1202(b)(2), amended Pub. L. 102-83, § 4(a)(3), (4), to make it inapplicable to this section. See 1991 Amendment note below.

1992—Subsecs. (a), (b)(1), (5), (c)(1). Pub. L. 102-405, § 302(c)(1), substituted "Under Secretary for Health" for "Chief Medical Director" wherever appearing.

Subsec. (c)(2). Pub. L. 102-405, § 102, amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Not later than 90 days after receipt of a report submitted under paragraph (1), the Secretary shall transmit the report, together with the Secretary's comments and recommendations thereon, to the appropriate committees of the Congress."

1991—Subsec. (b)(2). Pub. L. 102-83, § 4(a)(3), (4), which directed substitution of "Department" for "Veterans' Administration", was amended by Pub. L. 103-446, § 1202(b)(2), to make it inapplicable to this section.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-446, title XII, § 1202(b), Nov. 2, 1994, 108 Stat. 4689, provided that the amendment made by that section is effective Aug. 6, 1991, and as if included in the enactment of Pub. L. 102-83.

##### TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 1013 of Title 5, Government Organization and Employees.

#### § 7316. Malpractice and negligence suits: defense by United States

(a)(1) The remedy—

(A) against the United States provided by sections 1346(b) and 2672 of title 28, or

(B) through proceedings for compensation or other benefits from the United States as pro-

vided by any other law, where the availability of such benefits precludes a remedy under section 1346(b) or 2672 of title 28,

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a health care employee of the Administration in furnishing health care or treatment while in the exercise of that employee's duties in or for the Administration shall be exclusive of any other civil action or proceeding by reason of the same subject matter against the health care employee (or employee's estate) whose act or omission gave rise to such claim.

(2) For purposes of paragraph (1), the term "health care employee of the Administration" means a physician, dentist, podiatrist, chiropractor, optometrist, nurse, physician assistant, expanded-function dental auxiliary, pharmacist, or paramedical (such as medical and dental technicians, nursing assistants, and therapists), or other supporting personnel.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) (or such person's 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 such person or an attested true copy thereof to such person's immediate superior or to whomever was designated by the Secretary to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the 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 such person's employment in or for the Administration at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. After removal the United States shall have available all defenses to which it would have been entitled if the action had originally been commenced against the United States. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the employee whose act or omission gave rise to the suit was not acting within the scope of such person's office or employment, the case shall be remanded to the State court.

(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) The Secretary may, to the extent the Secretary considers appropriate, hold harmless or provide liability insurance for any person to whom the immunity provisions of this section apply (as described in subsection (a)), for damage for personal injury or death, or for property

damage, negligently caused by such person while furnishing medical care or treatment (including the conduct of clinical studies or investigations) in the exercise of such person's duties in or for the Administration, if such person is assigned to a foreign country, detailed to State or political division thereof, or is acting under any other circumstances which would preclude the remedies of an injured third person against the United States, provided by sections 1346(b) and 2672 of title 28, for such damage or injury.

(f) The exception provided in section 2680(h) of title 28 shall not apply to any claim arising out of a negligent or wrongful act or omission of any person described in subsection (a) in furnishing medical care or treatment (including medical care or treatment furnished in the course of a clinical study or investigation) while in the exercise of such person's duties in or for the Administration.

(Added Pub. L. 102-40, title IV, § 401(a)(3), May 7, 1991, 105 Stat. 219; amended Pub. L. 108-170, title III, § 302(e), Dec. 6, 2003, 117 Stat. 2058.)

#### Editorial Notes

##### AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108-170, § 302(e)(1), substituted “health” for “medical” in three places in concluding provisions.

Subsec. (a)(2). Pub. L. 108-170, § 302(e)(2), substituted “health” for “medical” the first place it appeared and inserted “chiropractor,” after “podiatrist.”

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-170, title III, § 302(h), Dec. 6, 2003, 117 Stat. 2058, provided that: “The amendments made by this section [amending this section and sections 7401 to 7404, 7409, and 7421 of this title] shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Dec. 6, 2003].”

#### § 7317. Hazardous research projects: indemnification of contractors

(a)(1) With the approval of the Secretary, any contract or research authorized by section 7303 of this title, the performance of which involves a risk of an unusually hazardous nature, may provide that the United States will indemnify the contractor as provided in paragraph (2), but only to the extent that the liability, loss, or damage concerned arises out of the direct performance of the contract and to the extent not covered by the financial protection required under subsection (e).

(2) Indemnity under paragraph (1) is indemnity against either or both of the following:

(A) Liability (including reasonable expenses of litigation or settlement) to third persons, except liability under State or Federal workers' injury compensation laws to employees of the contractor employed at the site of and in connection with the contract for which indemnification is granted, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(B) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract that provides for indemnification in accordance with subsection (a) must also provide for—

(1) notice to the United States of any claim or suit against the contractor for death, bodily injury, or loss of or damage to property; and

(2) control of or assistance in the defense by the United States, at its election, of any such suit or claim for which indemnification is provided hereunder.

(c) A payment may not be made under subsection (a) unless the Secretary certifies that the amount is just and reasonable.

(d) Upon approval by the Secretary, payments under subsection (a) may be made from—

(1) funds obligated for the performance of the contract concerned;

(2) funds available for research or development or both, and not otherwise obligated; or

(3) funds appropriated for those payments.

(e) Each contractor which is a party to an indemnification agreement under subsection (a) shall have and maintain financial protection of such type and in such amounts as the Secretary shall require to cover liability to third persons and loss of or damage to the contractor's property. The amount of financial protection required shall be the maximum amount of insurance available from private sources, except that the Secretary may establish a lesser amount, taking into consideration the cost and terms of private insurance. Such financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures.

(f) In administering the provisions of this section, the Secretary may use the facilities and services of private insurance organizations and may contract to pay a reasonable compensation therefor. Any contract made under the provisions of this section may be made without regard to the provisions of section 6101(b) to (d) of title 41, upon a showing by the Secretary that advertising is not reasonably practicable, and advance payments may be made under any such contract.

(g) The authority to indemnify contractors under this section does not create any rights in third persons which would not otherwise exist by law.

(h) Funds appropriated to carry out this section shall remain available until expended.

(i) In this section, the term “contractor” includes subcontractors of any tier under a contract containing an indemnification provision pursuant to subsection (a).

(Added Pub. L. 102-40, title IV, § 401(a)(3), May 7, 1991, 105 Stat. 220; amended Pub. L. 111-350, § 5(j)(4), Jan. 4, 2011, 124 Stat. 3850.)

#### Editorial Notes

##### AMENDMENTS

2011—Subsec. (f). Pub. L. 111-350 substituted “section 6101(b) to (d) of title 41” for “section 3709 of the Revised Statutes (41 U.S.C. 5)”.

#### § 7318. National Center for Preventive Health

(a)(1) The Under Secretary for Health shall establish and operate in the Veterans Health Ad-