

**(d) Pay of members**

(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 rate payable for level I of the Executive Schedule unless approved by the President under section 5377(d)(2) of title 5.

**(e) Contribution to retirement system of institutions of higher education**

The Secretary may, upon the request of a member who—

(1) performed service in the employ of an institution of higher education immediately prior to his appointment as a member of the Service, and

(2) retains the right to continue to make contributions to the retirement system of such institution,

contribute an amount not to exceed 10 percent per annum of the member's basic pay to such institution's retirement system on behalf of such member. A member who requests that such contribution be made shall not be covered by, or earn service credit under, any retirement system established for employees of the United States under title 5, but such service shall be creditable for determining years of service under section 6303(a) of such title.

**(f) Career and noncareer appointment of certain individuals**

Subject to the following sentence, the Secretary may, notwithstanding the provisions of title 5 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.

**(g) Rules and regulations**

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

(July 1, 1944, ch. 373, title II, § 228, as added Pub. L. 101-509, title V, § 529 [title III, § 304(a)], Nov. 5, 1990, 104 Stat. 1427, 1463; amended Pub. L. 103-43, title XX, § 2001, June 10, 1993, 107 Stat. 208.)

## REFERENCES IN TEXT

The General Schedule, referred to in subsecs. (b), (d)(2), and (f), is set out under section 5332 of Title 5, Government Organization and Employees.

The provisions of title 5 regarding appointments, referred to in subsecs. (b) and (f), are classified to section 3301 et seq. of Title 5.

Level I of the Executive Schedule, referred to in subsec. (d)(2), is set out in section 5312 of Title 5.

## AMENDMENTS

1993—Pub. L. 103-43, § 2001(b), substituted "Silvio O. Conte Senior Biomedical Research Service" for "Senior Biomedical Research Service" in section catchline.

Subsec. (a). Pub. L. 103-43, § 2001(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "There shall be in the Public Health Service a Senior Biomedical Research Service (hereinafter in this section referred to as the 'Service'), not to exceed 350 members at any time."

## EFFECTIVE DATE

Section effective on the 90th day following Nov. 5, 1990, see section 529 [title III, § 304(c)] of Pub. L. 101-509, set out as an Effective Date of 1990 Amendment note under section 212 of this title.

## PART B—MISCELLANEOUS PROVISIONS

## CODIFICATION

This part was classified to subchapter XXV (§ 300aaa et seq.) of this chapter prior to its renumbering by Pub. L. 103-43, title XX, § 2010(a)(1)-(3), June 10, 1993, 107 Stat. 213.

**§ 238. Gifts for benefit of Service****(a) Acceptance by Secretary**

The Secretary of Health and Human Services 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) Depository of funds; availability for expenditure**

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) Evidences of unconditional gifts of intangible property**

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 of Health and Human Services 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) Real property or tangible personal property**

The Secretary of Health and Human Services, 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 of Health and Human Services, 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 of Health and Human Services, and the proceeds thereof deposited with the Secretary of the Treasury, whenever in his judgment the purposes of the gifts will be served thereby.

(July 1, 1944, ch. 373, title II, § 231, formerly title V, § 501, 58 Stat. 709; July 3, 1946, ch. 538, § 10, 60 Stat. 425; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 90-574, title V, § 503(b), Oct. 15, 1968, 82 Stat. 1012; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; renumbered title XXI, § 2101, Pub. L. 98-24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2301, Pub. L. 99-660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2501, Pub. L. 100-607, title II, § 201(1), (2), Nov. 4, 1988, 102 Stat. 3062; renumbered title XXVI, § 2601, Pub. L. 100-690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2701, Pub. L. 101-381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 231, Pub. L. 103-43, title XX, § 2010(a)(1)-(3), June 10, 1993, 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa of this title prior to renumbering by Pub. L. 103-43, to section 300cc of this title prior to renumbering by Pub. L. 100-607, to section 300aa of this title prior to renumbering by Pub. L. 99-660, and to section 219 of this title prior to renumbering by Pub. L. 98-24.

AMENDMENTS

1968—Subsec. (e). Pub. L. 90-574 struck out subsec. (e) which provided for acknowledgment of donations of \$50,000 or more in aid of research by the establishment of suitable memorials within the National Institutes of Health and the National Institute of Mental Health.

1948—Subsec. (e). Act June 16, 1948, substituted "National Institutes of Health" for "National Institute of Health".

1946—Subsec. (e). Act July 3, 1946, inserted reference to National Institute of Mental Health.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20.

**§ 238a. Use of immigration station hospitals**

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 249(a)<sup>1</sup> of this title.

(July 1, 1944, ch. 373, title II, § 232, formerly title V, § 502, 58 Stat. 710, renumbered title XXI, § 2102, Pub. L. 98-24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2302, Pub. L. 99-660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2502, Pub. L. 100-607, title II, § 201(1), (2), Nov. 4, 1988, 102 Stat. 3062; renumbered title XXVI, § 2602, Pub. L. 100-690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2702, Pub. L. 101-381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 232, Pub. L. 103-43, title XX, § 2010(a)(1)-(3), June 10, 1993, 107 Stat. 213.)

REFERENCES IN TEXT

Subsec. (a) of section 249 of this title, referred to in text, which related to persons entitled to care and treatment without charge, was repealed, and subsec. (c) of section 249 of this title was redesignated as subsec. (a), by Pub. L. 97-35, title IX, § 986(a), (b)(2), Aug. 13, 1981, 95 Stat. 603.

CODIFICATION

Section was formerly classified to section 300aaa-1 of this title prior to renumbering by Pub. L. 103-43, to sec-

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

tion 300cc-1 of this title prior to renumbering by Pub. L. 100-607, to section 300aa-1 of this title prior to renumbering by Pub. L. 99-660, and to section 220 of this title prior to renumbering by Pub. L. 98-24.

#### TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by sections 1 and 2 of Reorg. Plan No. 2 of 1950, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, which were repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 662. Immigration and Naturalization Service, referred to in this section, was a bureau in Department of Justice.

#### ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

### § 238b. Disposition of money collected for care of patients

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.

(July 1, 1944, ch. 373, title II, §233, formerly title V, §503, 58 Stat. 710, renumbered title XXI, §2103, Pub. L. 98-24, §2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, §2303, Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, §2503, Pub. L. 100-607, title II, §201(1), (2), Nov. 4, 1988, 102 Stat. 3062; renumbered title XXVI, §2603, Pub. L. 100-690, title II, §2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, §2703, Pub. L. 101-381, title I, §101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, §233, Pub. L. 103-43, title XX, §2010(a)(1)-(3), June 10, 1993, 107 Stat. 213.)

#### CODIFICATION

Section was formerly classified to section 300aaa-2 of this title prior to renumbering by Pub. L. 103-43, to section 300cc-2 of this title prior to renumbering by Pub. L. 100-607, to section 300aa-2 of this title prior to renumbering by Pub. L. 99-660, and to section 221 of this title prior to renumbering by Pub. L. 98-24.

### § 238c. Transportation of remains of officers

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 chapter 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.

(July 1, 1944, ch. 373, title II, §234, formerly title V, §506, 58 Stat. 710; July 15, 1954, ch. 507, §14(b), 68 Stat. 481; renumbered title XXI, §2106, Pub. L. 98-24, §2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, §2306, Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, §2504, Pub. L. 100-607, title II, §201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, §2604, Pub. L. 100-690, title II, §2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, §2704, Pub. L. 101-381, title I, §101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, §234, Pub. L. 103-43, title XX, §2010(a)(1)-(3), June 10, 1993, 107 Stat. 213.)

#### CODIFICATION

Section was formerly classified to section 300aaa-3 of this title prior to renumbering by Pub. L. 103-43, to section 300cc-5 of this title prior to renumbering by Pub. L. 100-607, to section 300aa-5 of this title prior to renumbering by Pub. L. 99-660, and to section 224 of this title prior to renumbering by Pub. L. 98-24.

#### AMENDMENTS

1954—Act July 15, 1954, inserted sentence at end relating to availability of appropriations for paying expenses relating to recovery, care, and disposition of the remains of personnel or their dependents.

#### TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

#### DISPOSITION OF REMAINS OF DECEASED PERSONNEL

Recovery, care and disposition of the remains of deceased members of the uniformed services and other deceased personnel, see section 1481 et seq. of Title 10, Armed Forces.

### § 238d. Availability of appropriations for grants to Federal institutions

Appropriations to the Public Health Service available under this chapter for research, training, or demonstration project grants or for grants to expand existing treatment and research programs and facilities for alcoholism, narcotic addiction, drug abuse, and drug dependence and appropriations under title VI of the Mental Health Systems Act [42 U.S.C. 9511 et seq.] 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 Federal institutions may be funded at 100 per centum of the costs.

(July 1, 1944, ch. 373, title II, §235, formerly title V, §507, as added Pub. L. 90-31, §5, June 24, 1967,

81 Stat. 79; amended Pub. L. 91-513, title I, §3(c), Oct. 27, 1970, 84 Stat. 1241; Pub. L. 94-278, title XI, §1102(b), Apr. 22, 1976, 90 Stat. 415; Pub. L. 96-398, title VIII, §804(b), Oct. 7, 1980, 94 Stat. 1608; Pub. L. 97-35, title IX, §902(g)(2), Aug. 13, 1981, 95 Stat. 560; renumbered title XXI, §2107, Pub. L. 98-24, §2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, §2307, Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, §2505, Pub. L. 100-607, title II, §201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, §2605, Pub. L. 100-690, title II, §2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, §2705, Pub. L. 101-381, title I, §101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, §235, Pub. L. 103-43, title XX, §2010(a)(1)-(3), June 10, 1993, 107 Stat. 213.)

#### REFERENCES IN TEXT

The Mental Health Systems Act, referred to in text, is Pub. L. 96-398, Oct. 7, 1980, 94 Stat. 1564, as amended. Title VI of the Mental Health Systems Act is classified generally to subchapter V (§9511 et seq.) of chapter 102 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9401 of this title and Tables.

#### CODIFICATION

Section was formerly classified to section 300aaa-4 of this title prior to renumbering by Pub. L. 103-43, to section 300cc-6 of this title prior to renumbering by Pub. L. 100-607, to section 300aa-6 of this title prior to renumbering by Pub. L. 99-660, and to section 225a of this title prior to renumbering by Pub. L. 98-24.

#### AMENDMENTS

1981—Pub. L. 97-35 struck out provisions relating to appropriations available under Community Mental Health Centers Act for construction, etc.

1980—Pub. L. 96-398 struck out “and” after “drug dependence,” and inserted reference to title VI of the Mental Health Systems Act.

1976—Pub. L. 94-278 substituted “Federal institutions, except that grants to” for “hospitals of the Service, of the Veterans’ Administration, or of the Bureau of Prisons of the Department of Justice, and to Saint Elizabeths Hospital, except grants to such”.

1970—Pub. L. 91-513 inserted references to appropriations available for grants to expand existing treatment and research programs and facilities for alcoholism, narcotic addiction, drug abuse, and drug dependence, and appropriations available under Community Mental Health Centers Act for construction and staffing of community mental health centers and alcoholism and narcotic addiction, drug abuse, and drug dependence facilities, and inserted provision that grants to specified Federal institutions may be funded at 100 per centum of the costs.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as a note under section 238f of this title.

#### EFFECTIVE DATE

Section 5 of Pub. L. 90-31 provided that this section is effective July 1, 1968.

#### § 238e. Transfer of funds

For the purpose of any reorganization under section 203 of this title, the Secretary, with the approval of the Director of the Office of Management and Budget, is authorized to make such transfers of funds between appropriations as may be necessary for the continuance of transferred functions.

(July 1, 1944, ch. 373, title II, §236, formerly title V, §508, 58 Stat. 711; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; 1970 Reorg. Plan No. 2, §102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; renumbered title XXI, §2108, Pub. L. 98-24, §2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, §2308, Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, §2506, Pub. L. 100-607, title II, §201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, §2606, Pub. L. 100-690, title II, §2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, §2706, Pub. L. 101-381, title I, §101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, §236, Pub. L. 103-43, title XX, §2010(a)(1)-(3), June 10, 1993, 107 Stat. 213.)

#### CODIFICATION

Section was formerly classified to section 300aaa-5 of this title prior to renumbering by Pub. L. 103-43, to section 300cc-7 of this title prior to renumbering by Pub. L. 100-607, to section 300aa-7 of this title prior to renumbering by Pub. L. 99-660, and to section 226 of this title prior to renumbering by Pub. L. 98-24.

#### TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President of the United States by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970 redesignated Bureau of the Budget as Office of Management and Budget.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

#### § 238f. Availability of appropriations

Appropriations for carrying out the purposes of this chapter 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 Secretary, 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.

(July 1, 1944, ch. 373, title II, §237, formerly title V, §509, 58 Stat. 711; June 16, 1948, ch. 481, §6(b), 62 Stat. 469; June 25, 1948, ch. 654, §7, 62 Stat. 1018; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; renumbered title XXI, §2109, Pub. L. 98-24, §2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, §2309, Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, §2507, Pub. L. 100-607, title II, §201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, §2607, Pub. L. 100-690, title II, §2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, §2707, Pub. L. 101-381, title I, §101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, §237, Pub. L. 103-43, title XX, §2010(a)(1)-(3), June 10, 1993, 107 Stat. 213.)

#### CODIFICATION

Section was formerly classified to section 300aaa-6 of this title prior to renumbering by Pub. L. 103-43, to section 300cc-8 of this title prior to renumbering by Pub. L. 100-607, to section 300aa-8 of this title prior to renumbering by Pub. L. 99-660, and to section 227 of this title prior to renumbering by Pub. L. 98-24.

#### AMENDMENTS

1948—Act June 25, 1948, amended section generally to make it apply to all appropriations to carry out the purposes of the Service instead of merely to appropriations to carry out the research functions of the Service.

Act June 16, 1948, substituted "National Institutes of Health" for "National Institute of Health".

#### TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20.

#### BUY AMERICAN PROVISIONS

Section 2004 of Pub. L. 103-43, as amended by Pub. L. 105-392, title IV, §416(a), (b), Nov. 13, 1998, 112 Stat. 3590, provided that:

"(a) SENSE OF CONGRESS REGARDING PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—In the case of any equipment or product that may be authorized to be purchased with financial assistance provided pursuant to this Act for any of the fiscal years 1994 through 1996, it is the sense of the Congress that entities receiving such assistance should, in expending the assistance, purchase only American-made equipment and products.

"(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance pursuant to this Act, the Secretary of Health and Human Services shall provide to each recipient of the assistance a notice describing the statement made in subsection (a) by the Congress."

[Pub. L. 105-392, title IV, §416(c), Nov. 13, 1998, 112 Stat. 3591, provided that: "This section [amending section 2004 of Pub. L. 103-43, set out above] is deemed to have taken effect immediately after the enactment of Public Law 103-43 [June 10, 1993]."]

#### AVAILABILITY OF APPROPRIATIONS FOR ACTIVE COMMISSIONED OFFICERS AND OTHER EXPENSES

Pub. L. 102-394, title II, §202, Oct. 6, 1992, 106 Stat. 1810, provided that: "Appropriations in this or any other Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts shall be available for expenses for active commissioned officers in the Public Health Service Reserve Corps and for not to exceed 2,800 commissioned officers in the Regular Corps; expenses incident to the dissemination of health information in foreign countries through exhibits and other appropriate means; advances of funds for compensation, travel, and subsistence expenses (or per diem in lieu thereof) for persons coming from abroad to participate in health or scientific activities of the Department pursuant to law; expenses of primary and secondary schooling of dependents in foreign countries, of Public Health Service commissioned officers stationed in foreign countries, at costs for any given area not in excess of those of the Department of Defense for the same area, when it is determined by the Secretary that the schools available in the locality are unable to provide adequately for the education of such dependents, and for the transportation of such dependents, between such schools and their places of residence when the schools are not accessible to such dependents by regular means of transportation; expenses for medical care for civilian and commissioned employees of the Public Health Service and their dependents assigned abroad on a permanent basis in accordance with such regulations as the Secretary may provide; rental or lease of living quarters (for periods not exceeding five years), and provision of heat, fuel, and light and maintenance, improvement, and repair of such quarters, and advance payments therefor, for civilian officers and employees of the Public Health Service who are United States citizens and who have a permanent station in a foreign country; purchase, erection, and maintenance of temporary or portable structures; and for the payment of compensation to consultants or individual scientists appointed for limited periods of time pursuant to section 207(f) or section 207(g) of the Public Health Service Act [42 U.S.C. 209(f), (g)], at rates established by the Assistant Secretary for Health, or the Secretary where such action is required by statute, not to exceed the per diem rate equivalent to the maximum rate payable for senior-level positions under 5 U.S.C. 5376."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102-170, title II, §202, Nov. 26, 1991, 105 Stat. 1126.

Pub. L. 101-517, title II, §202, Nov. 5, 1990, 104 Stat. 2208.

Pub. L. 101-166, title II, §203, Nov. 21, 1989, 103 Stat. 1176.

Pub. L. 100-202, §101(h) [title II, §203], Dec. 22, 1987, 101 Stat. 1329-256, 1329-273.

Pub. L. 99-500, §101(i) [H.R. 5233, title II, §203], Oct. 18, 1986, 100 Stat. 1783-287, and Pub. L. 99-591, §101(i) [H.R. 5233, title II, §203], Oct. 30, 1986, 100 Stat. 3341-287.

Pub. L. 99-178, title II, §203, Dec. 12, 1985, 99 Stat. 1118.

Pub. L. 98-619, title II, §203, Nov. 8, 1984, 98 Stat. 3320.

Pub. L. 98-139, title II, §203, Oct. 31, 1983, 97 Stat. 887.

Pub. L. 97-377, title I, §101(e)(1) [title II, §203], Dec. 21, 1982, 96 Stat. 1878, 1893.

#### CREDITING OF PAYMENTS FOR ROOM AND BOARD TO APPROPRIATION ACCOUNTS

Pub. L. 102-394, title II, §206, Oct. 6, 1992, 106 Stat. 1811, provided that: "Hereafter amounts received from employees of the Department in payment for room and board may be credited to the appropriation accounts

which finance the activities of the Public Health Service.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102-170, title II, §206, Nov. 26, 1991, 105 Stat. 1126.

Pub. L. 101-517, title II, §206, Nov. 5, 1990, 104 Stat. 2209.

Pub. L. 101-166, title II, §207, Nov. 21, 1989, 103 Stat. 1177.

#### § 238g. Wearing of uniforms

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.

(July 1, 1944, ch. 373, title II, §238, formerly title V, §510, 58 Stat. 711; June 25, 1948, ch. 645, §5, 62 Stat. 859; renumbered title XXI, §2110, Pub. L. 98-24, §2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, §2310, Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, §2508, Pub. L. 100-607, title II, §201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, §2608, Pub. L. 100-690, title II, §2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, §2708, Pub. L. 101-381, title I, §101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, §238, Pub. L. 103-43, title XX, §2010(a)(1)-(3), June 10, 1993, 107 Stat. 213.)

#### CODIFICATION

Section was formerly classified to section 300aaa-7 of this title prior to renumbering by Pub. L. 103-43, to section 300cc-9 of this title prior to renumbering by Pub. L. 100-607, to section 300aa-9 of this title prior to renumbering by Pub. L. 99-660, and to section 228 of this title prior to renumbering by Pub. L. 98-24.

#### AMENDMENTS

1948—Act June 25, 1948, struck out penal provisions. See section 702 of Title 18, Crimes and Criminal Procedure.

#### EFFECTIVE DATE OF 1948 AMENDMENT

Amendment effective Sept. 1, 1948, see section 20 of act June 25, 1948.

#### TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

#### DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

#### § 238h. Biennial report

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 chapter, including a detailed statement of receipts and disbursements.

(July 1, 1944, ch. 373, title II, §239, formerly title V, §511, 58 Stat. 711; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; renumbered title XXI, §2111, Pub. L. 98-24, §2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, §2311, Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, §2509, Pub. L. 100-607, title II, §201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, §2609, Pub. L. 100-690, title II, §2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, §2709, Pub. L. 101-381, title I, §101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, §239, Pub. L. 103-43, title XX, §2010(a)(1)-(3), June 10, 1993, 107 Stat. 213; Pub. L. 104-66, title I, §1062(a), Dec. 21, 1995, 109 Stat. 720.)

#### CODIFICATION

Section was formerly classified to section 300aaa-8 of this title prior to renumbering by Pub. L. 103-43, to section 300cc-10 of this title prior to renumbering by Pub. L. 100-607, to section 300aa-10 of this title prior to renumbering by Pub. L. 99-660, and to section 229 of this title prior to renumbering by Pub. L. 98-24.

#### AMENDMENTS

1995—Pub. L. 104-66 amended section catchline and text generally. Prior to amendment, text read as follows: “The Surgeon General shall transmit to the Secretary, for submission to the Congress at the beginning of each regular session, a full report of the administration of the functions of the Service under this chapter, including a detailed statement of receipts and disbursements.”

#### TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which item 3 on page 101 identifies a reporting provision which, as subsequently amended, is contained in this section), see section 3003 of Pub. L. 104-66, as amended, and section 1(a)(4) [div. A, §1402(1)] of Pub. L. 106-554, set out as notes under section 1113 of Title 31, Money and Finance.

#### TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 202 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by sec-

tion 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20.

AGENCY REPORTING REQUIREMENTS; REPORT BY SECRETARY OF HEALTH, EDUCATION, AND WELFARE TO CONGRESSIONAL COMMITTEES RELATING TO REQUIREMENTS, TERMINATION, ETC.

Pub. L. 93-641, §7, Jan. 4, 1975, 88 Stat. 2275, provided that by Jan. 4, 1976, the Secretary of Health, Education, and Welfare report to specific committees of the Senate and the House of Representatives on the identity, due date, etc., of certain reports required under the Public Health Service Act, the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970.

**§ 238i. Memorials and other acknowledgments for contributions to health of Nation**

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.

(July 1, 1944, ch. 373, title II, §240, formerly title V, §512, as added Pub. L. 90-574, title V, §503(a), Oct. 15, 1968, 82 Stat. 1012; renumbered title XXI, §2112, Pub. L. 98-24, §2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, §2312, Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, §2510, Pub. L. 100-607, title II, §201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, §2610, Pub. L. 100-690, title II, §2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, §2710, Pub. L. 101-381, title I, §101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, §240, Pub. L. 103-43, title XX, §2010(a)(1)-(3), June 10, 1993, 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa-9 of this title prior to renumbering by Pub. L. 103-43, to section 300cc-11 of this title prior to renumbering by Pub. L. 100-607, to section 300aa-11 of this title prior to renumbering by Pub. L. 99-660, and to section 229a of this title prior to renumbering by Pub. L. 98-24.

**§ 238j. Evaluation of programs**

**(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 chapter 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) of this section.

(July 1, 1944, ch. 373, title II, §241, formerly title V, §513, as added Pub. L. 91-296, title IV, §401(a), June 30, 1970, 84 Stat. 351; amended Pub. L.

96-398, title VIII, §804(c), Oct. 7, 1980, 94 Stat. 1608; Pub. L. 97-35, title IX, §902(g)(3), Aug. 13, 1981, 95 Stat. 560; renumbered title XXI, §2113, Pub. L. 98-24, §2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, §2313, Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, §2511, Pub. L. 100-607, title II, §201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, §2611, Pub. L. 100-690, title II, §2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, §2711, Pub. L. 101-381, title I, §101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, §241, Pub. L. 103-43, title XX, §2010(a)(1)-(3), June 10, 1993, 107 Stat. 213; Pub. L. 103-183, title VII, §701, Dec. 14, 1993, 107 Stat. 2239.)

CODIFICATION

Section was formerly classified to section 300aaa-10 of this title prior to renumbering by Pub. L. 103-43, to section 300cc-12 of this title prior to renumbering by Pub. L. 100-607, to section 300aa-12 of this title prior to renumbering by Pub. L. 99-660, and to section 229b of this title prior to renumbering by Pub. L. 98-24.

AMENDMENTS

1993—Pub. L. 103-183 amended section generally. Prior to amendment, section read as follows: "Such portion as the Secretary may determine, but not more than 1 per centum, of any appropriation for grants, contracts, or other payments under any provision of this chapter, the Mental Health Systems Act, the Act of August 5, 1954 (Public Law 568, Eighty-third Congress), or the Act of August 16, 1957 (Public Law 85-151), for any fiscal year beginning after June 30, 1970, shall be available for evaluation (directly, or by grants or contracts) of any program authorized by this chapter or any of such other Acts, and, in the case of allotments from any such appropriation, the amount available for allotment shall be reduced accordingly."

1981—Pub. L. 97-35 struck out references to Mental Retardation Facilities Construction Act and Community Mental Health Centers Act.

1980—Pub. L. 96-398 inserted reference to Mental Health Systems Act.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 701 of Pub. L. 103-183 provided that the amendment made by that section is effective Oct. 1, 1994.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as a note under section 238j of this title.

**§ 238k. Contract authority**

The authority of the Secretary to enter into contracts under this chapter shall be effective

for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(July 1, 1944, ch. 373, title II, §242, formerly title V, §514, as added Pub. L. 95-623, §11(e), Nov. 9, 1978, 92 Stat. 3456; renumbered title XXI, §2114, Pub. L. 98-24, §2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, §2314, Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, §2512, Pub. L. 100-607, title II, §201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, §2612, Pub. L. 100-690, title II, §2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, §2712, Pub. L. 101-381, title I, §101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, §242, Pub. L. 103-43, title XX, §2010(a)(1)-(3), June 10, 1993, 107 Stat. 213.)

#### CODIFICATION

Section was formerly classified to section 300aaa-11 of this title prior to renumbering by Pub. L. 103-43, to section 300cc-13 of this title prior to renumbering by Pub. L. 100-607, to section 300aa-13 of this title prior to renumbering by Pub. L. 99-660, and to section 229c of this title prior to renumbering by Pub. L. 98-24.

#### OBLIGATIONS RELATED TO AGREEMENT WITH PRIVATE ENTITIES

Pub. L. 105-277, div. A, §101(f) [title II], Oct. 21, 1998, 112 Stat. 2681-337, 2681-349, provided in part: "That hereinafter obligations may be incurred related to agreement with private entities without receipt of advance payment."

### § 238I. Recovery

#### (a) Right of United States to recover base amount plus interest

If any facility with respect to which funds have been paid under the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.] (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 [42 U.S.C. 2689j] (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) of this section plus the interest (if any) prescribed by subsection (c)(2) of this section.

#### (b) Notice of sale, transfer, or change

The transferor and transferee of a facility that is sold or transferred as described in subsection (a)(1) of this section, or the owner of a facility the use of which changes as described in subsection (a)(2) of this section, 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 October 22, 1985, whichever is later.

#### (c) Base amount; interest

(1) The base amount that the United States is entitled to recover under subsection (a) of this section 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) of this section 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) of this section, 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) of this section, 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) Waiver of recovery rights

The Secretary may waive the recovery rights of the United States under subsection (a) of this section 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) Pre-judgment lien

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

(July 1, 1944, ch. 373, title II, §243, formerly title V, §515, formerly Pub. L. 88-164, title II, §225, as added Pub. L. 94-63, title III, §303, July 29, 1975, 89 Stat. 326; amended Pub. L. 95-622, title I, §110(c), Nov. 9, 1978, 92 Stat. 3420; renumbered title V, §515, and amended Pub. L. 97-35, title IX, §902(e)(2)(A), Aug. 13, 1981, 95 Stat. 560; renumbered title XXI, §2115, Pub. L. 98-24, §2(a)(1), Apr. 26, 1983, 97 Stat. 176; Pub. L. 99-129, title II, §226(a), Oct. 22, 1985, 99 Stat. 546; renumbered title XXIII, §2315, Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, §2513, Pub. L. 100-607, title II, §201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, §2613, Pub. L. 100-690, title II, §2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, §2713, Pub. L. 101-381, title I, §101(1), (2), Aug. 18, 1990, 104 Stat. 576; Pub. L. 102-229, title II, §208, Dec. 12, 1991, 105 Stat. 1716; Pub. L. 102-239, §1, Dec. 17, 1991, 105 Stat. 1912; renumbered title II, §243, Pub. L. 103-43, title XX, §2010(a)(1)-(3), June 10, 1993, 107 Stat. 213.)

## REFERENCES IN TEXT

The Community Mental Health Centers Act, referred to in subsec. (a), is title II of Pub. L. 88-164, as added by Pub. L. 94-63, title III, § 303, July 29, 1975, 89 Stat. 309, and amended, which was classified principally to subchapter III (§ 2689 et seq.) of chapter 33 of this title prior to its repeal by Pub. L. 97-35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560. Section 222 of the Community Mental Health Centers Act was classified to section 2689j of this title prior to its repeal.

## CODIFICATION

Section was classified to section 300aaa-12 of this title prior to renumbering by Pub. L. 103-43, to section 300cc-14 of this title prior to renumbering by Pub. L. 100-607, to section 300aa-14 of this title prior to renumbering by Pub. L. 99-660, to section 229d of this title prior to renumbering by Pub. L. 98-24, and to section 2689m of this title prior to renumbering by Pub. L. 97-35.

## AMENDMENTS

1991—Subsec. (d). Pub. L. 102-229 and Pub. L. 102-239 amended subsec. (d) identically, substituting “sub-section (a)” for “subsection (a)(2)”.

1985—Pub. L. 99-129 amended section generally. Prior to amendment, section read as follows: “If any facility of a community mental health center acquired, remodeled, constructed, or expanded with funds provided under the Community Mental Health Centers Act is, at any time within twenty years after the completion of such remodeling, construction, or expansion or after the date of its acquisition with such funds—

“(1) sold or transferred to any person or entity (A) which is not qualified to file an application under section 222 of the Community Mental Health Centers Act, or (B) which is not approved as a transferee by the State agency of the State in which such facility is located, or its successor; or

“(2) not used by a community mental health center in the provision of comprehensive mental health services, and the Secretary has not determined that there is good cause for termination of such use, the United States shall be entitled to recover from either the transferor or the transferee in the case of a sale or transfer or from the owner in the case of termination of use an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the United States district court for the district in which the center is situated) of so much of such facility or center as constituted an approved project or projects, as the amount of the Federal participation bore to the acquisition, remodeling, construction, or expansion cost of such project or projects. Such right of recovery shall not constitute a lien upon such facility or center prior to judgment.”

1981—Pub. L. 97-35 substituted “the Community Mental Health Centers Act” for “this subchapter” and “section 222 of the Community Mental Health Centers Act” for “section 2689j of this title”.

1978—Pub. L. 95-622 substituted “this subchapter” for “this part”.

## EFFECTIVE DATE OF 1985 AMENDMENT

Section 226(b) of Pub. L. 99-129 provided that: “In the case of any facility that was or is constructed, remodeled, expanded, or acquired on or before the date of enactment of this Act [Oct. 22, 1985] or within 180 days after the date of enactment of this Act, the period described in clause (i) or (ii), as the case may be, of section 2115(c)(2)(B) [now 243(c)(2)(B)] of the Public Health Service Act [subsec. (c)(2)(B)(i), (ii) of this section] (as amended by subsection (a) of this section) shall begin no earlier than 181 days after the date of enactment of this Act.”

## EFFECTIVE DATE OF 1981 AMENDMENT

Section 902(h) of Pub. L. 97-35 provided that: “The amendments made by this section [amending this sec-

tion and sections 201, 225a [now 238d], 229b [now 238j], 243, 246, 289k-1, 300d-4, 300d-6, 300f-2, 300m, 300m-3, 9412, and 9511 of this title, repealing sections 247b-1, 247b-2, 255, 300d to 300d-3, 300d-5, 300d-7 to 300d-9, 300d-21, 2689 to 2689f, 2689n to 2689p, 2689r to 2689aa, 9411, 9421 to 9423, 9431 to 9438, 9451, 9452, 9461 to 9465, 9471 to 9473, 9481, 9491 to 9493, 9502, 9512, 9521, and 9523 of this title, repealing provisions set out as notes under sections 246 and 2689 of this title, and transferring section 2689m to section 229d [now 238l] of this title] shall take effect October 1, 1981.”

## EFFECTIVE DATE OF 1978 AMENDMENT

Section 110(c) of Pub. L. 95-622 provided that the amendment made by that section is effective July 29, 1975.

## EFFECTIVE DATE

Section effective July 1, 1975, see section 608 of Pub. L. 94-63, set out as an Effective Date of 1975 Amendment note under section 247b of this title.

## OTHER LEGAL RIGHTS OF UNITED STATES NOT ADVERSELY AFFECTED BY 1985 AMENDMENT

Section 226(c) of Pub. L. 99-129 provided that: “The amendments made by subsection (a) of this section [amending this section] shall not adversely affect other legal rights of the United States.”

**§ 238m. Use of fiscal agents****(a) Contracting authority**

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 247d or 249 of this title,

(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) Contracting prerequisites**

(1) Contracts under subsection (a) of this section may be entered into without regard to section 5 of title 41 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) Advances under contracts**

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

**(d) Applicable statutory provisions**

Subsections (d) and (e)<sup>1</sup> of section 1395u of this title shall apply to contracts with entities under

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

subsection (a) of this section in the same manner as they apply to contracts with carriers under that section.

**(e) “Fiscal agent” defined**

In this section, the term “fiscal agent” means a carrier described in section 1395u(f)(1)<sup>1</sup> of this title and includes, with respect to contracts under subsection (a)(1)(A) of this section, an Indian tribe or tribal organization acting under contract with the Secretary under the Indian Self-Determination Act (Public Law 93-638) [25 U.S.C. 450f et seq.].

(July 1, 1944, ch. 373, title II, §244, formerly title XXI, §2116, as added Pub. L. 99-272, title XVII, §17003, Apr. 7, 1986, 100 Stat. 359; renumbered title XXIII, §2316, Pub. L. 99-660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, §2514, Pub. L. 100-607, title II, §201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, §2614, Pub. L. 100-690, title II, §2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, §2714, Pub. L. 101-381, title I, §101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, §244, Pub. L. 103-43, title XX, §2010(a)(1)-(3), June 10, 1993, 107 Stat. 213.)

REFERENCES IN TEXT

Subsections (d), (e), and (f) of section 1395u of this title, referred to in subsecs. (d) and (e), were repealed by Pub. L. 108-173, title IX, §911(c)(5), Dec. 8, 2003, 117 Stat. 2384.

The Indian Self-Determination Act, referred to in subsec. (e), is title I of Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

CODIFICATION

Section was classified to section 300aaa-13 of this title prior to renumbering by Pub. L. 103-43, to section 300cc-15 of this title prior to renumbering by Pub. L. 100-607, and to section 300aa-15 of this title prior to renumbering by Pub. L. 99-660.

**§ 238n. Abortion-related discrimination in governmental activities regarding training and licensing of physicians**

**(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 postgraduate 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>1</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 292d(a)(2)(B)(i) of this title (relating to a program of insured loans for training in the health professions), the requirements in such subclauses regarding accredited internship 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.

(July 1, 1944, ch. 373, title II, §245, as added Pub. L. 104-134, title I, §101(d) [title V, §515], Apr. 26, 1996, 110 Stat. 1321-211, 1321-245; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

<sup>1</sup> So in original. Probably should be “standard”.

**§ 238o. Restriction on use of funds for assisted suicide, euthanasia, and mercy killing**

Appropriations for carrying out the purposes of this chapter shall not be used in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997 [42 U.S.C. 14401 et seq.].

(July 1, 1944, ch. 373, title II, §246, as added Pub. L. 105-12, §9(e), Apr. 30, 1997, 111 Stat. 27.)

REFERENCES IN TEXT

The Assisted Suicide Funding Restriction Act of 1997, referred to in text, is Pub. L. 105-12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§14401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of this title and Tables.

EFFECTIVE DATE

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

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

**(a) Guidelines on placement**

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

**(b) Related recommendations**

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

- (1) Implementing appropriate training courses in the use of such devices, including the role of cardiopulmonary resuscitation.
- (2) Proper maintenance and testing of the devices.
- (3) Ensuring coordination with appropriate licensed professionals in the oversight of training of the devices.
- (4) Ensuring coordination with local emergency medical systems regarding the placement and incidents of use of the devices.

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

In carrying out this section, the Secretary shall—

- (1) consult with appropriate public and private entities;
- (2) consider the recommendations of national and local public-health organizations

for improving the survival rates of individuals who experience cardiac arrest in nonhospital settings by minimizing the time elapsing between the onset of cardiac arrest and the initial medical response, including defibrillation as necessary; and

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

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

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

**(e) Definitions**

For purposes of this section:

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

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

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

FINDINGS

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

- “(1) Over 700 lives are lost every day to sudden cardiac arrest in the United States alone.
- “(2) Two out of every three sudden cardiac deaths occur before a victim can reach a hospital.
- “(3) More than 95 percent of these cardiac arrest victims will die, many because of lack of readily available life saving medical equipment.
- “(4) With current medical technology, up to 30 percent of cardiac arrest victims could be saved if victims had access to immediate medical response, including defibrillation and cardiopulmonary resuscitation.
- “(5) Once a victim has suffered a cardiac arrest, every minute that passes before returning the heart to a normal rhythm decreases the chance of survival by 10 percent.
- “(6) Most cardiac arrests are caused by abnormal heart rhythms called ventricular fibrillation. Ventricular fibrillation occurs when the heart’s electrical system malfunctions, causing a chaotic rhythm that prevents the heart from pumping oxygen to the victim’s brain and body.
- “(7) Communities that have implemented programs ensuring widespread public access to defibrillators, combined with appropriate training, maintenance, and coordination with local emergency medical systems, have dramatically improved the survival rates from cardiac arrest.
- “(8) Automated external defibrillator devices have been demonstrated to be safe and effective, even when used by lay people, since the devices are designed not to allow a user to administer a shock until after the device has analyzed a victim’s heart rhythm and determined that an electric shock is required.
- “(9) Increasing public awareness regarding automated external defibrillator devices and encouraging their use in Federal buildings will greatly facilitate their adoption.
- “(10) Limiting the liability of Good Samaritans and acquirers of automated external defibrillator devices in emergency situations may encourage the use of automated external defibrillator devices, and result in saved lives.”

CERTAIN TECHNOLOGIES AND PRACTICES REGARDING  
SURVIVAL RATES FOR CARDIAC ARREST

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

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

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

Except as provided in subsection (b) of this section, 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) of this section 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 from civil liability arising from the use by such persons of automated external defibrillator devices in emergency situations (within the meaning of the State law or regulation involved).

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

(i) section 233 of this title; or

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

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

**(A) In general**

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

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

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

**(d) Federal jurisdiction**

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

**(e) Definitions****(1) Perceived medical emergency**

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

**(2) Other definitions**

For purposes of this section:

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

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

(ii) is capable of recognizing the presence or absence of ventricular fibrillation, and is capable of determining without intervention by the user of the device whether defibrillation should be performed;

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

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

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

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

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

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

## REFERENCES IN TEXT

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

## PART C—SMALLPOX EMERGENCY PERSONNEL PROTECTION

**§ 239. General provisions****(a) Definitions**

For purposes of this part:

**(1) Covered countermeasure**

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

**(2) Covered individual**

The term “covered individual” means an individual—

(A) who is a health care worker, law enforcement officer, firefighter, security personnel, emergency medical personnel, other public safety personnel, or support personnel for such occupational specialties<sup>1</sup>;

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

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

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

**(3) Covered injury**

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

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

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

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

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

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

**(4) Declaration**

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

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

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

**(6) Eligible individual**

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

<sup>1</sup> So in original. Probably should be “specialties”.