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with State or host country requirements to perform the contract services.

(d) In establishing lines of authority and accountability, DoD supervisors may direct the activities of personal services contractors on the same basis as DoD employees. However, the rights, benefits, and compensation of personal services contractors shall be determined solely in accordance with the personal service contract.

(e) Requests for personal services contracts contemplating reimbursement at the maximum rate of basic pay and allowances under 10 U.S.C. 1091 shall be approved at the major command level. The 0–6 grade shall be used sparingly and subsequently will be subject to review.

§ 107.5 Procedures.

(a) Each contract under 10 U.S.C. 1091 with an individual or with an entity, such as a professional corporation or partnership, for the personal services of an individual must contain language specifically acknowledging the individual as a personal services contractor whose performance is subject to supervision and direction by designated officials of the Department of Defense.

(b) The appearance of an employer-employee relationship created by the DoD supervision of a personal services contractor will normally support a limited recognition of the contractor as equal in status to a DoD employee in disposing of personal injury claims arising out of the contractor's performance. Personal injury claims alleging negligence by the contractor within the scope of his or her contract performance, therefore, will be processed as claims alleging negligence by DoD military or civil service personnel.

(c) Compensation for personal services contractors under 10 U.S.C. 1091 shall be within the limits established in the Table of Authorized Compensation Rates (see enclosure 1). Prorated compensation based upon hourly, daily, or weekly rates may be awarded when a contractor's services are not required on a full-time basis. In all cases, however, a contractor may be compensated only for periods of time actually devoted to the delivery of services required by the contract.

(d) Contracts for personal services entered into shall be awarded and administered pursuant to the provisions of the Federal Acquisition Regulation (FAR), part 37 and DoD and departmental supplementary contracting provisions.

§ 107.6 Responsibilities.

(a) The Military Departments shall be responsible for the management of the direct health care provider contracting program, ensuring that effective means of obtaining adequate quality care is achieved in compliance with the FAR, part 37. The portion of the Military Department regulations ensuring that compensation provided for a particular type of service is based on objective criteria and is not susceptible to individual favoritism shall be stressed.

(b) The Office of the Assistant Secretary of Defense (Health Affairs) (OASD(HA)) shall be responsible for monitoring the personal services contracting program.

ENCLOSURE 1 TO PART 107—TABLE OF AUTHORIZED COMPENSATION RATES

Occupation/specialty group	Compensation rate not to exceed	
	Pay grade	Years of service
I. Physicians and dentists	0–6	Over 26.
II. Other individuals, including nurse practitioners, nurse anesthetists, and nurse midwives, but excluding paraprofessionals.	0–5	Over 20 but less than 22.
III. All registered nurses, except those who are included in Group II.	0–4	Over 16 but less than 18.
IV. Paraprofessionals	0–3	Over 6 but less than 8.

PART 108—HEALTH CARE ELIGIBILITY UNDER THE SECRETARIAL DESIGNEE PROGRAM AND RELATED SPECIAL AUTHORITIES

Sec.
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AUTHORITY: 10 U.S.C. 1074(c); 10 U.S.C. 2559.

SOURCE: 75 FR 72682, Nov. 26, 2010, unless otherwise noted.

§ 108.1 Purpose.

This part:

(a) Establishes policy and assigns responsibilities under 10 U.S.C. 1074(c) for health care eligibility under the Secretarial Designee Program.

(b) Implements the requirement of 10 U.S.C. 2559 that the United States receive reimbursement for inpatient health care provided in the United States to foreign military or diplomatic personnel or their dependents, except in certain cases covered by Reciprocal Health Care Agreements (RHCAs) between the Department of Defense and a foreign country.

§ 108.2 Applicability.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the ''DoD Components'').

(b) Does not apply to health care services provided to coalition forces in operational settings, or to allied forces in overseas training exercises and similar activities. Also, does not apply to health care services provided to foreign nationals overseas under DoD Instruction 3000.05,[1] DoD Instruction 2205.2,[2] or DoD Instruction 2310.08E.[3]

§ 108.3 Definition.

Secretarial Designee Program. The program established under section 1074(c) to create by regulation an eligibility for health care services in military medical treatment facilities (MTFs) as well as dental treatment facilities for individuals who have no such eligibility under 10 U.S.C. chapter 55.

§ 108.4 Policy.

It is DoD policy that:

(a) *General Policy*. The use of regulatory authority to establish DoD health care eligibility for individuals without a specific statutory entitlement or eligibility shall be used very sparingly, and only when it serves a compelling DoD mission interest. When used, it shall be on a reimbursable basis, unless non-reimbursable care is authorized by this part or reimbursement is waived by the Under Secretary of Defense (Personnel & Readiness) (USD(P&R)) or the Secretaries of the Military Departments when they are the approving authority.

(b) *Foreign Military Personnel and Their Dependents*. (1) *MTF Care in the United States*. Foreign military personnel in the United States under the sponsorship or invitation of the Department of Defense, and their dependents approved by the Department of Defense to accompany them, are eligible for space-available care as provided in DoD Instruction 1000.13.[4] Consistent with 10 U.S.C. 2559, in cases in which reimbursement is required by DoD Instruction 1000.13, a RHCA may provide a waiver of reimbursement for inpatient and/or outpatient care in the United States in a military medical treatment facility for military personnel from a foreign country and their dependents, if comparable care is made available to at least a comparable number of U.S. military personnel and their dependents in that foreign country. A disparity of 25 percent or less in the number of foreign personnel and dependents above U.S. personnel and dependents shall be considered within the range of comparable numbers.

(2) *Non-MTF Care in the United States*. Foreign military personnel in the United States under the sponsorship or invitation of the Department of Defense, and their dependents approved by the Department of Defense to accompany them, are not eligible for DoD

[1] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/300005p.pdf*.

[2] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/220502p.pdf*.

[3] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/231008p.pdf*.

[4] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/100013p.pdf*.

payment for outpatient or inpatient care received from non-DoD providers, except for such personnel covered by the North Atlantic Treaty Organization Status of Forces Agreement (SOFA) or the Partnership for Peace SOFA and authorized care under the TRICARE Standard program according to §199.3 of title 32, Code of Federal Regulations, outpatient care may be provided as specified therein.

(c) *Foreign Diplomatic or Other Senior Foreign Officials*. Foreign diplomatic or other senior foreign officials and the dependents of such officials may be provided inpatient or outpatient services in MTFs only in compelling circumstances, including both medical circumstances and mission interests, and through case-by-case approval.

(1) In the United States, the approval authority is the USD(P&R). The authority to waive reimbursement for care provided in the United States, to the extent allowed by law, is the USD(P&R) or the Secretaries of the Military Departments when they are the approving authority.

(2) Requests from the State Department or other agency of the U.S. Government will be considered on a reimbursable basis.

(3) Under 10 U.S.C. 2559, reimbursement to the United States for care provided in the United States on an inpatient basis to foreign diplomatic personnel or their dependents is required.

(d) *Other Foreign Nationals*. Other foreign nationals (other than those described in paragraphs (b) and (c) of this section) may be designated as eligible for space-available care in MTFs only in extraordinary circumstances.

(1) The authority to waive reimbursement for care provided in the United States, to the extent allowed by law, is the USD(P&R) or the Secretaries of the Military Departments when they are the approving authority. Waiver requests will only be considered based on a direct and compelling relationship to a priority DoD mission objective.

(2) Requests from the State Department or other agency of the U.S. Government will be considered on a reimbursable basis. Such requests must be supported by the U.S. Ambassador to the country involved and the Geographical Combatant Commander for that area of responsibility and must be premised on critically important interests of the United States.

(e) *Invited Persons Accompanying the Overseas Force*. The Secretaries of the Military Departments and the USD(P&R) may designate as eligible for space-available care from the Military Health System outside the United States those persons invited by the Department of Defense to accompany or visit the military force in overseas locations or invited to participate in DoD-sponsored morale, welfare, and recreation activities. This authority is limited to health care needs arising in the course of the invited activities. Separate approval is needed to continue health care initiated under this paragraph in MTFs in the United States.

(1) In the case of employees or affiliates of news organizations, all care provided under the authority of introductory paragraph (e) of this section is reimbursable. For other individuals designated as eligible under this paragraph (e), the designation may provide, to the extent allowed by law, for outpatient care on a non-reimbursable basis, and establish a case-by-case authority for waiver of reimbursement for inpatient care.

(2) This paragraph (e) does not apply to employees of the Executive Branch of the United States or personnel affiliated with contractors of the United States.

(f) *U.S. Nationals Overseas*. Health care for U.S. nationals overseas is not authorized, except as otherwise provided in this part.

(g) *U.S. Government Civilian Employees and Contractor Personnel*. (1) Civilian employees of the Department of Defense and other government agencies, and employees of DoD contractors, and the dependents of such personnel are eligible for MTF care to the extent provided in DoD Instruction 1000.13.

(2) Occupational health care services provided to DoD employees under 5 U.S.C. 7901, authorities cited in DoD Instruction 6055.1,[5] or under other authorities except 10 U.S.C. 1074(c) are

[5] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/605501p.pdf*.

not affected by this Instruction. The Secretaries of the Military Departments and the USD(P&R) may designate DoD civilian employees, applicants for employment, and personnel performing services for the Department of Defense under Federal contracts as eligible for occupational health care services required by the Department of Defense as a condition of employment or involvement in any particular assignment, duty, or undertaking.

(3) Any health care services provided by the Military Health System to employees of DoD non-appropriated fund instrumentalities shall be on a reimbursable basis.

(4) In the case of DoD civilian employees forward deployed in support of U.S. military personnel engaged in hostilities, eligibility for MTF care (in addition to all eligibility for programs administered by the Department of Labor Office of Workers' Compensation Programs (OWCP)) is as follows:

(i) Consistent with Policy Guidance for Provision of Medical Care to DoD Civilian Employees Injured or Wounded While Forward Deployed in Support of Hostilities,[6] DoD civilian employees who become ill, contract diseases, or are injured or wounded while so deployed are eligible for medical evacuation or health care treatment and services in MTFs at the same level and scope provided to military personnel, all on a non-reimbursable basis, until returned to the United States.

(ii) DoD civilian employees who, subsequent to such deployment, and have been determined to have OWCP-compensable conditions are eligible for MTF care for such conditions, all on a non-reimbursable basis.

(iii) USD(P&R) may, under compelling circumstances, approve additional eligibility for care in MTFs for other U.S. Government civilian employees who become ill or injured while so deployed, or other DoD civilian employees overseas.

(5) *Contractor Personnel Authorized to Accompany U.S. Armed Forces*. In the case of contractor personnel authorized to accompany U.S. Armed Forces in deployed settings under DoD Instruction 3020.41,[7] MTF care may be provided as stated in DoD Instruction 3020.41.

(h) *Emergency Health Care*. The Secretaries of the Military Departments and the USD(P&R) may designate emergency patients as eligible for emergency health care from MTFs in the United States pursuant to arrangements with local health authorities or in other appropriate circumstances. Such care shall be on a reimbursable basis, unless waived by the USD(P&R) or the Secretaries of the Military Departments when they are the approving authority.

(i) *Research Subject Volunteers*. Research subjects are eligible for health care services from MTFs to the extent DoD Components are required by DoD Directive 3216.02[8] to establish procedures to protect subjects from medical expenses that are a direct result of participation in the research. Such care is on a non-reimbursable basis and limited to research injuries (unless the volunteer is otherwise an eligible health care beneficiary). Care is authorized during the pendency of the volunteer's involvement in the research, and may be extended further upon the approval of the USD(P&R).

(j) *Continuity of Care Extensions of Eligibility*. The Secretaries of the Military Departments and the USD(P&R) may establish temporary eligibility on a space-available basis for former members and former dependents of members of the seven Uniformed Services for a limited period of time, not to exceed 6 months, or in the case of pregnancy the completion of the pregnancy, after statutory eligibility expires when appropriate to allow completion or appropriate transition of a course of treatment begun prior to such expiration. In the case of a pregnancy covered by this paragraph, the designation of eligibility may include initial health care for the newborn infant. Care under this paragraph is authorized on a non-reimbursable basis for the former member or former dependent of member. Care

[6] Copies available at OASD (Health Affairs/TMA FHP&RP), 1200 Defense Pentagon, Room 3E1073, Washington, DC 20301–1200.

[7] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/302041p.pdf*.

[8] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/321602p.pdf*.

under this paragraph for the newborn of those former members or former dependents is authorized but on a full reimbursable basis unless the Secretary of the Military Department elect to use Secretarial Designee status for the newborn.

(k) *Members of the Armed Forces*. The Secretaries of the Military Departments and the USD(P&R) may establish eligibility not specifically provided by statute for critical mission-related health care services for designated members of the Armed Forces, such as Reserve Component members not in a present duty status. This authority includes payment for health care services in private facilities to the extent authorized by 10 U.S.C. 1074(c). Care under this paragraph is non-reimbursable.

(l) *Certain Senior Officials of the U.S. Government*. The officials and others listed in §108.5 of this part are designated as eligible for space-available inpatient and outpatient health care services from the Military Health System on a reimbursable basis.

(m) *Nonmedical Attendants*. The Secretaries of the Military Departments and the USD(P&R) may designate as eligible for space available MTF care persons designated as nonmedical attendants as defined by 37 U.S.C. 411k(b). Costs of medical care rendered are reimbursable unless reimbursement is waived by the Secretary of the Military Department concerned or USD(P&R). This authority is limited to health care needs arising while designated as a nonmedical attendant.

(n) *Patient Movement*. Provisions of this Instruction concerning inpatient care shall also apply to requests for patient movement through the medical evacuation system under DoD Instruction 6000.11.[9] Aeromedical evacuation transportation assets are reserved for those individuals designated as Secretarial Designees who need transportation to attain necessary health care.

(o) *Other Individuals Entitled to DoD Identification (ID) Card*. Other individuals entitled to a DoD ID card under DoD Instruction 1000.13 are eligible for space-available MTF health care to the extent provided in DoD Instruction 1000.13.

(p) *Reciprocity Among Military Departments*. Subject to the capabilities of the professional staff, the availability of space and facilities, and any other limitation imposed by the approving authority, all Services will provide medical treatment to individuals who have been granted Secretarial designee status by any of the Secretaries of the Military Departments. Each agreement must identify the specific MTF or geographical region in which medical care is requested, requiring close coordination among service program managers.

§ 108.5 Eligible senior officials of the U.S. government.

(a) The following individuals are Secretarial Designees for space-available care in MTFs on a reimbursable basis, unless specified otherwise by a Service Secretary:

(1) The President and Vice President, and their spouses and minor children.

(2) Members of Congress.

(3) Members of the Cabinet.

(4) Officials of the Department of Defense appointed by the President and confirmed by the Senate.

(5) Article III Federal Judges. (Article III courts are: The Supreme Court of the United States, U.S. Courts of Appeal, U.S. District Courts, U.S. Court of International Trade, United States Foreign Intelligence Surveillance Court, United States Foreign Intelligence Surveillance Court of Review.)

(6) Judges of the U.S. Court of Appeals for the Armed Forces.

(7) Assistants to the President.

(8) Director of the White House Military Office.

(9) Former Presidents of the United States and their spouses, widows, and minor children.

(b) [Reserved]

§ 108.6 Responsibilities.

(a) The USD(P&R) shall:

(1) Evaluate requests for and where appropriate, grant exceptions to policy

[9] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/600011p.pdf*.

established by this part and DoD Directive 5124.02,[10] including waiver of reimbursement, to the extent allowed by law.

(2) Following approval of the USD(P) and in coordination with USD(P) and the GC, DoD, and in accordance with DoD Directive 5530.3,[11] begin negotiations, negotiate, and have the authority to sign RHCAs.

(b) The USD(P) shall evaluate requests and determine DoD mission interest for Secretarial Designee Status and RHCAs to identify those agreements that would be in the best interest of the Department of Defense and approve negotiations of RHCAs by the USD(P&R).

(c) The USD(C) shall in coordination with USD(P&R), establish appropriate reimbursement rates, including appropriate interagency rates and rates applicable to students in International Military Education and Training programs.

(d) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall evaluate requests for Exception to the Transportation Policy. The authority to grant such a exception is by USD(P&R) or the Secretary of the Military Department concerned.

(e) The Secretaries of the Military Departments shall:

(1) Issue, revise or modify as appropriate, regulations to comply with this part.

(2) Appoint a Military Department representative who will administer the Secretarial Designee Program within the Military Department and coordinate with other DoD Components in its effective operation.

(3) Where and when appropriate, the Military Department concerned shall coordinate with U.S. Transportation Command/Global Patient Movement Requirements Center.

(4) Identify Secretarial Designees treated at MTFs.

(5) Provide an annual consolidated list reflecting the number of Secretarial Designees within their departments, reasons for such designation, location where designee is receiving treatment, the costs and sources of funding, nature and duration of treatment and expiration date of designee status to USD(P&R) and USD(C). The annual report is due 30 days after the start of the fiscal year reflecting the prior fiscal year's information.

(i) In cases where the USD(P&R) designates an individual as a Secretarial Designee, the Military Department concerned shall include this individual on any lists provided to USD(P&R) and USD(C) for reporting purposes.

(ii) Annually consolidate Secretarial Designee patient costs and forward those data to USD(P&R) and OSD(C), along with a report of collection for reimbursable costs.

(f) The Commanders of the Geographic Combatant Commands (GCCs) shall:

(1) Refer requests to waive reimbursement through the Chairman of the Joint Chiefs of Staff to the USD(P&R).

(2) Refer requests for Secretarial Designee status for medical care in the United States through the Chairman of the Joint Chiefs of Staff to USD(P&R).

(3) Through the Chairman of the Joint Chiefs of Staff, provide written annual reports to the USD(P&R) and USD(C) reflecting the number of individuals designated as Secretarial Designees within their geographic area of responsibility, the reasons for such designation, the expected duration of such designation, the costs and sources of funding authorizing the support of such designee status for each designee.

(4) Identify Secretarial Designees treated at MTFs within their geographic area of responsibility.

(5) Provide for an accounting and collection system for reimbursement of medical costs within their geographic area of responsibility.

(g) The Commander, United States Transportation Command shall:

(1) Coordinate patient movement with all concerned Military Departments.

(2) Upon request of the Military Department concerned or Commanders of the GCCs, determine availability of DoD transportation assets, or when cost effective, coordinate with civilian

[10] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/512402p.pdf*.

[11] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/553003p.pdf*.

ambulance authorities, to effect transportation of Secretarial Designee as appropriate.

(3) Ensure the Global Patient Movement Requirements Center, as the regulating agency, will consistently serve as the single point of contact for patient movement for Secretarial Designee patients using DoD assets upon request.

(4) Annually consolidate Secretarial Designee patient listing who utilized the DoD patient movement system and forward to USD(P&R) and USD(C).

PART 110—STANDARDIZED RATES OF SUBSISTENCE ALLOWANCE AND COMMUTATION INSTEAD OF UNIFORMS FOR MEMBERS OF THE SENIOR RESERVE OFFICERS' TRAINING CORPS

Sec.

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APPENDIX A TO PART 110—CLIMATIC ZONES USED TO DETERMINE RATES OF COMMUTATION ALLOWANCE
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APPENDIX E TO PART 110—APPLICATION OF 4-WEEK SUMMER FIELD TRAINING FORMULA (SAMPLE)

AUTHORITY: 10 U.S.C. 2101–2111, 37 U.S.C. 209, 50 App. U.S.C. 456(a).

SOURCE: 51 FR 26886, July 28, 1986, unless otherwise noted.

§ 110.1 Reissuance and purpose.

This part reissues 32 CFR part 110 implementing Pub. L. 88–647, 92–171, and 98–94 and updates policy, assigns responsibilities, and prescribes procedures for determining commutation rates for Reserve Officers' Training Corps (ROTC) detachments offered commutation funds instead of uniforms.

§ 110.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Logistics Agency (DLA) (hereafter referred to collectively as ''DoD Components''). The term ''Military Services,'' as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

§ 110.3 Policy.

It is DoD policy to provide subsistence allowance in accordance with Pub. L. 92–171 and to eligible participants of senior ROTC programs and commutation funds instead of uniforms (section 2110, Pub. L. 88–647) for members of senior ROTC programs at eligible schools.

§ 110.4 Responsibilities.

(a) The *Assistant Secretary of Defense (Force Management and Personnel)* (ADS(FM&P)), or designee, shall:

(1) Administer the overall DoD ROTC program.

(2) Maintain liaison with the Military Departments regarding the functioning of the ROTC program.

(3) Announce the standard rates of commutation instead of uniforms to the Military Departments not later than August 1 each year.

(b) The *Director, Defense Logistics Agency* (DLA), shall provide the Military Departments during December of each year the current unit price list of uniform items to be used the following fiscal year.

(c) The *Secretaries of the Military Departments* shall:

(1) Prescribe the standard uniform items for each climatic zone, sex, and course (basic and advanced) in quantities authorized to be provided.

(2) Develop the communication rates, based on the standard Military Service uniforms, and establish procedures for rate review on an annual basis.

(3) Submit to the ASD(FM&P) an estimate of the rates of commutation, based on the latest DLA clothing rate, for climatic zones by sex and course not later than July 1 of each year.

(4) Classify educational institutions as Military Colleges (MC), Civilian Colleges (CC), or Military Junior Colleges (MJC), hereafter also called schools.

(5) Conduct inspections to ensure that the schools meet the requirements