

appropriate military command for consideration of action, but the commander determined the report was unfounded as to the allegations against the subject of the investigation. Unfounded allegations reflect a determination by command, with the supporting advice of a qualified legal officer, that the allegations made against the alleged offender did not occur nor were attempted. These cases are either false or baseless. Public Law 111-383 requires the reporting of the number of victims associated with this category.

(1) *False cases.* Evidence obtained through an investigation shows that an offense was not committed nor attempted by the subject of the investigation.

(2) *Baseless cases.* Evidence obtained through an investigation shows that alleged offense did not meet at least one of the required elements of a UCMJ offense constituting the SAPR definition of sexual assault or was improperly reported as a sexual assault.

(e) *Subject outside DoD's legal authority.* When the subject of the investigation or the action being taken are beyond DoD's jurisdictional authority or ability to act, use the following descriptions to report case disposition. To comply with Public Law 111-383, Services must also identify the number of victims associated with these dispositions and specify when there was insufficient evidence that an offense occurred in the following categories.

(1) *Offender is unknown.* The investigation is closed because no person could be identified as the alleged offender.

(2) *Subject is a civilian or foreign national not subject to UCMJ.* The subject of the investigation is not amenable to military UCMJ jurisdiction for action or disposition.

(3) *Civilian or foreign authority is prosecuting Service member.* A civilian or foreign authority has the sexual assault allegation for action or disposition, even though the alleged offender is also subject to the UCMJ.

(4) *Offender died or deserted.* Commander action is precluded because of the death or desertion of the alleged offender or subject of the investigation.

(f) *Report unfounded by MCIO.* Determination by the MCIO that the allega-

tions made against the alleged offender did not occur nor were attempted. These cases are either false or baseless. Public Law 111-383 requires the reporting of the number of victims associated with this category.

(1) *False cases.* Evidence obtained through a MCIO investigation shows that an offense was not committed nor attempted by the subject of the investigation.

(2) *Baseless cases.* Evidence obtained through an investigation shows that alleged offense did not meet at least one of the required elements of a UCMJ offense constituting the SAPR definition of sexual assault or was improperly reported as a sexual assault.

§ 105.18 Information collection requirements.

(a) The DSAID and the DD Form 2910, referred to in this Instruction, have been assigned OMB control number 0704-0482.

(b) The annual report regarding sexual assaults involving Service members and improvement to sexual assault prevention and response programs referred to in §§ 105.5(f)(22); 105.7(a)(9), 105.7(a)(10), and 105.7(a)(12); 105.9(c)(8)(ii); and 105.16(a) and (d) of this part is submitted to Congress in accordance with section 1631(d) of Public Law 111-383 and is coordinated with the Assistant Secretary of Defense for Legislative Affairs in accordance with the procedures in DoDI 5545.02.

(c) The quarterly reports of sexual assaults involving Service members referred to in §§ 105.5, 105.7, 105.14, 105.15, and 105.16 of this part are prescribed by DoDD 5124.02 and have been assigned a DoD report control symbol in accordance with the procedures in DTM 12-004 and DoD 8910.1-M.

(d) The Service Academy sexual assault survey referred to in § 105.16(c) of this part has been assigned DoD report control symbol in accordance with the procedures in DTM 12-004 and DoD 8910.1-M.

PART 107—PERSONAL SERVICES AUTHORITY FOR DIRECT HEALTH CARE PROVIDERS

Sec.
107.1 Purpose.

§ 107.1

32 CFR Ch. I (7-1-16 Edition)

- 107.2 Applicability and scope.
- 107.3 Definitions.
- 107.4 Policy.
- 107.5 Procedures.
- 107.6 Responsibilities.

ENCLOSURE 1 TO PART 107—TABLE OF AUTHORIZED COMPENSATION RATES

AUTHORITY: 10 U.S.C. 1091; Federal Acquisition Regulation (FAR), part 37.

SOURCE: 50 FR 11693, Mar. 25, 1985, unless otherwise noted.

§ 107.1 Purpose.

This part establishes policy under 10 U.S.C. 1091, “Contracts For Direct Health Care Providers,” and assigns responsibility for implementing the authority for personal services contracts for direct health care providers.

§ 107.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD) and the Military Departments.

(b) It applies only to personal services contracts awarded under 10 U.S.C. 1091 for direct health care providers.

§ 107.3 Definitions.

(a) *Personal Services Contract.* A contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, to be government employees.

(b) *Direct Health Care Providers.* Health services personnel who participate in clinical patient care and services. This does not include personnel whose duties are primarily administrative or clerical, nor personnel who provide maintenance or security services.

§ 107.4 Policy.

(a) It is the policy of the Department of Defense that when in-house sources are insufficient to support the medical mission of the Military Departments, personal services contracts under 10 U.S.C. 1091 may be executed.

(b) It is the purpose of personal services contracts to facilitate mission accomplishment, maximize beneficiary access to military MTFs, maintain readiness capability, reduce use of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), and enhance quality of care by promoting the continuity of the patient/provider relationship.

(c) Personal services contractors shall be subject to the same quality assurance, credentialing processes, and other standards as those required of military health care providers. In addition, providers, other than para-professionals, must be licensed in accordance 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

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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.
- 108.1 Purpose.
- 108.2 Applicability.
- 108.3 Definition.

- 108.4 Policy.
- 108.5 Eligible senior officials of the U.S. Government.
- 108.6 Responsibilities.

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 (RHCA) 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

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

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

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