(including treatment provided under a contract
under section 1086 of this title or under part A
of title XVIII of the Social Security Act (42
U.S.C. 1395c et seq.).)

Stat. 666; amended Pub. L. 97–337, § 1, Oct. 15,
1982, 96 Stat. 1631; Pub. L. 98–525, title XIV,
100 Stat. 3992.)

REFERENCES IN TEXT
The Social Security Act, referred to in subsec. (b)(2),
is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended,
which is classified generally to chapter 7 (§ 301 et seq.)
of Title 42, The Public Health and Welfare. Part A of
title XVIII of the Social Security Act, is classified gen-
erally to Part A (§1395c et seq.) of subchapter XVIII of
chapter 7 of Title 42. For complete classification of this
Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS
(42 U.S.C. 1395c et seq.)” for “Act (42 U.S.C. 1395c et
seq.)”.
1984—Subsec. (b)(2). Pub. L. 98–525 which directed that
“(42 U.S.C. 1395c et seq.)” be inserted after “the Social
Security Act.”, was executed by inserting parenthet-
ical after “the Social Security Act” to reflect the prob-
able intent of Congress. See 1986 Amendment note
above.
1962—Subsec. (a). Pub. L. 97–337, § 1(1), designated exist-
ing provisions as subsec. (a).
Pub. L. 97–337, § 1(2), substituted provisions limiting the
maximum amount of space to be programed as the
greater of the amounts of space described in par. (1) or
(2) for provisions limiting the amount of space to be
programed to that amount needed to support teaching
and training requirements, except that space may be
programed in areas having large concentrations of re-
tired members where there is a critical shortage of fa-
cilities.

Effective Date of 1982 Amendment
Section 2 of Pub. L. 97–337 provided that: “The amend-
ment made by paragraph (2) of the first section
of this Act [amending this section] shall apply only
with respect to a facility for which funds for construc-
tion (or a major alteration) are first appropriated for a
fiscal year after fiscal year 1983.”

Effective Date
For effective date of section, see section 3 of Pub. L.
89–614, set out as a note under section 1071 of this title.

§ 1088. Air evacuation patients: furnished subsist-
ence
Notwithstanding any other provision of law,
and under regulations to be prescribed by the
Secretary concerned, a person entitled to medi-
cal and dental care under this chapter may be
furnished subsistence without charge while being
evacuated as a patient by military air-
craft of the United States.

1081.)

§ 1089. Defense of certain suits arising out of
medical malpractice
(a) The remedy against the United States pro-
vided by sections 1346(b) and 2672 of title 28
for damages for personal injury, including death,
cau sed by the negligent or wrongful act or omis-
sion of any physician, dentist, nurse, phar-
macist, or paramedical or other supporting per-
sonnel (including medical and dental techni-
cians, nursing assistants, and therapists) of the
armed forces, the National Guard while engaged
on training or duty under section 336, 502, 503,
504, or 505 of title 32, the Department of Defense,
the Armed Forces Retirement Home, or the Cen-
tral Intelligence Agency in the performance of
medical, dental, or related health care functions
(including clinical studies and investigations)
while acting within the scope of his duties or
employment therein or therefor shall hereafter be
exclusive of any other civil action or proceeding
by reason of the same subject matter against
such physician, dentist, nurse, phar-
macist, or paramedical or other supporting per-
sonnel (or the estate of such person) whose act
or omission gave rise to such action or proceeding.
This subsection shall also apply if the phy-
sician, dentist, nurse, pharmacist, or paramedi-
cal or other supporting personnel (or the estate
of such person) involved is serving under a per-
sonal services contract entered into under section
1091 of this title.

(b) The Attorney General shall defend any
civil action or proceeding brought in any court
against any person referred to in subsection (a)
of this section (or the estate of such person) for
any such injury. Any such person against whom
such civil action or proceeding is brought shall
deliver within such time after date of service or
knowledge of service as determined by the At-
torney General, all process served upon such
person or an attested true copy thereof to such
person’s immediate superior or to whomever was
designated by the head of the agency concerned
to receive such papers and such person shall
promptly furnish copies of the pleading and
process therein to the United States attorney
for the district embracing the place wherein the
action or proceeding is brought, to the Attorney
General and to the head of the agency con-
cerned.

(c) Upon a certification by the Attorney Gen-
eral that any person described in subsection (a)
was acting in the scope of such person’s duties
or employment at the time of the incident out
of which the suit arose, any such civil action or
proceeding commenced in a State court shall be
removed without bond at any time before trial
by the Attorney General to the district court of
the United States of the district and division
embracing the place wherein it is pending and
the proceeding deemed a tort action brought
against the United States under the provisions
title 28 and all references thereto. Should a
United States district court determine on a
hearing on a motion to remand held before a
trial on the merits that the case so removed is
one in which a remedy by suit within the mean-
ing of subsection (a) of this section is not avail-
able against the United States, the case shall be
remanded to the State court.

(d) The Attorney General may compromise or
settle any claim asserted in such civil action or
proceeding in the manner provided in section
2677 of title 28, and with the same effect.

(e) For purposes of this section, the provisions
of section 2680(h) of title 28 shall not apply to
any cause of action arising out of a negligent or
wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations).

(f)(1) The head of the agency concerned may, to the extent that the head of the agency concerned considers appropriate, hold harmless or provide liability insurance for any person described in subsection (a) for damages for personal injury, including death, caused by such person's negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of such person’s duties if such person is assigned to a foreign country or detailed for service with other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28, for such damage or injury.

(2) With respect to the Secretary of Defense and the Armed Forces Retirement Home Board, the authority provided by paragraph (1) also includes the authority to provide for reasonable attorney’s fees for persons described in subsection (a), as determined necessary pursuant to regulations prescribed by the head of the agency concerned.

(g) In this section, the term “head of the agency concerned” means—

(1) the Director of the Central Intelligence Agency, in the case of an employee of the Central Intelligence Agency;

(2) the Secretary of Homeland Security, in the case of a member or employee of the Coast Guard when it is not operating as a service in the Navy;

(3) the Chief Operating Officer of the Armed Forces Retirement Home, in the case of an employee of the Armed Forces Retirement Home; and

(4) the Secretary of Defense, in all other cases.


Subsec. (g)(3), (4). Pub. L. 101–510, § 1533(a)(1)(B), added par. (3) and struck out former par. (3) which read as follows: “the Board of Commissioners of the United States Soldiers’ and Airmen’s Home, in the case of an employee of the United States Soldiers’ and Airmen’s Home; and”.

1987—Subsec. (g). Pub. L. 100–180 inserted “the term” after “In this section,”.


Subsec. (f). Pub. L. 98–94, § 934(b), substituted “may, to the extent that the head of the agency concerned considers” for “or his designee may, to the extent that he or his designee deems”.

Subsec. (g)(3), (4). Pub. L. 98–94, § 934(c)(3), added par. (3) and redesignated former par. (3) as (4).

1981—Subsec. (a). Pub. L. 97–124 inserted “the National Guard while engaged in training or duty under section 316, 562, 563, 504, or 565 of title 32,” after “armed forces,”.

Effective Date of 2002 Amendment

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

Effective Date of 1990 Amendment

Amendment by Pub. L. 101–510 effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101–510, formerly set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

Effective Date of 1983 Amendment

Section 934(d) of Pub. L. 98–94 provided that: “The amendments made by this section [amending this section] shall apply only to claims accruing on or after the date of the enactment of this Act (Sept. 24, 1983).”

Effective Date of 1981 Amendment

Section 4 of Pub. L. 97–124 provided that: “The amendments made by this Act [amending this section and section 2671 of Title 28, Judiciary and Judicial Procedure] and the repeal made by section 3 of this Act [repealing section 334 of Title 32, National Guard] shall apply only with respect to claims arising on or after the date of enactment of this Act (Dec. 29, 1981).”

Effective Date

Section 4 of Pub. L. 94–464 provided that: “This Act [enacting this section, section 334 of Title 32, National Guard, section 2671 of Title 28, The Public Health and Welfare, and provisions set out as notes under this section and section 334 of Title 32] shall become effective on the date of its enactment (Oct. 8, 1976) and shall apply only to those claims accruing on or after such date of enactment.”

Congressional Findings

Section 2(a) of Pub. L. 94–464 provided that: “The Congress finds—

(1) that the Army National Guard and the Air National Guard are critical components of the defense posture of the United States;

(2) that a medical capability is essential to the performance of the mission of the National Guard when in Federal service;

(3) that the current medical malpractice crisis poses a serious threat to the availability of sufficient medical personnel for the National Guard; and

(4) that in order to ensure that such medical personnel will continue to be available to the National Guard, it is necessary for the Federal Government to
assume responsibility for the payment of malpractice claims made against such personnel arising out of actions or omissions on the part of such personnel while they are performing certain training exercises."

§ 1090. Identifying and treating drug and alcohol dependence

The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations, implement procedures using each practical and available method, and provide necessary facilities to identify, treat, and rehabilitate members of the armed forces who are dependent on drugs or alcohol.


HISTORICAL AND REVISION NOTES

Revised section Source (U.S. Code) Source (Statutes at Large)

The word “regulations” is added for consistency. The word “persons” is omitted as surplus.

AMENDMENTS


1990—Pub. L. 101–510 inserted “, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy,” after “Secretary of Defense”.


EFFECTIVE DATE OF 2002 AMENDMENT

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

§ 1090a. Commanding officer and supervisor referrals of members for mental health evaluations

(a) REGULATIONS.—The Secretary of Defense shall prescribe and maintain regulations relating to commanding officer and supervisor referrals of members of the armed forces for mental health evaluations. The regulations shall incorporate the requirements set forth in subsections (b), (c), and (d) and such other matters as the Secretary considers appropriate.

(b) REDUCTION OF PERCEIVED STIGMA.—The regulations prescribed by subsection (a) shall, to the greatest extent possible—

(1) seek to eliminate perceived stigma associated with seeking and receiving mental health services, promoting the use of mental health services on a basis comparable to the use of other medical and health services; and

(2) clarify the appropriate action to be taken by commanders or supervisory personnel who, in good faith, believe that a subordinate may require a mental health evaluation.

(c) PROCEDURES FOR INPATIENT EVALUATIONS.—The regulations required by subsection (a) shall provide that, when a commander or supervisor determines that it is necessary to refer a member of the armed forces for a mental health evaluation—

(1) the health evaluation shall only be conducted in the most appropriate clinical setting, in accordance with the least restrictive alternative principle; and

(2) only a psychiatrist, or, in cases in which a psychiatrist is not available, another mental health professional or a physician, may admit the member pursuant to the referral for a mental health evaluation to be conducted on an inpatient basis.

(d) PROHIBITION ON USE OF REFERRALS FOR MENTAL HEALTH EVALUATIONS TO RETALIATE AGAINST WHISTLEBLOWERS.—The regulations required by subsection (a) shall provide that no person may refer a member of the armed forces for a mental health evaluation as a reprisal for making or preparing a lawful communication of the type described in section 1839(c)(2) of this title, and applicable regulations. For purposes of this subsection, such communication shall also include a communication to any appropriate authority in the chain of command of the member.

(e) DEFINITIONS.—In this section—

(1) The term “mental health professional” means a psychiatrist or clinical psychologist, a person with a doctorate in clinical social work, or a psychiatric clinical nurse specialist.

(2) The term “mental health evaluation” means a psychiatric examination or evaluation, a psychological examination or evaluation, an examination for psychiatric or psychological fitness for duty, or any other means of assessing the state of mental health of a member of the armed forces.

(3) The term “least restrictive alternative principle” means a principle under which a member of the armed forces committed for hospitalization and treatment shall be placed in the most appropriate and therapeutic available setting—

(A) that is no more restrictive than is conducive to the most effective form of treatment; and

(B) in which treatment is available and the risks of physical injury or property damage posed by such placement are warranted by the proposed plan of treatment.


§ 1091. Personal services contracts

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