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Gays in the Military - Benefits: DOD [Department of Defense] Law - Disability

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meaning given such term in section 1072(4) of title 10, United States Code [section 1072(4) of this title] (as added by section 701(b)).

"(3) The term 'covered beneficiary' has the meaning given such term in section 1072(5) of

title 10, United States Code [section 1072(5) of this title] (as added by section 701(b))."

Legislative History

For legislative history and purpose of Pub.L. 98-557, see 1984 U.S. Code Cong. and Adm. News, p. 4831.

CODE OF FEDERAL REGULATIONS

Eligibility for medical and dental care at—
Civilian facilities, see 32 CFR 732.1 et seq.
Naval facilities, see 32 CFR 728.1 et seq.

Implementation of Civilian Health and Medical Program of Uniformed Services, see 32 CFR 199.1 et seq.

§ 1074. Medical and dental care for members and certain former members

(a) Under joint regulations to be prescribed by the administering Secretaries, a member of a uniformed service who is on active duty is entitled to medical and dental care in any facility of any uniformed service.

(b) Under joint regulations to be prescribed by the administering Secretaries, a member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay may, upon request, be given medical and dental care in any facility of any uniformed service, subject to the availability of space and facilities and the capabilities of the medical and dental staff. The administering Secretaries may, with the agreement of the Secretary of Veterans Affairs, provide care to persons covered by this subsection in facilities operated by the Secretary of Veterans Affairs and determined by him to be available for this purpose on a reimbursable basis at rates approved by the President.

(c) Funds appropriated to a military department may be used to provide medical and dental care to persons entitled to such care by law or regulations, including the provision of such care (other than elective private treatment) in private facilities for members of the armed forces. If a private facility or health care provider providing care under this subsection is a health care provider under the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense, after consultation with the other administering Secretaries, may by regulation require the private facility or health care provider to provide such care in accordance with the same payment rules (subject to any modifications considered appropriate by the Secretary) as apply under that program.

(As amended Pub.L. 98-525, Title XIV, § 1401(e)(1), Oct. 19, 1984, 98 Stat. 2616; Pub.L. 98-557, § 19(3), Oct. 30, 1984, 98 Stat. 2869; Pub.L. 101-189, Div. A, Title VII, § 729, Title XVI, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1481, 1603; Pub.L. 101-510, Div. A, Title XIV, § 1484(j)(1), Nov. 5, 1990, 104 Stat. 1718.)

HISTORICAL AND STATUTORY NOTES

Prior Provisions

Provisions similar to subsec. (c) of this section were contained in Pub.L. 98-212, Title VII, § 735 in part, Dec. 8, 1983, 97 Stat. 1444 (set out as a section 138 note), prior to deletion of the provisions from section 735, effective Oct. 1, 1985, by sections 1403(a)(2), 1404 of Pub.L. 98-525.

1990 Amendment

Subsec. (b). Pub.L. 101-510 substituted "Secretary of Veterans Affairs" for "Administrator".

1989 Amendment

Subsec. (b). Pub.L. 101-189, § 1621(a)(2), substituted "Secretary of Veterans Affairs" for "Administrator of Veterans Affairs" wherever appearing.

Subsec. (c). Pub.L. 101-189, § 729, added provision that if a private facility or health care provider providing care under this subsection is a health provider under the Civilian Health

Medical Program of the Uniformed Services, the Secretary of Defense, after consultation with the other administering Secretaries, may

by regulation require the private facility or health care provider to provide such care in accordance with the same payment rules (subject to any modifications considered appropriate by the Secretary) as apply under that program.

1984 Amendments

Subsec. (a). Pub.L. 98-557, § 19(3) substituted reference to administering Secretaries, for reference to Secretary of Defense and Secretary of Health and Human Services.

Subsec. (b). Pub.L. 98-557, § 19(3) substituted references to the administering Secretaries, for references to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (c). Pub.L. 98-525, § 1401(e)(1), added subsec. (c).

Effective Date of 1984 Amendment

Amendment by Pub.L. 98-525, effective Oct. 1, 1985, see section 1404 of Pub.L. 98-525, set out as a note under section of this title.

Persian Gulf War Veterans' Health Status

For provisions establishing the Persian Gulf War Veterans Health Registry, relating to

health examinations and counseling for veterans eligible for inclusion in certain health-related registries, expansion of coverage of the Persian Gulf Registry established under section 734 of Pub.L. 102-190 (set out as a note under this section), provisions requiring a study by the Office of Technology Assessment of the Persian Gulf Registry and the Persian Gulf War Veterans Health Registry, provisions relating to an agreement with the National Academy of Sciences for review of health consequences of service during the Persian Gulf War, and coordination of government activities on health-related research on the Persian Gulf War, see Pub.L. 102-585, Title VII, §§ 701 to 708, Nov. 4, 1992, 106 Stat. 4975 to 4980, set out as a note under section 527 of Title 38, Veterans' Benefits.

Mental Health Evaluations of Members of Armed Forces

Pub.L. 102-484, Div. A, Title V, § 546(a)-(b), Oct. 23, 1992, 106 Stat. 2416, provided for regulations for outpatient and inpatient evaluations, rights of members of the armed forces, procedures for emergency or involuntary inpatient evaluations, prohibition against the use of referrals to retaliate against whistleblowers, and for a report describing the preparation of the regulations.

Study on Risk-Sharing Contracts for Health Care

Pub.L. 102-484, Div. A, Title VII, § 725, Oct. 23, 1992, 106 Stat. 2440, provided that:

"(a) Study.—Not later than 18 months after the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense, in consultation with the Secretary of Health and Human Services, shall carry out a study of the feasibility and advisability of entering into risk-sharing contracts with eligible organizations described in section 1876(b) of the Social Security Act (42 U.S.C. 1395mm(b) [section 1395mm(b) of Title 42, The Public Health and Welfare]) to furnish health care services to persons entitled to health care in a facility of a uniformed service under section 1074(b) or 1076(b) of title 10, United States Code [subsec. (b) of this section or section 1076(b) of this title].

"(b) Plan.—If the Secretary of Defense determines as a result of the study required by subsection (a) that entry into risk-sharing contracts is feasible and advisable, the Secretary shall develop a plan for the entry into such contracts in accordance with the Secretary's determinations under the study.

"(c) Report.—The Secretary of Defense shall submit to Congress a report describing the results of the study and containing any plan developed under subsection (b) to enter into risk-sharing contracts."

Registry of Members of the Armed Forces Exposed to Fumes of Burning Oil in Connection with Operation Desert Storm

Pub.L. 102-190, Div. A, Title VII, § 734, Dec. 5, 1991, 105 Stat. 1411, as amended Pub.L. Title VII, § 704, Nov. 4, 1992, Stat. 4977, provided that:

"(a) Establishment of Registry.—The Secretary of Defense shall establish and maintain a

special record (in this section referred to as the 'Registry') relating to the following members of the Armed Forces:

"(1) Members who, as determined by the Secretary, were exposed to the fumes of burning oil in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

"(2) Any other members who served in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

"(b) Contents of Registry.—(1) The Registry shall include—

"(A) with respect to each class of members referred to in each of paragraphs (1) and (2) of subsection (a)—

"(i) a list containing each such member's name and other relevant identifying information with respect to the member; and

"(ii) to the extent that data are available and inclusion of the data is feasible, a description of the circumstances of the member's service during the Persian Gulf conflict, including the locations in the Operation Desert Storm theater of operations in which such service occurred and the atmospheric and other environmental circumstances in such locations at the time of such service; and

"(B) with respect to the members referred to in subsection (a)(1), a description of the circumstances of each exposure of each such member to the fumes of burning oil as described in such subsection (a)(1), including the length of time of the exposure.

"(2) The Secretary shall establish the Registry with the advice of an independent scientific organization.

"(c) Reporting requirement relating to exposure studies.—The Secretary shall submit to Congress each year, at or about the time that the President's budget is submitted that year under section 1105 of title 31, United States Code [section 1105 of Title 31, Money and Finance], a report regarding—

"(1) the results of all on-going studies on the members referred to in subsection (a)(1) to determine the health consequences (including any short- or long-term consequences) of the exposure of such members to the fumes of burning oil; and

"(2) the need for additional studies relating to the exposure of such members to such fumes.

"(d) Medical examination.—Upon the request of any member listed in the Registry pursuant to subsection (a)(1), the Secretary of the military department concerned shall, if medically appropriate, furnish a pulmonary function examination and chest x-ray to such person.

"(e) Effective date.—The Secretary shall establish the Registry not later than 180 days after the date of the enactment of this Act [Dec. 5, 1991].

"(f) Definitions.—For purposes of this section:

"(1) The term 'Operation' has the meaning given in section 8(1) of the Persian Gulf Conflict Supplemental

Authorization Personnel Act of 1991 (Public Law 102-25; 105 Stat. 77; 10 U.S.C. 101 note) [set out as a note under section 101 of this title].

"(2) The term 'Persian Gulf conflict' has the meaning given such term in section 3(8) of such Act [set out as a note under section 101 of this title]."

Advisory Committee on Mental Health Evaluation Protections

Pub.L. 101-510, Div. A, Title V, § 554, Nov. 5, 1990, 104 Stat. 1667, as amended Pub.L. 102-484, Div. A, Title V, § 546(j), Oct. 23, 1992, 106 Stat. 2419, provided that:

"(a) Requirement.—Not later than 60 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Defense shall establish an advisory committee to carry out the functions described in subsection (d).

"(b) Membership.—The advisory committee shall include not fewer than 12 members, including the following:

"(1) Three board-certified psychiatrists who are officers of the Armed Forces, one of whom shall be an officer in the Medical Corps of the Army, one of whom shall be an officer in the Medical Corps of the Navy, and one of whom shall be an officer in the Air Force designated as a medical officer.

"(2) One board-certified psychiatrist who is a civilian not employed by the Department of Defense, with expertise in procedures for the psychiatric commitment of civilian adults.

"(3) Three clinical psychologists who are officers of the Armed Forces and who have been awarded a diploma as a Diplomate in Psychology by the American Board of Professional Psychology, one of whom shall be an officer in the Medical Service Corps of the Army, one of whom shall be an officer in the Medical Service Corps of the Navy, and one of whom shall be an officer in the Air Force who is designated as a biomedical sciences officer.

"(4) One clinical psychologist who is a civilian not employed by the Department of Defense and who has been awarded a diploma as a Diplomate in Psychology by the American Board of Professional Psychology.

"(5) Three judge advocates, one each from the Army, the Navy, and the Air Force, with expertise in pretrial restraint and other procedures associated with the mental health evaluation of individuals subject to the Uniform Code of Military Justice.

"(6) An attorney who is a civilian not employed by the Department of Defense, with expertise in legal procedures associated with the psychiatric commitment of civilian adults.

"(7) Such other civilian officials (employed by the Department of Defense or otherwise employed) and members of the Armed Forces as the Secretary considers appropriate.

"(c) Chairman.—The Secretary of Defense shall appoint a chairman of the advisory committee from among the members of the committee.

"(d) Functions.—(1) The advisory committee shall develop and recommend to the Secretary regulations on procedural protections that be afforded to any member of the A

Forces who is referred by a commanding officer for a mental health evaluation by a mental health professional. The recommended regulations shall apply uniformly throughout the Department of Defense and shall include appropriate procedural protections according to whether the evaluations are to be carried out on an outpatient or inpatient basis and whether, based on the results of the evaluation, the member is to be involuntarily hospitalized in a mental health treatment facility. In developing the regulations with respect to procedural protections for evaluations conducted on an inpatient basis, the committee shall take into account any guidelines regarding psychiatric hospitalization of adults prepared by professional civilian mental health organizations.

"(2)(A) The regulations developed under paragraph (1) shall include both of the following:

"(i) A prohibition on the inappropriate referral for a mental health evaluation of a member of the Armed Forces as a reprisal against the member for making or preparing to make a communication described in subparagraph (B).

"(ii) Procedural protections to be afforded to a member who is referred for a mental health evaluation following a communication described in subparagraph (B). Such protections shall provide the member with an appropriate opportunity to allow for a timely, prompt challenge to the referral.

"(B) A communication referred to in subparagraph (A) is a lawful communication by a member of the Armed Forces of the type described in section 1034(c)(2) of title 10, United States Code [section 1034(c)(2) of this title], except that, for purposes of this section, such a communication shall include a communication to any appropriate authority in the chain of command of the member (as defined by the Secretary of Defense in regulations under subsection (g)).

"(e) Definitions.—In this section:

"(1) 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 a member's state of mental health.

"(2) The term 'mental health professional' means a psychiatrist, a psychologist, a person with a master's degree in social work, or any other individual who conducts mental health evaluations for the Department of Defense.

"(f) Report.—(1) Not later than six months after the date of the enactment of this Act [Nov. 5, 1990], the advisory committee shall submit to the Secretary of Defense a report containing the recommended regulations and such other information as the committee considers appropriate.

"(2) Not later than 30 days after receipt of the report under paragraph (1), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives the report of the advisory committee, along with such additional comments and recommendations by the Secretary as the Secretary considers appropriate.

["(g) Repealed. Pub.L. 484, Div. A, Title V, § 546(j), Oct. 23, 1992, 106 Stat. 2419]

"(h) Termination of committee.—The advisory committee shall terminate on the date on which the Secretary prescribes regulations under subsection (g)."

Two-Year Prohibition on Fee for Outpatient Care at Military Medical Treatment Facilities

Pub.L. 101-189, Div. A, Title VII, § 721, Nov. 29, 1989, 103 Stat. 1477, provided that: "During fiscal years 1990 and 1991, the Secretary of Defense may not impose a charge for the receipt of outpatient medical or dental care at a military medical treatment facility."

Pub.L. 100-180, Div. A, Title VII, § 722, Dec. 4, 1987, 101 Stat. 1116, provided that: "During fiscal years 1988 and 1989, the Secretary of Defense may not impose a fee for the receipt of outpatient medical or dental care at a military medical treatment facility."

Restriction on Use of Information Obtained During Certain Epidemiologic-Assessment Interviews

Pub.L. 99-661, Div. A, Title VII, § 705(c), Nov. 14, 1986, 100 Stat. 3904 provided that:

"(1) Information obtained by the Department of Defense during or as a result of an epidemiologic-assessment interview with a serum-positive member of the Armed Forces may not be used to support any adverse personnel action against the member

"(2) For purposes of paragraph (1):

CODE OF FEDERAL REGULATIONS

Implementation of Civilian Health and Medical Program of Uniformed Services, see 32 CFR 199.1 et seq.

NOTES OF DECISIONS

3. Persons entitled to care

Commissioned officer of public health service could not sue Government for service-connected injuries arising from elective surgery; plaintiff was entitled to free medical care at military and public health service facilities and to disability payments. *Scheppan v. U.S.*, C.A.4 (Va.) 1987, 810 F.2d 461.

Insured, who was veteran, but not military retiree, did not have right to free medical care at Veteran's Administration hospital for nonservice-connected injury. *U.S. v. Dairyland Ins. Co.*, N.D.Ga.1986, 644 F.Supp. 702.

Reservist who had been involuntarily released from active duty within two years of becoming eligible for retirement pay was not entitled to compensation for medical bills incurred after date of his constructive release from active duty. *Umet v. U.S.*, 1989, 17 Cl.Ct. 679, affirmed 936 F.2d 280.

7. United States as third-party beneficiary Under Mississippi law, United States was third-party beneficiary of boating and automo-

"(A) The term 'epidemiologic-assessment interview' means questioning of a serum-positive member of the Armed Forces for purposes of medical treatment or counseling or for epidemiologic or statistical purposes.

"(B) The term 'serum-positive member of the Armed Forces' means a member of the Armed Forces who has been identified as having been exposed to a virus associated with the acquired immune deficiency syndrome.

"(C) The term 'adverse personnel action' includes—

"(i) a court-martial;

"(ii) non-judicial punishment;

"(iii) involuntary separation (other than for medical reasons);

"(iv) administrative or punitive reduction in grade;

"(v) denial of promotion;

"(vi) an unfavorable entry in a personnel record;

"(vii) a bar to reenlistment; and

"(viii) any other action considered by the Secretary concerned to be an adverse personnel action."

Legislative History

For legislative history and purpose of Pub.L. 98-625, see 1984 U.S. Code Cong. and Adm. News, p. 4174. See, also, Pub.L. 98-557, 1984 U.S. Code Cong. and Adm. News, p. 4581; Pub.L. 101-189, 1989 U.S. Code Cong. and Adm. News, p. 838; Pub. L. 101-510, 1990 U.S. Code Cong. and Adm. News, p. 2331.

bile policies issued to various members of military, such that it was entitled to reimbursement from insurer for value of medical care provided to members pursuant to statutory obligations; insurer was obligated to pay costs of reasonable medical services, whether such costs were borne personally by insured or directly by medical care provider. *U.S. v. State Farm Mut. Auto. Ins. Co.*, C.A.5 (Miss.) 1991, 936 F.2d 206.

United States was third-party beneficiary of boating and automobile policies issued to various active duty and retired members of military, such that it was entitled to reimbursement from insurer for reasonable value of medical care it provided to members, pursuant to its statutory obligation, after members were involved in accidents covered by policies; absent showing that lesser premium was charged for servicemen and their dependents, failure to reimburse Government for reasonable medical services would constitute windfall to insurer. *U.S. v. State Farm Mut. Auto. Ins. Co.*, S.D.Miss.1989, 717 F.Supp. 1207, affirmed 936 F.2d 206.

§ 1074a. Medical and dental care: members on duty other than active duty for a period of more than 30 days

(a) Under joint regulations prescribed by the administering Secretaries, the following are entitled to the its described in subsection (b):

(1) Each member of a uniformed service who incurs or aggravates an injury, illness, or disease in the line of duty while performing—

- (A) active duty for a period of 30 days or less; or
- (B) inactive-duty training.

(2) Each member of a uniformed service who incurs or aggravates an injury, illness, or disease while traveling directly to or from the place at which that member is to perform or has performed—

- (A) active duty for a period of 30 days or less; or
- (B) inactive-duty training.

(b) A person described in subsection (a) is entitled to—

- (1) the medical and dental care appropriate for the treatment of the injury, illness, or disease of that person until the resulting disability cannot be materially improved by further hospitalization or treatment; and
- (2) subsistence during hospitalization.

(c) A member is not entitled to benefits under this section if the injury, illness, or disease, or aggravation of an injury, illness, or disease described in subsection (a)(2), is the result of the gross negligence or misconduct of the member.

(Added Pub.L. 98-94, Title X, § 1012(a)(1), Sept. 24, 1983, 97 Stat. 665, and amended Pub.L. 98-525, Title VI, § 631(a)(1), Oct. 19, 1984, 98 Stat. 2642; Pub.L. 98-557, § 19(4), Oct. 30, 1984, 98 Stat. 2869; Pub.L. 99-145, Title XIII, § 1303(a)(7), Nov. 8, 1985, 99 Stat. 739; Pub.L. 99-661, Div. A, Title VI, § 604(a)(1), Nov. 14, 1986, 100 Stat. 3874.)

HISTORICAL AND STATUTORY NOTES

1986 Amendment

Pub.L. 99-661 amended section generally substituting "active duty for a period of more than 30 days" for "active duty; injuries, diseases and illnesses incident to duty" in section catchline and new text.

1985 Amendment

Subsec. (a). Pub.L. 99-145, § 1303(a)(7), substituted reference to the administering Secretaries, for references to Secretaries of Defense, Transportation, and Health and Human Services.

1984 Amendments

Catchline. Pub.L. 98-525, § 631(a)(1), substituted "Medical and dental care: members on duty other than active duty; injuries, diseases and illnesses incident to duty" for "Medical and dental care for members of the uniformed services for injuries incurred or aggravated while traveling to and from inactive duty training".

Subsec. (a). Pub.L. 98-557, § 19(4) substituted reference to administering Secretaries, for reference to Secretary of Defense and Secretary of Health and Human Services.

Pub.L. 98-525, § 631(a)(1), authorized the Secretary of Transportation to participate in issuance of joint regulations, added para. (1) to (3), and incorporated existing provisions in text designated par. (4).

Subsec. (b). Pub.L. 98-525, § 631(a)(1), included treatment of diseases or illnesses.

Effective Date of 1986 Amendment

Section 604(g) of Pub.L. 99-661 provided that: "The amendments made by this section [amend-

ing sections 1074a, 1076, 1086, 1204-1206, 1476, 1476, 1481, 8723, and 8723 of this title and sections 204 and 206 of Title 37, Pay and Allowances of the Uniformed Services and repealing sections 3687, 3721, 3722, 6148, 8687, 8721, and 8722 of this title and sections 318-321 of Title 32, National Guard] shall apply with respect to persons who, after the date of enactment of this Act [Nov. 14, 1986], incur or aggravate an injury, illness, or disease or die."

Effective Date of 1984 Amendment

Section 631(c) of Pub.L. 98-525 provided that: "The amendments made by this section [amending this section and repealing section 6148(d) of this title] shall apply only with respect to injuries incurred or aggravated and diseases or illnesses contracted or aggravated after September 30, 1984."

Effective Date

Section 1012(c) of Pub.L. 98-94 provided that: "The amendments made by subsections (a) and (b) [enacting this section and section 204(j) of Title 37, Pay and Allowances of the Uniformed Services] shall apply only in cases of injuries incurred or aggravated on or after the date of the enactment of this Act [Sept. 24, 1983]."

Legislative History

For legislative history and purpose of Pub.L. 98-94, see 1983 U.S. Code Cong. and Adm. News, p. 1081. See, also, Pub.L. 98-525, 1984 U.S. Code Cong. and Adm. News, p. 4174; Pub.L. 98-557, 1984 U.S. Code Cong. and Adm. News, p. 4831; Pub.L. 99-145, 1985 U.S. Code Cong. and Adm. News, p. 472; Pub.L. 99-661, 1986 U.S. Code Cong. and Adm. News, p. 6418.

§ 1074b. Transitional medical and dental care: members on active duty in support of contingency operations.

(a) **Health care provided.**—A member of the armed forces described in subsection (b), and the dependents of the member, shall be entitled to receive health care described

in subsection (c) upon the release of the member from active duty in support of a contingency operation until the earlier of—

- (1) 30 days after the date of the release of the member from active duty; or
- (2) the date on which the member and the dependents of the member are covered by a health plan sponsored by an employer.

(b) **Eligible member described.**—A member of the armed forces referred to in subsection (a) is a member who—

- (1) is a member of a reserve component and is called or ordered to active duty in support of a contingency operation;
- (2) is involuntarily retained on active duty under section 673c of this title in support of a contingency operation; or
- (3) voluntarily agrees to remain on active duty for a period of less than one year in support of a contingency operation.

(c) **Health care described.**—The health care referred to in subsection (a) is—

- (1) medical and dental care available under section 1076 of this title in the same manner as such care is available for a dependent described in subsection (a)(2) of that section; and
- (2) health benefits contracted for under the authority of section 1079(a) of this title and subject to the same rates and conditions as apply to persons covered under that section.

(Added Pub.L. 102-190, Div. A, Title VI, § 640(a)(2), Dec. 5, 1991, 105 Stat. 1386.)

HISTORICAL AND STATUTORY NOTES

Prior Provisions

A prior section 1074b, added Pub.L. 98-525, Title XIV, § 1401(a)(2)(A), Oct. 19, 1984, 98 Stat. 2616, was renumbered section 1074c.

Legislative History

For legislative history and purpose of Pub.L. 102-190, see 1991 U.S. Code Cong. and Adm. News, p. 918.

§ 1074c. Medical care: authority to provide a wig

A person entitled to medical care under this chapter who has alopecia resulting from the treatment of a malignant disease may be furnished a wig if the person has not previously been furnished one at the expense of the United States.

(Added Pub.L. 98-525, Title XIV, § 1401(a)(2)(A), Oct. 19, 1984, 98 Stat. 2616; § 1074b, renumbered Pub.L. 102-190, Div. A, Title VI, § 640(a)(1), Dec. 5, 1991, 105 Stat. 1385.)

HISTORICAL AND STATUTORY NOTES

Effective Date

Section effective Oct. 1, 1985, see section 1404 of Pub.L. 98-525, set out as an Effective Date note under section 620b of this title.

Similar Provisions

Provisions similar to those comprising this section were contained in the following prior appropriation acts:

Pub.L. 98-473, Title I, § 101(b) [Title VIII, § 8083], Oct. 12, 1984, 98 Stat. 1904, 1929.

Pub.L. 98-212, Title VII, § 739, Dec. 8, 1983, 97 Stat. 1445.

Pub.L. 97-377, Title I, § 101(c) [Title VII, § 742], Dec. 21, 1982, 96 Stat. 1833, 1858.

Pub.L. 97-114, Title VII, § 743, Dec. 29, 1981, 95 Stat. 1586.

Pub.L. 96-527, Title VII, § 744, Dec. 15, 1980, 94 Stat. 3089.

Legislative History

For legislative history and purpose of Pub.L. 98-525, see 1984 U.S. Code Cong. and Adm. News, p. 4174. See, also, Pub.L. 102-190, 1991 U.S. Code Cong. and Adm. News, p. 918.

§ 1074d. Primary and preventive health care services for women

(a) **Services available.**—Female members and former members of the uniformed services entitled to medical care under section 1074 or 1074a of this title shall also be entitled to primary and preventive health care services for women as part of such medical care.

(b) **Definition.**—In this section, the term "primary and preventive health care services for women" means health care services, including related counseling services, provided to women with respect to the following:

- (1) Papanicolaou tests (pap smear).
- (2) Breast examinations and mammography.

- (3) Comprehensive obstetrical and gynecological care, including care related to pregnancy and the prevention of pregnancy.
- (4) Infertility and sexually transmitted diseases, including prevention.
- (5) Menopause, including hormone replacement therapy and counseling regarding the benefits and risks of hormone replacement therapy.
- (6) Physical or psychological conditions arising out of acts of sexual violence.
- (7) Gynecological cancers.

(Added Pub.L. 103-160, Div. A, Title VII, § 701(a)(1), Nov. 30, 1993, 107 Stat. 1685.)

HISTORICAL AND STATUTORY NOTES

Report on the Provision of Primary and Preventive Health Care Services for Women

Section 735 of Pub.L. 103-160 provided that:

"(a) Report required.—The Secretary of Defense shall prepare a report evaluating the provision of primary and preventive health care services through military medical treatment facilities and the Civilian Health and Medical Program of the Uniformed Services to female members of the uniformed services and female covered beneficiaries eligible for health care under chapter 55 of title 10, United States Code [this chapter].

"(b) Contents.—The report required by subsection (a) shall contain the following:

"(1) A description of the number and types of health care providers who are providing health care services in military medical treatment facilities or through the Civilian Health and Medical Program of the Uniformed Services to female members and female covered beneficiaries.

"(2) A description of the health care programs implemented (or planned) by the administering Secretaries to assess the health needs of women or to meet the special health needs of women.

"(3) A description of the demographics of the population of female members and female covered beneficiaries and the leading categories of morbidity and mortality among such members and beneficiaries.

"(4) A description of any actions, including the use of special pays and incentives, undertaken by the Secretary during fiscal year 1993—

"(A) to ensure the retention of health care providers who are providing health care services to female members and female covered beneficiaries;

"(B) to recruit additional health care providers to provide such health care services; and

"(C) to replace departing health care providers who provided such health care services.

"(5) A description of any existing or proposed programs to encourage specialization of health care providers in fields related to primary and preventive health care services for women.

"(6) An assessment of any difficulties experienced by military medical treatment facilities or health care providers under the Civilian Health and Medical Program of the Uniformed Services in furnishing primary and preventive health care services for women and a description of the actions taken by the Secretary to resolve such difficulties.

"(7) A description of the actions taken by the Secretary to foster and encourage the expansion of research relating to health care issues of concern to female members of the uniformed services and female covered beneficiaries.

"(c) Study of the needs of female members and female covered beneficiaries for health care services.—(1) As part of the report required by subsection (a), the Secretary shall conduct a study to determine the needs of female members of the uniformed services and female covered beneficiaries for health care services, including primary and preventive health care services for women.

"(2) The study shall examine the health care needs of current female members and female covered beneficiaries and anticipated future female members and female covered beneficiaries, taking into consideration the anticipated size and composition of the Armed Forces in the year 2000 and the demographics of the entire United States.

"(d) Submission and revision.—The Secretary shall submit to Congress the report required by subsection (a) not later than October 1, 1994. The Secretary shall revise and resubmit the report to Congress not later than October 1, 1999.

"(e) Definitions.—For purposes of this section:

"(1) The term 'primary and preventive health care services for women' has the meaning given that term in section 1074d(b) of title 10, United States Code, as added by section 701(a) [subsec. (b) of this section].

"(2) The term 'covered beneficiary' has the meaning given that term in section 1072(5) of such title [section 1072(5) of this title]."

Legislative History

For legislative history and purpose of Pub.L. 103-160, see 1993 U.S. Code Cong. and Adm. News, p. —

§ 1075. Officers: certain enlisted: ers: subsistence charges

CODE OF FEDERAL REGULATIONS

Eligibility for medical and dental care at—
Civilian facilities, see 32 CFR 732.1 et seq.
Naval facilities, see 32 CFR 728.1 et seq.

Implementation of Civilian Health and Medical Program of Uniformed Services, see 32 CFR 199.1 et seq.

§ 1076. Medical and dental care for dependents: general rule

(a)(1) A dependent described in paragraph (2) is entitled, upon request, to the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff.

(2) A dependent referred to in paragraph (1) is a dependent of a member of a uniformed service—

(A) who is on active duty for a period of more than 30 days or who died while on that duty; or

(B) who died from an injury, illness, or disease incurred or aggravated—

(i) while on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive duty training; or

(ii) while traveling to or from the place at which the member is to perform, or has performed, such active duty, active duty for training, or inactive duty training.

(b) Under regulations to be prescribed jointly by the administering Secretaries, a dependent of a member or former member—

[See main volume for text of (1) and (2)]

may, upon request, be given the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff, except that a dependent of a member or former member described in clause (2) may not be given such medical or dental care until the date on which such member or former member would have attained age 60. A dependent described in section 1072(2)(F) of this title may be provided medical and dental care pursuant to clause (2) without regard to subclause (B) of such clause.

[See main volume for text of (c)]

(d) To utilize more effectively the medical and dental facilities of the uniformed services, the administering Secretaries shall prescribe joint regulations to assure that dependents entitled to medical or dental care under this section will not be denied equal opportunity for that care because the facility concerned is that of a uniformed service other than that of the member.

(e)(1) Subject to paragraph (3), if—

(A) a member of a uniformed service receives a dishonorable or bad-conduct discharge or is dismissed from a uniformed service as a result of a court-martial conviction for an offense involving abuse of a dependent of the member, as determined in accordance with regulations prescribed by the administering Secretary for such uniformed service; and

(B) the abused dependent needs medical or dental care for an injury or illness resulting from the abuse,

the administering Secretary may, upon request of the abused dependent, furnish medical or dental care to the dependent for the treatment of such injury or illness in facilities of the uniformed services.

(2) Subject to paragraph (3), upon request of any dependent of a member of a uniformed service punished for an abuse described in paragraph (1)(A), the administering Secretary for such uniformed service may furnish medical care in facilities of the uniformed services to the dependent for the treatment of any adverse health condition resulting from such dependent's knowledge of (A) the abuse, or (B) any injury or illness suffered by the abused person as a result of such:

Cross References

Commissioned officer of Public Health Service credited, for purposes of this chapter, with active service comparable to service performed by commissioned officers of Service, see section 212 of Title 42, The Public Health and Welfare.

Commissioned officer (other than warrant officer) retired in highest grade of satisfactory service unless retired under provisions of this chapter, see section 1370 of this title.

Commissioned officers of the Public Health Service, applicability of this chapter, see section 213a of Title 42, The Public Health and Welfare.

Election of annuity, see section 1431 of this title.

National Oceanic and Atmospheric Administration, applicability of this chapter to, see section 857a of Title 33, Navigation and Navigable Waters.

Recomputation of retired or retainer pay to reflect later active duty, see sections 1402, 1402a of this title.

Retirement of Coast Guard officer under provisions of this chapter after selected for promotion in grade selected for promotion, see section 294 of Title 14, Coast Guard.

Travel and transportation allowances, see sections 404, 406 of Title 37, Pay and Allowances of the Uniformed Services.

Uniform date for retirement of Federal personnel, see section 8301 of Title 5, Government Organization and Employees.

§ 1201. Regulars and members on active duty for more than 30 days: retirement

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also determines that—

(1) based upon accepted medical principles, the disability is of a permanent nature;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(3) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination; and either—

(i) the member has at least eight years of service computed under section 1208 of this title;

(ii) the disability is the proximate result of performing active duty;

(iii) the disability was incurred in line of duty in time of war or national emergency; or

(iv) the disability was incurred in line of duty after September 14, 1978.

(Aug. 10, 1956, c. 1041, 70A Stat. 91; Sept. 2, 1958, Pub.L. 85-861, § 1(28)(A), 72 Stat. 1451; Sept. 7, 1962, Pub.L. 87-651, Title I, § 107(a), 76 Stat. 508; Sept. 19, 1978, Pub.L. 95-377, § 3(1), 92 Stat. 719; Sept. 8, 1980, Pub.L. 96-343, § 10(c)(1), 94 Stat. 1129; Dec. 12, 1980, Pub.L. 96-513, Title I, § 117, 94 Stat. 2878.)

Historical and Revision Notes

1956 Act

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1201	37:272(a) (less clause (5), and less 2d proviso). 37:272(b) (less clause (5), and less 2d and last provisos). 37:272(f) (less applicability to 37:272(c) and (e)).	Oct. 12, 1949, ch. 681, § 402(a) (less clause (5), and less 2d proviso), (b) (less clause (5), and less 2d and last provisos), (f) (less applicability to § 402(c) and (e)), 63 Stat. 816, 817, 820.

Explanatory Notes

The words "any other member" are substituted for the words "a member of a Reserve component", in 37:272(a) and (b), since the words "Reserve component" are defined by section 102(k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U.S.C. 231(k)), to include members appointed, enlisted, or inducted without component. The words "active duty (other than for training)" are substituted for the words "extended active duty" for clarity and to reflect the opinion of the Comptroller General in 31 Comp.Gen. 95, 99. The words "if the Secretary also determines that" are substituted for the words "That if condition (5) above is met by a finding that", in 37:272(a) and (b). The words

"of such member", "upon retirement", and "to receive", in 37:272(a), are omitted as surplusage.

In clause (1) the words "based upon accepted medical principles" are inserted as a necessary implication of the rule stated in 37:272(a)(5) and (b)(5).

Clause (3)(A) is substituted for 37:272(f) (less applicability to 37:272(c) and (e)). 37:272(f) is omitted as surplusage.

In clause (3)(B), the words "at the time of the determination" are substituted for the word "current", in 37:272(a) and (b).

Clause (3)(B)(iii) is substituted for 37:272(a) (last proviso).

1958 Act

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1201	[No source].	[No source].

The amendment reflects the Act of April 23, 1956, ch. 209 (70 Stat. 115). (See opinion of Comp.Gen., B-130269, March 18, 1957.)

1962 Act

The changes corrected typographical errors.

1980 Amendments. Par. (3)(B)(iv). Pub. L. 96-513 substituted "after September 4, 1978" for "during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect".

Pub.L. 96-343 added cl. (iv).

1978 Amendment. Par. (3)(B)(iv). Pub.L. 95-377 added cl. (iv), which provided additional condition, effective on Presidential determination, that the disability was incurred in the line of duty during Sept. 15, 1978, through Sept. 30, 1979, and which terminated on Sept. 30, 1979. See Effective and Termination Dates of 1978 Amendment note set out below.

1962 Amendment. Pub.L. 87-651 substituted "training under section 270(b) of this title" for "training" under section 270(b) of this title.

1958 Amendment. Pub.L. 85-861 inserted "under section 270(b) of this title" following "(other than for training)".

Effective Date of 1980 Amendment. Amendment by Pub.L. 96-513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub.L. 96-513 effective on Dec. 12, 1980, see section 701 of Pub.L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

Effective and Termination Dates of 1978 Amendment. Section 3 of Pub.L. 95-377 provided in part that the amendment by Pub.L. 95-377 is effective only for the period beginning Sept. 15, 1978 and ending Sept. 30, 1979.

Public Health Service Authority vested by this chapter in the "military departments", "the Secretary concerned" or "the Secretary of Defense" to be exercised with respect to commissioned officers of the Public Health Service, by the Secretary of Health and Human Services or his designee, see section

213a(b) of Title 42, The Public Health and Welfare.

National Oceanic and Atmospheric Administration. Authority vested by this chapter in the "military departments", "the Secretary concerned", or "the Secretary of Defense" to be exercised, with respect to the commissioned officer corps of the National Oceanic and Atmospheric Administration, by the Secretary of Commerce or his designee, see section 857a of Title 33, Navigation and Navigable Waters.

Legislative History. For legislative history and purpose of Pub.L. 85-861, see 1958 U.S. Code Cong. and Adm. News, p. 4615. See, also, Pub.L. 87-651, 1962 U.S. Code Cong. and Adm. News, p. 2456; Pub.L. 95-377, 1978 U.S. Code Cong. and Adm. News, p. 1784; Pub.L. 96-343, 1980 U.S. Code Cong. and Adm. News, p. 2682; Pub.L. 96-513, 1980 U.S. Code Cong. and Adm. News, p. 6333.

EXECUTIVE ORDER NO. 12239

Ex. Ord. No. 12239, Sept. 21, 1980, 45 F.R. 62967, which related to suspension of certain promotion and disability separation limita-

tions, was revoked by Ex. Ord. No. 12396, Dec. 9, 1982, 47 F.R. 55897, set out as a note under section 301 of Title 3, The President.

Cross References

Computation of retired pay, see section 1401 of this title.

Election as to computation of retired pay, see sections 1402, 1402a of this title.

Entitlement of commissioned officers of Public Health Service or their surviving beneficiaries to rights, benefits, privileges, and immunities provided under this section, see section 213a of Title 42, The Public Health and Welfare.

Grade on retirement for physical disability, see section 1372 of this title.

Members on temporary disability retired list, retirement under this section, see section 1210 of this title.

Monthly retired pay base of member retired under this section, see section 1407 of this title.

Pension to persons serving ten years, see section 6160 of this title.

Code of Federal Regulations

Active duty for period of more than 30 days, Navy Department, see 32 CFR 725.204.

Library References

Armed Services ☞ 10, 13.5(5), 23.4.

C.J.S. Armed Services §§ 80, 114 to 121, 126.

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NOTES OF DECISIONS

1. Attorney's fees

Where sole claim raised in former serviceman's complaint against United States Navy was that Navy served him with discharge papers in contravention of provisions of former section 6384 of this title governing discharge of navy and marine officers with fewer than 20 years of service for unsatisfactory performance, alternative theories, including challenge to constitution-

ality of former section 6384 of this title, and late delivery of certificate of discharge were discreet claims; therefore, as serviceman prevailed only on narrow statutory claim initially alleged, and documentation of time expended did not clearly distinguish amount of time spent on each of several claims presented, hearing was required to determine appropriate award of attorney fees. *Walton v. Lehman*, D.C.Pa.1983, 570 F.Supp. 490.

§ 1186. Officer considered for removal: voluntary retirement or discharge

[See main volume for text of (a) and (b)]

(c) An officer who is discharged under subsection (b)(2) is entitled, if eligible therefor, to separation pay under section 1174(a)(2) of this title.

(As amended Pub.L. 101-510, Div. A, Title V, § 501(f)(1), Nov. 5, 1990, 104 Stat. 1550.)

HISTORICAL AND STATUTORY NOTES

1990 Amendment

Subsec. (c). Pub.L. 101-510, § 501(f)(1), substituted "section 1174(a)(2) of this title" for "section 1174(b) of this title".

Legislative History

For legislative history and purpose of Pub.L. 101-510, see 1990 U.S. Code Cong. and Adm. News, p. 2931.

CHAPTER 61—RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

Sec. 1204. Members on active duty for 30 days or less: retirement.
1205. Members on active duty for 30 days or less: temporary disability retired list.

Sec. 1206. Members on active duty for 30 days or less: separation.

HISTORICAL AND STATUTORY NOTES

1986 Amendment

Pub.L. 99-661, Div. A, Title VI, § 604(d)(4), Nov. 14, 1986, 100 Stat. 3876, struck out "disability from injury" following "30 days or less;" in items 1204, 1205, 1206.

ity from injury" following "30 days or less;" in items 1204, 1205, 1206.

CROSS REFERENCES

Adjustment of retired pay and retainer pay to reflect changes, inapplicability to disability retirement, see 10 USC § 1401a.

§ 1201. Regulars and members on active duty for more than 30 days: retirement

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also determines that—

(1) based upon accepted medical principles, the disability is of a permanent nature and stable;

[See volume for of (2)]

(3) either—

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination; and either—

[See main volume for text of (i) to (iv)]

(As amended Nov. 8, 1985, Pub.L. 99-145, Title V, § 513(a)(1)(A), 99 Stat. 627; Nov. 29, 1989, Pub.L. 101-189, Div. A, Title XVI, § 1621(a)(1), 103 Stat. 1602.)

HISTORICAL AND STATUTORY NOTES

1989 Amendment

Par. (3)(B). Pub.L. 101-189, § 1621(a)(1), substituted "Department of Veterans Affairs" for "Veterans' Administration" wherever appearing.

1985 Amendment

Par. (1). Pub.L. 99-145 inserted "and stable".

Legislative History

For legislative history and purpose of Pub.L. 99-145, see 1985 U.S. Code Cong. and Adm. News, p. 472. See, also, Pub.L. 101-189, 1989 U.S. Code Cong. and Adm. News, p. 838.

CODE OF FEDERAL REGULATIONS

Medical and dental care, eligible persons at naval facilities, see 32 CFR 723.1 et seq.

LAW REVIEW COMMENTARIES

Rewriting the fiscal constitution: The case of Gramm-Rudman-Hollings. *Kate Stith*, 76 Cal. L.Rev. 593 (1988).

NOTES OF DECISIONS

I. GENERALLY

1. Construction with other laws

Husband's Veterans Administration disability compensation benefits were not preempted from treatment under state community property laws by Federal Uniform Service Former Spouse Protection Act to extent benefits represented husband's longevity pension, which he was required to waive in order to obtain disability payments. *In re Marriage of Daniels*, 1986, 231 Cal.Rptr. 169, 186 C.A.3d 1084.

2. Retroactive effect

Although United States Supreme Court decision and 10 U.S.C.A. § 1408 exempted military disability retirement benefits under 10 U.S.C.A. § 1201 from division pursuant to divorce, neither applied retroactively, and thus, settlement agreement providing for division of such disability benefits adopted by a divorce decree which became final prior to date of rendition of decision and effective date of legislation was enforceable. *Patrick v. Patrick*, Tex.App. 2 Dist. 1985, 693 S.W.2d 52, error refused n.r.e.

19. Community property

Disability retirement pay, although nominally a disability pension, can be community asset if and to extent that some amount thereof reflects nondisability retirement creditable service. *Russell v. Russell*, La.App. 3 Cir.1985, 465 So.2d 181.

III. PRACTICE AND PROCEDURE

75. — Par. ar arbitrary

Isivan v. U.S., F.2d volume) 231 Ct.Cl. 671.

Denial of veteran's request to have his military records correct to reflect medical discharge instead of honorable discharge, in order to retroactively recover disability retirement benefits, was not arbitrary or capricious, though Veterans Administration had given veteran temporary 100% disability rating, in that such rating covered only six-month period commencing over four years after veteran's discharge; there was no evidence rebutting presumption that pre-discharge examination, which found veteran fit for duty, was properly performed, and veteran was gainfully employed as law enforcement officer from time of discharge until four years later, when diagnosed with posttraumatic stress disorder. *Kirwin v. U.S.*, 1991, 23 Cl.Ct. 497.

79. — Veterans' Administration determinations

Veterans Administration disability ratings are not determinative of issues in military disability retirement cases. *Lord v. U.S.*, 1983, 2 Cl.Ct. 749.

80. Administrative review

Board of Correction of Naval Records did not exceed its authority, in former servicemember's action for correction of service record and for retroactive and prospective disability benefits, when it determined de novo that there was clear and convincing evidence that servicemember was voluntarily intoxicated at of motorcycle and his disabilities proximately caused by that intoxication, though servicemember's claims pre-considered by administrative review boards created to con-

81. Jurisdiction of court

In action by former member of Army seeking correction of his records to convert honorable discharge to medical disability retirement with 100 percent disability rating retroactive to date of plaintiff's separation, plaintiff was required to waive his rights to recover any amount over \$10,000 in order for district court to have jurisdiction. *Powell v. Marsh*, D.C.D.C.1983, 560 F.Supp. 636.

84. Limitations—Generally

Harper v. U.S., 310 F.2d 405, [main volume] 159 Ct.Cl. 135, rehearing denied 312 F.2d 436, 159 Ct.Cl. 157.

85. — Accrual of cause of action

Dzialo v. U.S., 677 F.2d 873 [main volume] 230 Ct.Cl. 506.

Harper v. U.S., 310 F.2d 405 [main volume] 159 Ct.Cl. 135, rehearing denied 312 F.2d 436, 159 Ct.Cl. 157.

89. Summary judgment

de Cicco v. U.S., 677 F.2d 66 [main volume] 230 Ct.Cl. 224.

91. — Rebuttal

de Cicco v. U.S., 677 F.2d 66 [main volume] 230 Ct.Cl. 224.

96. — Particular cases insufficient

Harper v. U.S., 310 F.2d 405 [main volume] 159 Ct.Cl. 135, rehearing denied 312 F.2d 436, 159 Ct.Cl. 157.

99. Record

Honorably discharged serviceman was not entitled to have record sealed in his suit to correct military records, on grounds that he would suffer threat of embarrassment and private harm if contents of record, indicating psychiatric treatment, were available to public; precise data sought to be protected was voluntarily made part of public record by former serviceman one year prior to his seeking to seal record. *Black v. U.S.*, 1991, 24 Cl.Ct. 461.

100. Scope of judicial review

de Cicco v. U.S., 677 F.2d 66 [main volume] 230 Ct.Cl. 224.

§ 1202. Regulars and members on active duty for more than 30 days: temporary disability retired list

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, would be qualified for retirement under section 1201 of this title but for the fact that his disability is not determined to be of a permanent nature and stable, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

(As amended Nov. 8, 1985, Pub.L. 99-145, Title V, § 513(a)(1)(B), 99 Stat. 627.)

HISTORICAL AND STATUTORY NOTES

1985 Amendment

Pub.L. 99-145 inserted "and stable" after "is not determined to be of a permanent nature".

Legislative History

For legislative history and purpose of Pub.L. 99-145, see 1985 U.S.Code Cong. and Adm. News, p. 472.

LAW REVIEW COMMENTARIES

Rewriting the fiscal constitution: The case of Gramm-Rudman-Hollings. *Kate Stith*, 76 Cal. L.Rev. 593 (1988).

§ 1203. Regulars and members on active duty for more than 30 days: separation

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—

volume for of (1) to (3)

the determination, and the disability was (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, or (iii) incurred in line of duty after September 14, 1978;

(B) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and the member has at least eight years of service computed under section 1208 of this title; or

(C) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, the disability was neither (i) the proximate result of performing active duty; (ii) incurred in line of duty in time of war or national emergency, nor (iii) incurred in line of duty after September 14, 1978, and the member has less than eight years of service computed under section 1208 of this title on the date when he would otherwise be retired under section 1201 of this title or placed on the temporary disability retired list under section 1202 of this title.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

(As amended Pub.L. 101-189, Div. A, Title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602.)

HISTORICAL AND STATUTORY NOTES

1989 Amendment

Par. (4)(A) to (C). Pub.L. 101-189, § 1621(a)(1), substituted "Department of Veterans Affairs" for "Veterans' Administration" wherever appearing.

Legislative History

For legislative history and purpose of Pub.L. 101-189, see 1989 U.S.Code Cong. and Adm. News, p. 838.

§ 1204. Members on active duty for 30 days or less: retirement

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability, the Secretary may retire the member with retired pay computed under section 1401 of this title, if the Secretary also determines that—

(1) based upon accepted medical principles, the disability is of a permanent nature and stable;

(2) the disability is the proximate result of performing active duty or inactive-duty training or of traveling directly to or from the place at which such duty is performed;

[See main volume for text of (3)]

(4) either—

[See main volume for text of (A)]

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination.

(As amended Nov. 8, 1985, Pub.L. 99-145, Title V, § 513(a)(1)(A), 99 Stat. 627; Nov. 14, 1986, Pub.L. 99-661, Div. A, Title VI, § 604(d)(1), (2)(A), 100 Stat. 3876; Nov. 29, 1989, Pub.L. 101-189, Div. A, Title XVI, § 1621(a)(1), 103 Stat. 1602; Oct. 23, 1992, Pub.L. 102-484, Div. A, Title V, § 516(a), 106 Stat. 2407.)

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Par. (2). Pub.L. 102-484, § 516(a), included disability which is the proximate result of traveling directly to or from the place at which active duty or inactive-duty training is performed in disabilities for which retirement pay may be warranted.

for "Veterans' Administration" wherever appearing.

Amendment

Pub.L. § 604(d)(1), struck out "ing from an injury" following "of physical disability".

§ 1374. Reserve commissioned officers: grade on retirement or transfer to Retired Reserve

[See main volume for text of (a) to (d)]

(e) Unless entitled to a higher grade under another provision of law, a reserve commissioned officer who is transferred to the Retired Reserve after having served in the position of Attending Physician to the Congress is entitled to be placed on the retired list established by section 1376(a) of this title in the grade held by such officer while serving in such position.

(f) This section does not apply to commissioned warrant officers.

(As amended Pub.L. 99-661, Div. A, Title V, § 508(d)(2), Nov. 14, 1986, 100 Stat. 3867.)

HISTORICAL AND STATUTORY NOTES

1986 Amendment

Subsec. (e). Pub.L. 99-661, § 508(d)(2)(B), added subsec. (e). Former subsec. (e) was redesignated as (f).

Subsec. (f). Pub.L. 99-661, § 508(d)(2)(A), redesignated subsec. (e) as (f).

Effective Date of 1986 Amendment

Amendment by section 508 of Pub.L. 99-661 applicable only with respect to appointments

made on or after Nov. 14, 1986, see section 508(f) of Pub.L. 99-661, set out as a note under section 600a of this title.

Legislative History

For legislative history and purpose of Pub.L. 99-661, see 1986 U.S. Code Cong. and Adm. News, p. 6413.

CHAPTER 71—COMPUTATION OF RETIRED PAY

Sec.		Sec.	
1402.	Recomputation of retired or retainer pay to reflect later active duty of members who first became members before September 8, 1980.	1407.	Retired pay base for members who first became members after September 7, 1980: high-36 month average.
1403.	Disability retired pay: treatment under Internal Revenue Code of 1986.	1409.	Retired pay multiplier.
1406.	Retired pay base for members who first became members before September 8, 1980: final basic pay.	1410.	Restoral of full retirement amount at age 62 for members entering on or after August 1, 1986.
		1411.	Rules of construction.
		1412.	Rounding to next lower dollar.

HISTORICAL AND STATUTORY NOTES

1987 Amendment

Pub.L. 100-26, § 7(h)(2)(B), Apr. 21, 1987, 101 Stat. 282, substituted "Disability retired pay: treatment under Internal Revenue Code of 1986." for "Disability retired pay: treatment under Internal Revenue Code of 1954." in item 1403.

1986 Amendment

Pub.L. 99-348, Title III, § 304(b)(2), July 1, 1986, 100 Stat. 703, inserted "of members who

first became members before September 8, 1980" after "active duty" in item 1402, substituted "Retired pay base for members who first became members before September 8, 1980: final basic pay" for "Limitations on revocation of retired pay" in item 1406 and "Retired pay base for members who first became members after September 7, 1980: high-36 month average" for "Retired pay base" in item 1407, and added items 1409 to 1412.

§ 1401. Computation of retired pay

(a) Disability, non-regular service, warrant officer, and DOPMA retirement.—The monthly retired pay of a person entitled thereto under this subtitle is computed according to the following table. For each case covered by a section of this title named in the column headed "For sections", retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, 3, and 4, as modified by the applicable footnotes.

Form- ula No.	For sec- tions	Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
1	1201 1204	Retired pay base as computed under section 1406(b) or 1407.	As member elects— (1) 2½% of years of service credited to him under section 1208; ¹ or (2) the percentage of disability on date when retired.		Excess over 76% of retired pay base upon which computation is based.

Form- ula No.	For sec- tions	Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
2	1202 1205	Retired pay base as computed under section 1406(b) or 1407.	As member elects— (1) 2½% of years of service credited to him under section 1208; ¹ or (2) the percentage of disability on date when his name was placed on temporary disability retired list.	Amount necessary to increase product of columns 1 and 2 to 50% of retired pay base upon which computation is based.	Excess over 76% of retired pay base upon which computation is based.
3	1331	Retired pay base as computed under section 1406(b) or 1407.	2½% of years of service credited to him under section 1333.		Excess over 76% of retired pay base upon which computation is based.
4	580 1263 1293 1305	Retired pay base as computed under section 1406(b) or 1407.	The retired pay multiplier prescribed in section 1409(a) for the years of service credited to him under section 1406.		
5	633 634 635 636 1251	Retired pay base as computed under section 1406(b) or 1407.	The retired pay multiplier prescribed in section 1409(a) for the years of service credited to him under section 1406.		

¹ Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

(b) Use of most favorable formula.—If a person would otherwise be entitled to retired pay computed under more than one formula of the table in subsection (a) or of any other provision of law, the person is entitled to be paid under the applicable formula that is most favorable to him.

(As amended Sept. 24, 1983, Pub. L. 98-24, Title IX, §§ 922(a)(1), 923(a)(1), (2)(A), 97 Stat. 641, 642; Oct. 30, 1984, Pub.L. 98-557, § 35(b), 98 Stat. 2877; July 1, 1986, Pub.L. 99-348, Title II, § 201(a), 100 Stat. 691; Oct. 23, 1992, Pub.L. 102-484, Div. A, Title X, § 1052(18), 106 Stat. 2500.)

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Subsec. (a). Pub.L. 102-484, Title X, § 1052(b)(18), in the table in the section for formula number 4, under the heading "For sections", substituted "580" for "564".

1986 Amendment

Subsec. (a). Pub.L. 99-348, § 201(a)(1), designated existing provision as subsec. (a), and in subsec. (a) as so designated inserted "Disability, non-regular service, warrant officers, and DOPMA retirement.—" after "(a)".

Pub.L. 99-348, § 201(a)(2), struck out provisions that if the amount computed is not a multiple of \$1, it be rounded to the next lower multiple of \$1, if a person is entitled to retired pay under more than one formula of the table under this section or of any other provision of law, he be paid under the applicable formula most favorable to him, and sections reference in the Table and footnotes are to sections of this title.

Pub.L. 99-348, § 201(a)(3), completely revised column 1 by substituting provision that all formulas take retired base pay as computed under section 1406(b) or 1407 for provision that for a who first became a member of the uniformed services after Sept. 7, take the monthly retired pay base as computed under

section 1407(b), that for formulas 1 and 2, subject to footnotes 1 and 4, take the monthly basic pay of the grade to which a member is entitled under section 1372 or to which he was entitled on the day before retirement or placement on the temporary disability retired list, whichever is higher, that for formula 3, subject to footnote 2, take to monthly basic pay of the highest grade held satisfactorily by the person at any time in the armed forces, that for formula 4, take the monthly basic pay to which the member would have been entitled if he had served on active duty in his retired grade on the day before retirement, or if the pay of that grade is less than the pay of any warrant grade satisfactorily held by him on active duty, the monthly basic pay of that warrant officer grade, and that in formula 5, subject to footnotes 1 and 5, take the monthly basic pay of the member's retired grade.

Pub.L. 99-348, § 201(a)(4), in formula 4, column 2, substituted provision that column 1 be multiplied by the retired pay multiplier prescribed in section 1409(a) for the years of service credited to him under section 1406 for provision that column 1 be multiplied by 2½% of the years of service that may be credited to him under section 1406, subject to footnote 3, in formula 5,

2, substituted provision that column 1 be multiplied by the retired pay multiplier pre-

scribed in section 1401(a) for the years of service credited to him under section 1405 for provision that column 1 be multiplied by 2% of the years of service credited to him under section 1405, subject to footnote 3, and in formulas 4 and 5, column 4, struck out provision that the excess over 75% of pay upon which the computation is based be subtracted.

Pub.L. 99-348, § 201(a)(5), in columns 3 and 4 substituted "retired pay base" for "pay" wherever appearing.

Pub.L. 99-348, § 201(a)(6), redesignated former footnote 3 as 1, and struck out former footnote 1, which provided computation at rates applicable on the date of retirement or date when the member's name was placed on the temporary disability retired list, as the case may be, footnote 2, which provided computation at rates on the date when retired pay is granted, footnote 4, which provided computation at the highest rates of basic pay available to individuals now included within the term "Chief of Service" as defined in section 1406(i)(2)(A), while so serving in that office, and computation at the highest rate of pay available to individuals now included within the term "senior enlisted member" as defined in section 1406(i)(2)(B), while so serving, if that rate is higher than the rate authorized by the table, and footnote 5, which provided for purposes of this section, an officer's retired grade be determined as if sections 3962(b) and 3962(b) did not apply.

Pub.L. 99-348, § 201(a)(7), in column 2 substituted footnote 1 designation for footnote 3 designation wherever appearing.

Subsec. (b). Pub.L. 99-348, § 201(a)(8), added subsec. (b).

1984 Amendment

Pub.L. 98-557 added reference to Commandant of the Coast Guard in footnote 4.

1983 Amendment

Pub. L. 98-94, § 922(a)(1) added "The amount computed, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1."

Pub. L. 98-94, § 923(a)(1), (2)(A), in footnote 3 of the table, substituted "Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month" for "Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months".

Effective Date of 1984 Amendment

Section 35(c) of Pub.L. 98-557 provided that: "The amendments made by this section [amending footnote 4 of the table of this section and provision set out as a note under section 1009 of Title 37, Pay and Allowances of the Uniformed Services] shall become effective on October 1, 1984."

Effective Date of 1983 Amendment

Section 922(e) of Pub. L. 98-94 provided that: "The amendments made by this section [amending section 1401 of this title] shall become effective on October 1, 1984."

1451, 16151, and of this title, section 423 of Title 14, Coast Guard, section 8630 of Title 33, Navigable Waters, and section 212 of Title 42, The Public Health and Welfare] shall take effect on October 1, 1983."

Amendment of this section by section 923(a) of Pub. L. 98-94 applicable with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, and (2) the recomputation of retired pay under section 1402, 1402a, 3992, or 3992 of this title, of any individual who after Sept. 30, 1983, becomes entitled to recompute retired pay under such section, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of this title.

Short Title of 1986 Amendment

Section 1(a) of Pub.L. 99-348 provided that: "This Act [enacting sections 134a, 1406, 1407, 1409, 1410, 1411, and 1412 of this title, redesignating former section 1406 of this title as section 1338 of this title, amending sections 101, 135, 136a, 716, 1040, 1338, 1401, 1401a, 1402, 1402a, 1405, 1447, 1451, 1452, 2830, 3925, 3991, 3992, 5083, 5201, 6151, 6322, 6323, 6325, 6326, 6330, 6333, 6383, 8925, 8991, and 8992 of this title, sections 5313 and 5314 of Title 5, Government Organization and Employees, sections 46, 47, 51, 288, 291, 292, 293, 327, 334, 353, 354, 355, 357, 362, 421, 422, 423, and 424 of Title 14, Coast Guard, section 8630 of Title 33, Navigation and Navigable Waters, and sections 211 and 212 of Title 42, The Public Health and Welfare, repealing section 6328 of this title, enacting provisions set out as notes under sections 135, 1331, and 1401 of this title, and repealing provisions set out as notes under sections 1401 and 6330 of this title] may be cited as the 'Military Retirement Reform Act of 1986'."

Six-Month Rounding Rule

Section 805(b) of Pub.L. 99-348 provided that:

"(1) General rule.—Retired pay or retainer pay may not be paid to a covered member of the Armed Forces (as defined in paragraph (3)) for any month in an amount that is greater than the amount otherwise determined to be payable after such reductions as may be necessary to reflect adjusting the computation of retired pay or retainer pay that includes credit for a part of a year of service to permit credit for a part of a year of service only for such month or months actually served.

"(2) Exceptions.—The limitation in paragraph (1) does not apply to a member who before January 1, 1982—

"(A) applied for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve;

"(B) was being processed for retirement under the provisions of chapter 61 of title 10, United States Code [section 1201 et seq. of this title], or who was on the temporary disability retired list and thereafter retired under the provisions of section 1210(c) or 1210(d) of such title [section 1210(c) or (d) of this title]; or

"(C) was retired or in an inactive status and would have been eligible for retired pay under the provisions of chapter 67 of title

[section 1331 et seq. of this title], but for the fact that the person was under 60 years of age.

"(3) Definition of covered member.—For the purposes of this subsection, the term 'covered member of the Armed Forces' means a member of the Armed Forces who became entitled to retired or retainer pay during the period beginning on January 1, 1982, and ending on September 30, 1983.

"(4) Repeal of source law.—Section 8054 of the Department of Defense Appropriations Act, 1985 (as contained in section 101(h) of Public Law 98-473) [section 101(h) Title VIII, § 8054] of Pub.L. 98-473, set out as a note under this section, is repealed.

"(5) Cross reference.—For the effective date of October 1, 1983, for provisions making permanent programmatic changes in law to accomplish the policy provided in such section 8054 (and prior provisions of law); see section 923(h) of the Department of Defense Authorization Act, 1984 (Public Law 98-94) [probably means section 923(g) of Pub.L. 98-94, set out as a note under section 1174 of this title]."

Limitation on Payment of Retired or Retainer Pay To Reflect Fractional Year Adjustments

Pub.L. 98-473, Title I, § 101(h) [Title VIII, § 8054], Oct. 12, 1984, 98 Stat. 1904, 1933, which provided that none of the assets of the Depart-

LAW REVIEW COMMENTARIES

Representing the military spouse. Meredith J. Cohen, 61 Fla.B.J. 117 (June 1987).

NOTES OF DECISIONS

State retirement pay 15

6. Disability retirement

Husband's military disability benefits were awarded to husband in divorce proceeding as separate property where husband was entitled to receive both disability and retirement benefits but only one total sum was received to compensate both interests; however, trial court must divide community property in manner and proportion as it deems just in view of award of military disability benefits to husband as separate property. *Griggs v. Griggs*, 1984, 686 P.2d 68, 107 Idaho 123.

11. Distribution between spouses

In dissolution proceeding, remand was necessary to receive evidence regarding husband's nontaxable Veterans' Administration disability benefits, since item was neither valued nor specifically set off to either spouse and since there existed a strong argument that pension would be marital property. *In re Marriage of Gooding*, Mo.App.1984, 677 S.W.2d 332.

12. Community property

Husband's military disability benefits were awarded to husband in divorce proceeding as separate property where husband was entitled

ment of Defense Military Retirement Fund be available to pay retired or retainer pay of a member of the Armed Forces for any month who, on or after Jan. 1, 1982, became entitled to retired or retainer pay, in an amount greater than the amount determined payable after reductions necessary to reflect adjusting the computation of retired or retainer pay that includes credit for part of a year of service to permit credit for a part of a year of service only for such month or months actually served, except that the limitation not apply to any member who before Jan. 1, 1982, applied for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, was being processed for retirement under chapter 61 of this title or who was on the temporary disability list and thereafter retired under section 1210(c) or (d) of this title, or was retired or in an inactive status and would be eligible for retirement under this chapter, but for the fact the person was under sixty years of age, was repealed, by Pub.L. 99-348, Title III, § 305(b)(4), July 1, 1986, 100 Stat. 705.

Legislative History

For legislative history and purpose of Pub. L. 98-94, see 1983 U. S. Code Cong. and Adm. News p. 1081. See, also, Pub.L. 98-557, 1984 U.S. Code Cong. and Adm. News, p. 4831; Pub.L. 102-484, 1992 U.S. Code Cong. and Adm. News, p. 1636.

to receive both disability and retirement benefits but only one total sum was received to compensate both interests; however, trial court must divide community property in manner and proportion as it deems just in view of award of military disability benefits to husband as separate property. *Griggs v. Griggs*, 1984, 686 P.2d 68, 107 Idaho 123.

14. Res judicata

Uniformed Services Former Spouses' Protection Act [10 U.S.C.A. § 1401 note] did not give courts power to modify final divorce judgment which specifically awarded military retirement benefits to husband rendered after *McCarty*, precluding partition of military retirement pay, but before the Act; thus divorce judgment was res judicata as to wife's action to partition military benefits. *Breen v. Breen*, Tex.App. 4 Dist. 1985, 693 S.W.2d 495.

15. State retirement pay

State military retirement pay owed to retired officer would be based on active service annual pay to which he was entitled at time of his retirement even though federal law based retirement pay on highest rank held at any time and state placed him on retirement list under his highest rank. *Baker v. Department of Defense*, 1983, N.W.2d 43, Mich.App.

§ 1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index

(a) **Prohibition on recomputation to reflect increases in basic pay.**—Unless otherwise specifically provided by law, the retired pay of a member or former member of an armed force may not be recomputed to reflect any increase in the rates of basic pay for members of the armed forces.

(b) **Cost-of-living adjustments based on CPI increases.**—

(1) **In general.**—Effective on December 1 of each year, the Secretary of Defense shall increase the retired pay of members and former members entitled to that pay in accordance with paragraphs (2) and (3).

(2) **Pre-August 1, 1986 members.**—

(A) **General rule.**—The Secretary shall increase the retired pay of each member and former member who first became a member of a uniformed service before August 1, 1986, by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

- (i) the price index for the base quarter of that year, exceeds
- (ii) the base index.

(B) **Special rules for fiscal years 1994 through 1998.**—

(i) **Fiscal year 1994.**—In the case of an increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1, 1993, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1994.

(ii) **Fiscal years 1995 through 1998.**—In the case of an increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1 of 1994, 1995, 1996, or 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September of the following year.

(C) **Inapplicability to disability retirees.**—Subparagraph (B) does not apply with respect to the retired pay of a member retired under chapter 61 of this title.

(3) **Post-August 1, 1986 members.**—If the percent determined under paragraph (2) is greater than 1 percent, the Secretary shall increase the retired pay of each member and former member who first became a member on or after August 1, 1986, by the difference between—

- (A) the percent determined under paragraph (2); and
- (B) 1 percent.

(4) **Special rule for paragraph (3).**—If in any case in which an increase in retired pay that would otherwise be made under paragraph (3) is not made by reason of law (other than any provision of this section), then (unless otherwise provided by law) when the next increase in retired pay is made under this subsection, the increase under paragraph (3) shall be carried out so as to achieve the same net increase in retired pay under that paragraph that would have been the case if that law had not been enacted.

(5) **Regulations.**—Any increase in retired pay under this subsection shall be made in accordance with regulations prescribed by the Secretary of Defense.

[(6) **Repealed.** Pub.L. 103-160, Div. A, Title XI, § 1182(e)(2), Nov. 30, 1993, 107 Stat. 1773]

(c) **Rule for first adjustment after retirement with intervening increase in basic pay.**—Notwithstanding subsection (b), if a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, becomes entitled to retired pay based on rates of monthly basic pay that became effective after the last day of the calendar quarter of the base index, the retired pay of the member or former member shall be increased on the effective date of the next adjustment of retired pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

- (1) the price index for the base quarter of that year, exceeds

(2) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.

(d) **Rule for first adjustment after retirement with no intervening increase in basic pay.**—If a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, becomes entitled to retired pay on or after the effective date of an adjustment in retired pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay, the retired pay of the member or former member shall be increased, effective on the date the member becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

(1) the base index, exceeds

(2) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.

(e) **Pro rating of initial adjustment.**—Notwithstanding subsection (b), the retired pay of a member or former member of an armed force who first became a member of a uniformed service on or after August 1, 1986, shall be increased on the effective date of the first adjustment of retired pay under subsection (b) after the member or former member becomes entitled to retired pay by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between—

(1) the percent by which—

(A) the price index for the base quarter of that year, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay; and

(2) one-fourth of 1 percent for each calendar quarter from the quarter described in paragraph (1)(B) to the quarter described in paragraph (1)(A).

If in any case the percent described in paragraph (2) exceeds the percent determined under paragraph (1), such an increase shall not be made.

(f) **Prevention of pay inversions.**—Notwithstanding any other provision of law, the monthly retired pay of a member or a former member of an armed force who initially became entitled to that pay on or after January 1, 1971, may not be less than the monthly retired pay to which he would be entitled if he had become entitled to retired pay at an earlier date, adjusted to reflect any applicable increases in such pay under this section. In computing the amount of retired pay to which such a member or former member would have been entitled on that earlier date, the computation shall be based on his grade, length of service, and the rate of basic pay applicable to him at that time. However, in the case of a member who, after initially becoming eligible for retired pay, is reduced in grade pursuant to a sentence of a court-martial, such computation may not be based on a grade higher than the grade in which the member is retired. This subsection does not authorize any increase in the monthly retired pay to which a member was entitled for any period before October 7, 1975.

(g) **Definitions.**—In this section:

(1) The term “price index” means the Consumer Price Index (all items, United States city average) published by the Bureau of Labor Statistics.

(2) The term “base quarter” means the calendar quarter ending on September 30 of each year.

(3) The term “base index” means the price index for the base quarter for the most recent adjustment under subsection (b).

(4) The term “retired pay” includes retainer pay.

(h) **Price index for a quarter.**—For purposes of this section, the price index for a calendar quarter is the arithmetical mean of the price index for the three months comprising that quarter.

(As amended Pub. L. 98-94, Title IX, § 921(a)(1), (b), 922(a)(2), Sept. 24, 1983, 97 Stat. 640, 641; Pub.L. 99-625, Title XIV, § 1405(26), Oct. 19, 1984, 98 Stat. 2623; Pub.L. 99-348, Title I, § 102, July 1, 1986, 100 Stat. 683; Pub.L. 100-180, Div. A, Title XII, § 1231(21), Dec. 4, 1987, 101 Stat. 1161; Pub.L. 100-224, § 1, Dec. 22, 1987, 101 Stat. 1536; Pub.L. 100-456, Div. A, Title VI, § 622(a), Sept. 29, 1988, 102 Stat. 1460; Pub.L. 101-189, Div. A, Title VI, § 622(a), Nov. 29, 1988, 102 Stat. 1460; Pub.L. 103-66, Title II, § 2, Aug. 10, 1990, 107 Stat. 1773; Pub.L. 103-160, Div. A, Title XI, § 1182(e), Nov. 30, 1993, 107 Stat. 1773.)

HISTORICAL AND STATUTORY NOTES

Amendment

Subsec. (b)(3). Pub.L. 101-189, § 651(b)(1)(A), in provisions preceding subpar. (A), substituted "each member and former member" for "each member".

Subsec. (e). Pub.L. 101-189, § 651(b)(1)(B), substituted "the retired pay of a member or former member" and "after the member or former member becomes entitled" for "the retired pay of a member" and "after the member becomes entitled", respectively.

Subsec. (f). Pub.L. 101-189, § 651(b)(1)(C), substituted "to which such a member or former member would have been entitled" for "to which such a member would have been entitled" before "on that earlier date".

Amendment

Subsec. (f). Pub.L. 100-456 added sentence directing that, in the case of a member who, after initially becoming eligible for retired pay, is reduced in grade pursuant to a sentence of a court-martial, the computation may not be based on a grade higher than the grade in which the member is retired.

Amendments

Subsec. (a). Pub.L. 100-180, § 1231(21), struck out "pay" following "the retired pay".

Subsec. (b)(4). Pub.L. 100-224, § 1(a)(2), added par. (4). Former par. (4) was redesignated (5).

Subsec. (b)(5). Pub.L. 100-224, § 1(a)(1), redesignated par. (4) as (5).

Subsec. (e). Pub.L. 100-224, § 1(b), substituted "by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between (1) the percent by which (A) the price index for the base quarter of that year, exceeds (B) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay; and (2) one-fourth of 1 percent for each calendar quarter from the quarter described in paragraph (1)(B) to the quarter described in paragraph (1)(A)" for "only by the percent (adjusted to the nearest one-tenth of 1 percent) by which (1) the price index for the base quarter of that year, exceeds (2) the price index for the calendar quarter immediately before the calendar quarter in which the member became entitled to retired pay" and added sentence directing that: "If in any case the percent described in paragraph (2) exceeds the percent determined under paragraph (1), such an increase shall not be made."

Amendment

Subsec. (a). Pub.L. 99-348, § 102(b)(1), (c)(1), inserted "Prohibition on recomputation to reflect increases in basic pay—" after (a), struck out "or retainer" after "retired pay" and provision defining "Index" in this section as meaning the Consumer Price Index, all items, United States city average, published by the Bureau of Labor Statistics.

Subsec. (b). Pub.L. 99-348, § 102(a), inserted subsection and subparagraph headings substituted provision directing the Secretary of De-

fense to base cost-of-living increases on Consumer Price Index increases for provision directing the Secretary of Defense to increase retired and retainer pay of members and former members of the armed forces each time an increase is made under section 8340(b) of Title 5 in annuities paid under subchapter III of chapter 83 of Title 5, with such increase to be by the same percentage by which the annuities are increased.

Subsec. (c). Pub.L. 99-348, § 102(a), inserted subsection heading and substituted provision establishing a rule for first adjustment after retirement with intervening increase in basic pay for provision that, notwithstanding subsec. (b), if a member or former member of the armed forces becomes entitled to retired or retainer pay based on rates of monthly basic pay prescribed in section 203 of Title 37 that became effective after the last day of the month of the base index, his retired or retainer pay be increased on the effective date of the next adjustment of the retired or retainer pay under subsec. (b) only by the percent, adjusted to the nearest one-tenth of 1 percent, that the new base index exceeds the index for the calendar month immediately before that in which the rates on monthly basic pay which his retired or retainer is based became effective.

Subsec. (d). Pub.L. 99-348, § 102(a), inserted subsection heading and substituted provision establishing a rule for first adjustment after retirement with no intervening increase in basic pay for provision that if a member or former member of the armed forces becomes entitled to retired or retainer pay on or after the effective date of an adjustment of retired or retainer pay under subsec. (b) but before the effective date of the next increase in the rates of monthly basic pay prescribed by section 203 of Title 37, his retired or retainer pay be increased, effective on the date he becomes entitled to that pay, by the percent, adjusted to the nearest one-tenth of 1 percent, that the base index exceeds the index for the calendar month immediately before that in which the rates of monthly basic pay on which his retired or retainer pay is based becomes effective.

Subsec. (e). Pub.L. 99-348, § 102(a), added subsec. (e).

Subsec. (f). Pub.L. 99-348, § 102(c)(2), inserted "Prevention of pay inversions—" after "(f)" and struck out "or retainer" after "retired" in five places.

Subsec. (g). Pub.L. 99-348, § 102(b)(2), substituted provision defining "price index", "base quarter", "base index", and "retired pay" as used in this section for provision that retired or retainer pay of a member or former member of the armed forces as adjusted under this section; if not a multiple of \$1, be rounded to the next lower multiple of \$1. See section 1412 of this title.

Subsec. (h). Pub.L. 99-348, § 102(b)(2), added subsec. (h).

1984 Amendment

Subsec. (f). Pub.L. 98-525 substituted "before October 7, 1975" for "prior to the effective date of this subsection".

1983 Amendment

Subsec. (e). Pub.L. 98-94, § 921(a)(1), struck out subsec. (e) which had provided that: "Notwithstanding subsections (c) and (d), the adjusted retired pay or retainer pay of a member or former member of an armed force retired on or after October 1, 1967, may not be less than it would have been had he become entitled to retired pay or retainer pay based on the same pay grade, years of service for pay, years of service for retired or retainer pay purposes, and percent of disability, if any, on the day before the effective date of the rates of monthly basic pay on which his retired pay or retainer pay is based."

Subsec. (f). Pub.L. 98-94, § 921(b) struck out "subject to subsection (e) of this section," after "the computation shall".

Subsec. (g). Pub.L. 98-94, § 922(a)(2), added subsec. (g).

Effective Date of 1988 Amendment

Section 622(b) of Pub.L. 100-456 provided that: "The amendment made by subsection (a) [amending subsec. (f) of this section] shall take effect on the first day of the first month that begins after the date of the enactment of this Act [Sept. 29, 1988] and shall apply to the computation of the retired or retainer pay of members who initially become entitled to such pay on or after such effective date."

Effective Date of 1983 Amendment

Section 921(a)(2) of Pub.L. 98-94 provided that:

"(A) Notwithstanding the repeal of such subsection [subsec. (e) of this section], the provisions of such subsection shall apply in the case of any member or former member of the Armed Forces eligible to retire on the date of the enactment of this Act [Sept. 24, 1983] for a period of three years after such date in the same manner such provisions would have applied had they not been repealed."

"(B) The amount of retired or retainer pay of any member or former member of the Armed Forces who was eligible to retire on the date of the enactment of this Act [Sept. 24, 1983] and who becomes entitled to such pay at any time after the end of the three-year period beginning on the date of the enactment of this Act [Sept. 24, 1983] may not be less than it would have been had he become entitled to retired or retainer pay on the day before the end of such three-year period."

Enactment of subsec. (g) of this section by Pub.L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub.L. 98-94, set out as a note under section 1401 of this title.

Contingent Once-a-Year Adjustment of Retired and Retainer Pay

Pub.L. Title VIII, § 812, Sept. 8, 94 Stat. 1 as amended Pub.L. 97-35,

Title II, § 211(b), Aug. 13, 1981, 95 Stat. 383, provided that:

[See main volume for text of (a)]

"(b)(1) Effective August 31, 1981, but subject to paragraph (2), section 1401a(b) of title 10, United States Code [subsec. (b) of this section], relating to adjustment of retired pay and retainer pay to reflect changes in the Consumer Price Index, is amended to read as follows:

[See main volume for text of (2)]

"(3) If legislation described in paragraph (2) is enacted to provide for the adjustment of annuities paid under subchapter III of chapter 83 of title 5, United States Code [section 8331 et seq. of Title 5], on a once-a-year basis, the President shall exercise the authority vested in him under section 292 of the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees (50 U.S.C. 403 note) [renamed the Central Intelligence Agency Retirement Act and classified to chapter 38, section 2001 et seq., of Title 50, see section 804(b) of Pub.L. 102-496, set out as a note under section 2001 of Title 50] to provide for cost-of-living adjustments in the annuities paid under such Act on an identical basis.

"(4) If at the time the first adjustment in retired and retainer pay is made under section 1401a(b) of title 10, United States Code [subsec. (b) of this section], as amended by paragraph (1) of this subsection, the period upon which the most recent adjustment in such retired and retainer pay was computed is not identical to the period upon which the most recent adjustment in annuities under subchapter III of chapter 83 of title 5, United States Code [section 8331 et seq. of Title 5], was computed, then the percentage increase to be made under such section 1401a(b) [subsec. (b) of this section] at the time of the first such adjustment shall be computed in the same manner as the percentage increase made at the same time in annuities under subchapter III of chapter 83 of title 5, United States Code [section 8331 et seq. of Title 5], is computed, but shall be based on the period beginning on the last day of the period upon which the most recent adjustment in such retired and retainer pay was computed and ending on the last day of the period upon which the adjustment being made at the same time in annuities under such subchapter III is computed. The President shall by Executive order provide for a similar computation of the adjustment in annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees (50 U.S.C. 403 note) [renamed the Central Intelligence Agency Retirement Act and classified to chapter 38, section 2001 et seq., of Title 50, see section 804(b) of Pub.L. 102-496, set out as a note under section 2001 of Title 50] which is made at the same time as the increase in retired and retainer pay to which the preceding sentence is applicable.

[See main volume for text of (c)]

Cost-of-Living Adjustment of Retired Pay or Retainer Pay of Members and Former Members of Armed Forces and Commissioned Officers of National Oceanic and Atmospheric Administration and Public Health Service; Effective Date of 1976 Amendment

Section 801(c) of Pub.L. 94-361 provided that:

[See main volume for text of (1)]

"(2) If any change other than the repeal of the so-called 1 per centum add-on provision referred to in paragraph (1) is made in the method of computing the cost-of-living adjustment of annuities paid under chapter 83 of title 5, United States Code, the President shall make the same change in the cost-of-living adjustment of retired pay and retainer pay of members and former members of the Armed Forces and the cost-of-living adjustment of annuities paid under the Central Intelligence Agency Act of 1964 for Certain Employees [renamed the Central Intel-

ligence Agency Retirement Act and classified to chapter 33, section 2001 et seq., of Title 50, see section 804(b) of Pub.L. 102-496, set out as a note under section 2001 of Title 50]. Any change made under this paragraph shall have the same effective date as the effective date applicable to such change made in annuities under chapter 83 of title 5, United States Code.

[See main volume for text of (3)]

Legislative History

For legislative history and purpose of Pub. L. 98-94, see 1983 U. S. Code Cong. and Adm. News, p. 1081. See, also, Pub.L. 98-525, 1984 U.S. Code Cong. and Adm. News, p. 4174; Pub.L. 100-180, 1987 U.S. Code Cong. and Adm. News, p. 1018; Pub.L. 100-458, 1988 U.S. Code Cong. and Adm. News, p. 2508; Pub.L. 101-189, 1989 U.S. Code Cong. and Adm. News, p. 838; Pub.L. 103-66, 1993 U.S. Code Cong. and Adm. News, p. 378; Pub.L. 103-160, 1993 U.S. Code Cong. and Adm. News, p. —

NOTES OF DECISIONS

Change in computation method 5

3. Date of retirement eligibility

Under subsec. (f) of this section, 1972 basic pay rates (which would have been most advantageous to army officer who initially retired in 1982) could not be used in computing his retired pay, since he was not army member in 1972, and thus could not have been eligible for retirement then. 1983, 62 Op.Comp.Gen. 406.

4. Distribution between spouses

Divorce decree entered before case holding that military retirement pay is legally exempt from claims of an ex-spouse was decided, and which did not mention husband's military retirement pay, was final and conclusive on the issue, and there was nothing for the trial court to modify on such subject; under such circum-

stances, to allow wife one half of husband's military retirement pay seven years after the divorce decree because of enactment of this chapter would not be a modification, but a new judgment. *Moller v. Moller*, S.D.1984, 356 N.W.2d 909.

5. Change in computation method

Former service member whose disability retirement pay was initially calculated as a percentage of monthly pay of active-duty service member of his rank had no ongoing right to have calculation continued on that basis and Government acted properly in adding cost of living adjustments voted by Congress to original per month amount rather than allowing retirees to receive increases based on changes in active-duty pay rates. *Schrader v. U.S.*, 1990, 20 Cl.Ct. 161.

§ 1402. Recomputation of retired or retainer pay to reflect later active duty of members who first became members before September 8, 1980

(a) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who has become entitled to retired pay or retainer pay, and who thereafter serves on active duty (other than for training), is entitled to recompute his retired pay or retainer pay upon his release from that duty according to the following table.

Col. 1, take—	Col. 2, multiply by—	Col. 3, subtract—
Monthly basic pay ¹ or the grade in which he would be eligible— (1) to retire if he were retiring upon that release from active duty; or (2) to transfer to the Fleet Reserve or Fleet Marine Corps Reserve if he were transferring to either upon release from active duty.	2½ percent of the sum of— (1) the years of service that may be credited to him in computing retired pay or retainer pay; and (2) his years of active service after becoming entitled to retired pay or retainer pay. ²	Excess over 75 percent of pay upon which computation is based.

¹ For a member who has been entitled, for a continuous period of at least two years, to basic pay under the rates of basic pay in effect upon that release from active duty, compute under those rates. For a member who has been entitled to basic pay for a continuous period of at least two years upon that release from active duty, but who is not covered by the preceding sentence, compute under the rates of basic pay replaced by those in effect upon that release from active duty. For any other member, compute under the rates of basic pay under which the member's retired pay or retainer pay was computed when he entered on that active duty.

² Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

However, an officer who was ordered to active duty (other than for training) in the grade that he holds on the retired list under former section 6150 of this title, or under any other law that authorized advancement on the retired list based upon a special commendation for the performance of duty in actual combat, may have his retired pay recomputed under this subsection on the basis of the rate of basic pay applicable to that grade upon his release from that active duty only if he has been entitled, for a continuous period of at least three years, to basic pay at that rate. If, upon his release from that active duty, he has been entitled to the basic pay of that grade for a continuous period of at least three years, but he does not qualify under the preceding sentence, he may have his retired pay recomputed under this subsection on the basis of the rate of basic pay prescribed for that grade by the rates of basic pay replaced by those in effect upon his release from that duty.

(b) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who has been retired other than for physical disability, and who while on active duty incurs a physical disability of at least 30 percent for which he would otherwise be eligible for retired pay under chapter 61 of this title, is entitled, upon his release from active duty, to retired pay under subsection (d).

(c) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who—

[See main volume for text of (1) to (3)]

is entitled, upon his release from active duty, to retired pay under subsection (d).

(d) A member of an armed force covered by subsection (b) or (c) may elect to receive either (1) the retired pay to which he became entitled when he retired, increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay, or (2) retired pay computed according to the following table.

Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
Highest monthly basic pay that member received while on active duty after retirement or after date when his name was placed on temporary disability retired list, as the case may be.	As member elects— (1) 2½% of years of service credited under section 1208 of this title; ¹ or (2) the highest percentage of disability attained while on active duty after retirement or after the date when his name was placed on temporary disability retired list, as the case may be. ¹	Add amount necessary to increase product of columns 1 and 2 to 50% of pay upon which computation is based, if member is on temporary disability retired list.	Excess over 75% of pay upon which computation is based.

¹ Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional of a month.

If, while on active duty after retirement or after his disability retired list, a member is covered by this subsection on the temporary promoted to a higher

(b) **New disability incurred during later active duty.**—A member of an armed force who first became a member of a uniformed service after September 7, 1980, who has been retired other than for physical disability and who while on active duty incurs a physical disability of at least 30 percent for which he would otherwise be eligible for retired pay under chapter 61 of this title, is entitled, upon his release from active duty, to retired pay under subsection (d).

(c) **Additional or aggravated disability incurred during later active duty.**—A member of an armed force who first became a member of a uniformed service after September 7, 1980, and who—

[See main volume for text of (1) to (3)]

is entitled, upon his release from active duty, to retired pay under subsection (d).

(d) **Computation for later disability.**—A member of an armed force covered by subsection (b) or (c) may elect to receive either (1) the retired pay to which he became entitled when he retired, increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay, or (2) retired pay computed according to the following table.

Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
The retired pay base computed under section 1407(b) of this title.	As member elects— (1) 2% percent of years of service credited under section 1208 of this title; or (2) the highest percentage of disability attained while on active duty after retirement or after the date when his name was placed on temporary disability retired list, as the case may be.	Amount necessary to increase product of columns 1 and 2 to 50 percent of pay upon which computation is based, if member is on temporary disability retired list.	Excess over 75 percent of retired or retainer pay base upon which computation is based.

¹ Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months.

(e) **Alternative recomputation to subsection (a) formula.**—Notwithstanding subsection (a), a member covered by that subsection may elect, upon his release from that active duty, to have his retired pay or retainer pay—

[See main volume for text of (1) and (2)]

(f) **Additional 10 percent for certain enlisted members credited with extraordinary heroism.**—(1) In the case of a member who is entitled to recompute retired pay under this section upon release from active duty served after retiring under section 3914 or 8914 of this title, the member's retired pay as recomputed under another provision of this section shall be increased by 10 percent of the amount so recomputed if the member has been credited by the Secretary concerned with extraordinary heroism in the line of duty during any period of active duty service in the armed forces.

(2) The amount of the retired pay as recomputed under another provision of this section and as increased under paragraph (1) may not exceed the amount equal to 75 percent of the retired pay base upon which the recomputation of such retired pay is based.

(3) The determination of the Secretary concerned as to extraordinary heroism is conclusive for all purposes.

(As amended Pub.L. 98-94, Title IX, §§ (5), (6), (X1), (2)(D), (E), Sept. 24, 1983, 97 Stat. 641; Pub.L. 99-348, Title II, § 201(b)(1), (2), July 1, 1986, 100 Stat. 693; Pub.L. 102-484, Div. A, Title VI, § 642(b), Oct. 23, 1986, 106 Stat. 2063.)

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Subsec. (f). Pub.L. 102-484, Title VI, § 642(b), added subsec. (f).

1986 Amendment

Subsec. (a). Pub.L. 99-348, § 201(b)(1), inserted "In general—" after "(a)", struck out provisions that member of a uniformed service be defined in section 1407(a)(2) of this title and that if the amount recomputed is not a multiple of \$1, it be rounded to the next lower multiple of \$1, in column 1 of the Table substituted "Retired pay base or retainer pay base" for "Monthly retired or retainer pay base", in column 2 of the Table substituted "The retired pay multiplier or retainer pay multiplier prescribed in section 1409 for" for "for 2½% of", struck out footnote 1 to column 2, which provided that before applying the percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month, and struck out column 3, which directed that the excess over 75 percent of monthly retired or retainer pay on which the computation is based be subtracted.

Subsec. (b). Pub.L. 99-348, § 201(b)(2)(A), inserted "New disability incurred during later active duty—" after "(b)".

Subsec. (c). Pub.L. 99-348, § 201(b)(2)(B), inserted "Additional or aggravated disability incurred during later active duty—" after "(c)".

Subsec. (d). Pub.L. 99-348, § 201(b)(2)(C), inserted "Computation for later disability—" after "(d)", struck out provision that if the amount recomputed is not a multiple of \$1, it be rounded to the next lower multiple of \$1, and in column 1 of the Table struck out "monthly" before "retired pay" and in column 4 of the Table struck out "monthly" before "retired or".

Subsec. (e). Pub.L. 99-348, § 201(b)(2)(D), inserted "Alternative recomputation to subsection (a) formula—" after "(e)".

1983 Amendment

Subsec. (a). Pub.L. 98-94, § 922(a)(5), substituted "according to the following table. The amount recomputed, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1." for "as follows:".

Pub. L. 98-94, § 923(a)(1), (2)(D), in footnote 1 of the table, substituted "Before applying per-

centage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month" for "Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months".

Subsec. (d). Pub.L. 98-94, § 922(a)(6), substituted "according to the following table. The amount computed, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1." for "as follows:".

Pub. L. 98-94, § 923(a)(1), (2)(E), in footnote 1 of the table, substituted "Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month" for "Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months".

Effective Date of 1992 Amendment

Amendment by section 642(b) of Pub.L. 102-484 effective Oct. 23, 1992, see section 642(c) of Pub.L. 102-484, set out as a note under section 1402 of this title.

Effective Date of 1983 Amendment

Amendment by section 922(a)(5) and (6) of Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of this title.

Amendment by section 923(a)(1) and (2)(D) and (E) of Pub. L. 98-94 applicable with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, and (2) the recomputation of retired pay under section 1402, 1402a, 3992, or 8992 of this title, of any individual who after Sept. 30, 1983, becomes entitled to recompute retired pay under such section, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98-94, see 1983 U. S. Code Cong. and Adm. News, p. 1081. See, also, Pub.L. 102-484, see 1992 U.S. Code Cong. and Adm. News, p. 1636.

§ 1403. Disability retired pay: treatment under Internal Revenue Code of 1986

That part of the retired pay of a member of an armed force, computed under formula No. 1 or 2 of section 1401, or under section 1402(d) or 1402a(d), of this title on the basis of years of service, which exceeds the retired pay that he would receive if it were computed on the basis of percentage of disability is not considered as a pension, annuity, or similar allowance for personal injury, or sickness, resulting from active service in the armed forces, under section 104(a) of the Internal Revenue Code of 1

(As amended Apr. 21, 1987, Pub.L. 100-26, § 7(h)(1), (2)(A), 101 Stat. 253.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Internal Revenue Code of 1986, referred to in section catchline and text, is Title 26, Internal Revenue Code. Section 104(a) is classified to section 104(a) of Title 26.

1987 Amendment

Pub.L. 100-26, § 7(h)(1), substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

§ 1405. Years of service

(a) **In general.**—For the purposes of the computation of the years of service of a member of the armed forces under a provision of this title providing for such computation to be made under this section, the years of service of the member are computed by adding—

[See main volume for text of (1) to (3)]

(b) **Fractional years of service.**—In determining a member's years of service under subsection (a)—

(1) each full month of service that is in addition to the number of full years of service creditable to the member shall be credited as $\frac{1}{12}$ of a year; and

(2) any remaining fractional part of a month shall be disregarded.

(As amended Pub.L. 99-348, Title I, § 106, July 1, 1986, 100 Stat. 691.)

HISTORICAL AND STATUTORY NOTES

1986 Amendment

Subsec. (a). Pub.L. 99-348, § 106(1), designated existing provision as subsec. (a), and in subsec. (a) as so designated, inserted "In general.—" after "(a)" and in provision preceding par. (1) substituted "the computation of the years of service of a member of the armed forces under a provision of this title providing for such computation to be made under this section" for "the computation of the years of service of a member of the armed forces under a provision of this title providing for such computation to be made under this section".

Subsec. (b). Pub.L. 99-348, § 106(2), added subsec. (b).

§ 1406. Retired pay base for members who first became members before September 8, 1980: final basic pay

(a) **Use of retired pay base in computing retired pay.**—

(1) **General rule.**—The retired pay or retainer pay of any person entitled to that pay who first became a member of a uniformed service before September 8, 1980, is computed using the retired pay base or retainer pay base determined under this section.

(2) **Exception for recomputation.**—Recomputation of retired or retainer pay to reflect later active duty is provided for under section 1402 of this title without reference to a retired pay base or retainer pay base.

(b) **Retirement under subtitle A.**—In the case of a person whose retired pay is computed under this subtitle, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired base pay is:
1201 1202 1204 1205	Monthly basic pay ¹ of grade to which member is entitled under section 1372 or to which he was entitled on day before retirement or placement on temporary disability retired list, whichever is higher.
1331	Monthly pay ² of highest grade satisfactorily held by him on day before retirement or placement on temporary disability retired list, whichever is higher.

For a member entitled to retired pay under section:	The retired base pay is:
580 1263 1293 1305	Monthly basic pay to which member would have been entitled if he had served on active duty in his retired grade on day before retirement, or if the pay of that grade is less than the pay of any warrant grade satisfactorily held by him on active duty, the monthly basic pay of that warrant officer grade.
633 634 635 636 1251	Monthly basic pay ³ of member's retired grade. ⁴

¹ Compute at rates applicable on date of retirement or date when member's name was placed on temporary disability retired list, as the case may be.

² Compute at rates applicable on date when retired pay is granted.

³ Compute at rates applicable on date of retirement.

⁴ For the purposes of this subsection, determine member's retired grade as if sections 3962(b) and 8962(b) did not apply.

(c) **Voluntary retirement for members of the Army.**—

(1) **In general.**—In the case of a member whose retired pay is computed under section 3991 of this title or who is entitled to retired pay computed under section 3992 of this title, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
3911 3918 3920 3924	Monthly basic pay of member's retired grade. ¹
3914 3917	Monthly basic pay to which member was entitled on day before he retired.
8992	Monthly basic pay of grade to which member is advanced on retired list.

¹ For the purposes of this subsection, determine member's retired grade as if section 3962(b) did not apply.

(2) **Rate of basic pay to be used.**—The rate of basic pay to be used under paragraph (1) is the rate applicable on the date of the member's retirement.

(d) **Retirement for members of the Navy and Marine Corps.**—In the case of a member whose retired pay is computed under section 6333 of this title, who is advanced on the retired list under section 6151 or 6152 of this title, or who is entitled to retainer pay under section 6151 or 6152 of this title, the retired pay or retainer pay is determined in accordance with the following table.

For a member entitled to retired or retainer pay under section:	The retired pay base or retainer pay base is:
6323 6325(a) 6383	Basic pay of the grade in which the member retired. ¹
6325(b)	Basic pay of the grade the officer would hold if he had not received an appointment described in section 6325(b).
6326	Basic pay of the pay grade in which the member was serving on the day before retirement.
6330	Basic pay that the member received at the time of transfer to the Fleet Reserve or Fleet Marine Corps Reserve.
6151	Basic pay of the grade to which the member is advanced under section 6151.
6334	Basic pay of the grade to which the member is advanced under section 6334.

¹ If the rate specified is less than the pay of any warrant officer grade satisfactorily held by the member on active duty, use the monthly basic pay of that warrant officer grade.

(e) Voluntary retirement for members of the Air Force.—

(1) **In general.**—In the case of a member whose retired pay is computed under section 8991 of this title or who is entitled to retired pay computed under section 8992 of this title, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
8911 8918 8920 8924	Monthly basic pay of member's retired grade. ¹
8914 8917	Monthly basic pay to which member was entitled on day before he retired.
8992	Monthly basic pay of grade to which member is advanced on retired list.

¹ For the purposes of this subsection, determine member's retired grade as if section 8962(b) did not apply.

(2) **Rate of basic pay to be used.**—The rate of basic pay to be used under paragraph (1) is the rate applicable on the date of the member's retirement.

(f) **Coast Guard.**—In the case of a member who is retired under any section of title 14, the member's retired pay is computed under section 423(a) of title 14 in the manner provided in that section.

(g) **Commissioned Corps of National Oceanic and Atmospheric Administration.**—In the case of an officer whose retired pay is computed under section 16 of the Coast and Geodetic Survey Commissioned Officers' Act of 1948 (33 U.S.C. 853o), the retired pay base is the basic pay of the rank with which the officer retired.

(h) **Commissioned Corps of Public Health Service.**—In the case of an officer who is retired under section 210(g) or 211(a) of the Public Health Service Act (42 U.S.C. 211(g), 212(a)), the retired pay base is determined as follows:

(1) **Mandatory retirement.**—If the officer is retired under section 210(g) of such Act, the retired pay base is the basic pay of the permanent grade held by the officer at the time of retirement.

(2) **Voluntary retirement.**—If the officer is retired under section 211(a) of such Act, the retired pay base is the basic pay of the highest grade held by the officer and in which, in the case of a temporary promotion to such grade, the officer has performed active duty for not less than six months.

(i) **Special rule for former Chairmen and Vice Chairman of the JCS, Chiefs of Service, and senior enlisted members.**—

(1) **In general.**—For the purposes of subsections (b) through (e), in determining the rate of basic pay to apply in the determination of the retired pay base of a member who has served as Chairman or Vice Chairman of the Joint Chiefs of Staff, as a Chief of Service, or as the senior enlisted member of an armed force, the highest rate of basic pay applicable to the member while serving in that position shall be used, if that rate is higher than the rate otherwise authorized by this section.

(2) **Definitions.**—In this subsection:

(A) The term "Chief of Service" means any of the following:

- (i) Chief of Staff of the Army.
- (ii) Chief of Naval Operations.
- (iii) Chief of Staff of the Air Force.
- (iv) Commandant of the Marine Corps.
- (v) Commandant of the Coast Guard.

(B) The term "senior enlisted member" means any of the following:

- (i) Sergeant Major of the Army.
- (ii) Master Chief Petty Officer of the Navy.
- (iii) Chief Master Sergeant of the Air Force.
- (iv) Sergeant Major of the Marine Corps.
- (v) Master Chief Petty Officer of the Coast Guard.

(Added Pub.L. 99-348, Title I, § 104(b), July 1, 1986, 100 Stat. 686, and amended Pub.L. 100-180, Div. A, Title V, § 512(d)(2), Title XIII, § 1314(b)(6), Dec. 4, 1987, 101 Stat. 1090, 1176; Pub.L. 100-456, Div. A, Title XII, § 1233(c), Sept. 29, 1988, 102 Stat. 2057; Pub.L. 102-190, Div. A, Title XI, § 1131(7), Dec. 5, 1991, 105 Stat. 1506.)

HISTORICAL AND STATUTORY NOTES

References in Text

Section 16 of the Coast and Geodetic Survey Commissioned Officers' Act of 1948, referred to in subsec. (g), is classified to section 853o of Title 33, Navigation and Navigable Waters.

Section 210(g) of the Public Health Service Act, referred to in subsec. (h), is classified to section 211(g) of Title 42, The Public Health and Welfare.

Section 211(a) of the Public Health Service Act, referred to in subsec. (h), is classified to section 212(a) of Title 42.

Prior Provisions

A prior section 1406, Added Pub.L. 89-652, § 2(1), Oct. 14, 1966, 80 Stat. 902, relating to limitations on revocation of retired pay, was redesignated as section 1888 of this title.

1991 Amendments

Subsec. (b). Pub.L. 102-190, in the first column in the table, substituted "section 580" for "section 564".

1988 Amendment

Subsec. (b). Pub.L. 100-456 substituted "satisfactorily" for "satisfactory" in the matter in the second column relating to members entitled to retired pay under section 1831.

1987 Amendment

Subsec. (d). Pub.L. 100-180, § 512(d)(2)(A), substituted "section 6151 or 6334 of this title" for "section 6151 of this title".

Pub.L. 100-180, § 512(d)(2)(B), added item in table relating to section 6334.

Subsec. (i). Pub.L. 100-180, § 1314(b)(6)(A), inserted "and Vice Chairmen" following "for former Chairmen" in subsection catchline.

Subsec. (i)(1). Pub.L. 100-180, § 1314(b)(6)(B), inserted "or Vice Chairman" following "served as Chairman".

Effective Date of Amendments

Amendment by Pub.L. 102-190 effective Feb. 1, 1991, see section 1132 of Pub.L. 102-190, set as a note under section 521 of this title.

Legislative History

For legislative history and purpose of Pub.L. 100-180, see 1987 U.S. Code Cong. and Adm.

News, p. 1018. See, also, Pub.L. 100-456, 1988 U.S. Code Cong. and Adm. News, p. 2503; Pub.L. 102-190, 1991 U.S. Code Cong. and Adm. News, p. 918.

§ 1407. Retired pay base for members who first became members after September 7, 1980: high-36 month average

(a) **Use of retired pay base in computing retired pay.**—The retired pay or retainer pay of any person entitled to that pay who first became a member of a uniformed service after September 7, 1980, is computed using the retired pay base or retainer pay base determined under this section.

(b) **High-three average.**—The retired pay base or retainer pay base of a person under this section is the person's high-three average determined under subsection (c) or (d).

(c) **Computation of high-three average for members entitled to retired or retainer pay for regular service.**—

(1) **General rule.**—The high-three average of a member entitled to retired or retainer pay under any provision of law other than section 1204 or 1205 or section 1331 of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member was entitled for the 36 months (whether or not consecutive) out of all the months of active service of the member for which the monthly basic pay to which the member was entitled was the highest, divided by

(B) 36.

(2) **Special rule for short-term disability retirees.**—In the case of a member who is entitled to retired pay under section 1201 or 1202 of this title and who has completed less than 36 months of active service, the member's high-three average (notwithstanding paragraph (1)) is the amount equal to—

(A) the total amount of basic pay to which the member was entitled during the period of the member's active service, divided by

(B) the number of months (including any fraction thereof) of the member's active service.

(d) **Computation of high-three average for members and former members entitled to retired pay for nonregular service.**—

(1) **Retired pay under chapter 67.**—The high-three average of a member or former member entitled to retired pay under section 1331 of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member or former member was entitled during the member or former member's high-36 months (or to which the member or former member would have been entitled if the member or former member had served on active duty during the entire period of the member or former member's high-36 months), divided by

(B) 36.

(2) **Nonregular service disability retired pay.**—The high-three average of a member entitled to retired pay under section 1204 or 1205 of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member was entitled during the member's high-36 months (or to which the member would have been entitled if the member had served on active duty during the entire period of the member's high-36 months), divided by

(B) 36.

(3) **Special rule for short-term disability retirees.**—In the case of a member who is entitled to retired pay under section 1204 or 1205 of this title and who was a member for less than 36 months before being retired under that section, the member's high-three average (notwithstanding paragraph (2)) is the amount equal to—

(A) the total amount of : pay to which the member : entitled during the entire period the member was a : er of a uniformed service before being so retired (or to which the member would have : entitled if the

member had served on active duty during the entire period the member was a member of a uniformed service before being so retired), divided by

(B) the number of months (including any fraction thereof) which the member was a member before being so retired.

(4) **High-36 months.**—The high-36 months of a member or former member whose retired pay is covered by paragraph (1) or (2) are the 36 months (whether or not consecutive) out of all the months before the member or former member became entitled to retired pay for which the monthly basic pay to which the member or former member was entitled (or would have been entitled if serving on active duty during those months) was the highest. In the case of a former member, only months during which the former member was a member of a uniformed service may be used for purposes of the preceding sentence.

(e) **Limitation for enlisted members retiring with less than 30 years' service.**—In the case of a member who is retired under section 3914 or 8914 of this title or who is transferred to the Fleet Reserve or Fleet Marine Corps Reserve under section 6330 of this title, the member's high-36 average shall be computed using only rates of basic pay applicable to months of active duty of the member as an enlisted member.

(Added Pub.L. 99-348, Title I, § 104(b), July 1, 1986, 100 Stat. 689, and amended Pub.L. 101-189, Div. A, Title VI, § 651(a), (b)(2), Nov. 29, 1989, 103 Stat. 1459, 1460.)

HISTORICAL AND STATUTORY NOTES

Prior Provisions

A prior section 1407, Added Pub.L. 96-342, Title VIII, § 813(a)(1), Sept. 8, 1980, 94 Stat. 1100, and amended Pub.L. 96-513, Title I, § 113(c), Title V, §§ 501(21), 511(53), Dec. 12, 1980, 94 Stat. 2877, 2908, 2925, which related to determination of retired pay base, was repealed by Pub.L. 99-348, Title I, § 104(b), July 1, 1986, 100 Stat. 686.

1989 Amendment

Subsec. (b). Pub.L. 101-189, § 651(a)(1), added reference to subsec. (d).

Pub.L. 101-189, § 651(b)(2), substituted "person" and "person's" for "member" and "member's", respectively.

Subsec. (c). Pub.L. 101-189, § 651(a)(2), (4), added subsec. (c), and struck out former subsec. (c), which provided that for the purposes of this section, a member's high-three average was the amount equal to the total amount of monthly basic pay to which the member was entitled for

the member's high-36 months, divided by 36, and defined the term high-36 months. See subsec. (d) of this section.

Subsec. (d). Pub.L. 101-189, § 651(a)(4), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub.L. 101-189, § 651(a)(2), (3), redesignated former subsec. (d) as (e), and struck out former subsec. (e), which had provided special rules for short-term disability retirees. See subsec. (d)(3) of this section.

Subsecs. (f), (g). Pub.L. 101-189, § 651(a)(2), struck out former subsec. (f), relating to special rule for members retiring with non-regular service, and former subsec. (g), defining the term "years of creditable service". See subsec. (d)(2) of this section.

Legislative History

For legislative history and purpose of Pub.L. 101-189 see 1989 U.S. Code Cong. and Adm. News, p. 838.

NOTES OF DECISIONS

1. Computation

Erroneous payments should not be included in computation of a service member's retired pay

base, for purposes of computing his entitlement, under this section. 1983, 62 Comp.Gen. 167.

§ 1408. Payment of retired or retainer pay in compliance with court orders

(a) **Definitions.**—In this section:

(1) The term "Court" means—

[See main volume for text of (A) to (C)]

(2) The term "court order" means a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court ordered, ratified, or approved property settlement incident to such previously issued decree), which—

main volume for of (A) (B)]

(C) in the case of a division of property, specifically provides for the payment of an amount, expressed in dollars or as a percentage of disposable retired pay, from the disposable retired pay of a member to the spouse or former spouse of that member.

(3) The term "final decree" means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

(4) The term "disposable retired pay" means the total monthly retired pay to which a member is entitled less amounts which—

(A) are owed by that member to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;

(B) are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-marital or as a result of a waiver of retired pay required by law in order to receive compensation under title 5 or title 38;

(C) in the case of a member entitled to retired pay under chapter 61 of this title, are equal to the amount of retired pay of the member under that chapter, computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list); or

(D) are deducted because of an election under chapter 73 of this title to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this section.

[(E) and (F) redesignated (C) and (D)]

(5) The term "member" includes a former member entitled to retired pay under section 1331 of this title.

(6) The term "spouse or former spouse" means the husband or wife, or former husband or wife, respectively, of a member who, on or before the date of a court order, was married to that member.

(7) The term "retired pay" includes retainer pay.

(b) Effective service of process.—For the purposes of this section—

(1) service of a court order is effective if—

(A) an appropriate agent of the Secretary concerned designated for receipt of service of court orders under regulations prescribed pursuant to subsection (i) or, if no agent has been so designated, the Secretary concerned, is personally served or is served by certified or registered mail, return receipt requested;

[See main volume for text of (B)]

(C) the court order or other documents served with the court order identify the member concerned and include, if possible, the social security number of such member; and

[See main volume for text of (D), (2)]

(c) Authority for court to treat retired pay as property of the member and spouse.—(1) Subject to the limitations of this section, a court may treat disposable retired pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court. A court may not treat retired pay as property in any proceeding to divide or partition any amount of retired pay of a member as the property of the member and the member's spouse or former spouse if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member's spouse or former spouse (A) was issued before June 25, 1981, and

(B) did not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member's spouse or former spouse

(2) Notwithstanding any other provision of law, this section, title, or interest which can be sold, assigned, transferred, (including by inheritance) by a spouse or former spouse. A court concerned under subsection (d) to a spouse or former spouse with retired pay as the property of a member and the member's spouse may not be treated as amounts received as retired pay for service services.

[See main volume for text of (3)]

(4) A court may not treat the disposable retired pay of a member in the described in paragraph (1) unless the court has jurisdiction over the member in (A) his residence, other than because of military assignment, in the territorial jurisdiction of the court, (B) his domicile in the territorial jurisdiction of the court, or his consent to the jurisdiction of the court.

(d) Payments by secretary concerned to spouse or former spouse.—(1) After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired pay from a member to the spouse, or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired pay specifically provided for in the court order. In the case of a member entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date of effective service. In the case of a member not entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date on which the member first becomes entitled to receive retired pay.

(2) If the spouse or former spouse to whom payments are to be made under this section was not married to the member for a period of 10 years or more during which the member performed at least 10 years of service creditable in determining the member's eligibility for retired pay, payments may not be made under this section to the extent that they include an amount resulting from the treatment by the court under subsection (c) of disposable retired pay of the member as property of the member or property of the member and his spouse.

[See main volume for text of (3)]

(4) Payments from the disposable retired pay of a member pursuant to this section shall terminate in accordance with the terms of the applicable court order, but not later than the date of the death of the member or the date of the death of the spouse or former spouse to whom payments are being made, whichever occurs first.

(5) If a court order described in paragraph (1) provides for a division of property (including a division of community property) in addition to an amount of child support or alimony or the payment of an amount of disposable retired pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse of the member, any part of the amount payable to the spouse or former spouse under the division of property upon effective service of a final court order of garnishment of such amount from such retired pay.

(e) Limitations.—(1) The total amount of the disposable retired pay of a member payable under all court orders pursuant to subsection (c) may not exceed 50 percent of such disposable retired pay.

(2) In the event of effective service of more than one court order which provide for payment to a spouse and one or more former spouses or to more than one former spouse, the disposable retired pay of the member shall be used to satisfy (subject to the limitations of paragraph (1)) such court orders on a first-come, first-served basis. Such court orders shall be satisfied (subject to the limitations of paragraph (1)) of that amount of disposable retired pay which remains after the satisfaction of all court orders which have previously been served.

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(3)(A) In the event of effective service of conflicting court orders under this section which assert to direct that different amounts be paid during a month to the same spouse or former spouse of the same member, the Secretary concerned shall—

(i) pay to that spouse from the member's disposable retired pay the least amount directed to be paid during that month by any such conflicting court order, but not more than the amount of disposable retired pay which remains available for payment of such court orders based on when such court orders were effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4);

(ii) retain an amount of disposable retired pay that is equal to the lesser of—

(I) the difference between the largest amount required by any conflicting court order to be paid to the spouse or former spouse and the amount payable to the spouse or former spouse under clause (i); and

(II) the amount of disposable retired pay which remains available for payment of any conflicting court order based on when such court order was effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4); and

(iii) pay to that member the amount which is equal to the amount of that member's disposable retired pay (less any amount paid during such month pursuant to legal process served under section 459 of the Social Security Act (42 U.S.C. 659) and any amount paid during such month pursuant to court orders effectively served under this section, other than such conflicting court orders), minus—

(I) the amount of disposable retired pay paid under clause (i); and

(II) the amount of disposable retired pay retained under clause (ii).

[See main volume for text of (B)]

(4)(A) In the event of effective service of a court order under this section and the service of legal process pursuant to section 459 of the Social Security Act (42 U.S.C. 659), both of which provide for payments during a month from the same member, satisfaction of such court orders and legal process from the retired pay of the member shall be on a first-come, first-serve basis. Such court orders and legal process shall be satisfied out of moneys which are subject to such orders and legal process and which remain available in accordance with the limitations of paragraph (1) and subparagraph (B) of this paragraph during such month after the satisfaction of all court orders or legal process which have been previously served.

(B) Notwithstanding any other provision of law, the total amount of the disposable retired pay of a member payable by the Secretary concerned under all court orders pursuant to this section and all legal processes pursuant to section 459 of the Social Security Act (42 U.S.C. 659) with respect to a member may not exceed 65 percent of the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act (42 U.S.C. 662) to be remuneration for employment that is payable by the United States.

(5) A court order which itself or because of previously served court orders provides for the payment of an amount which exceeds the amount of disposable retired pay available for payment because of the limit set forth in paragraph (1), or which, because of previously served court orders or legal process previously served under section 459 of the Social Security Act (42 U.S.C. 659), provides for payment of an amount that exceeds the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4), shall not be considered to be irregular on its face solely for that reason. However, such order shall be considered to be fully satisfied for purposes of this section by the payment to the spouse or former spouse of the maximum amount of disposable retired pay permitted under paragraph (1) and subparagraph (B) of paragraph (4).

(6) Nothing in this section shall be construed to relieve a member of liability for the payment of alimony, child support, or other payments required by a court order on the grounds that payments made out of disposable retired pay under this section have been made in the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4). Any such unsatisfied obligation of a member may be enforced by any means available under law other than the means provided under this section in any case in which the maximum amount permitted under paragraph (1) has been paid and under section 459 of the Social Security Act (42 U.S.C. 659) in any case in which the maximum amount permitted under subparagraph (B) of paragraph (4) has been paid.

(f) Immunity of officers and employees of United States and any officer or employee of the United States shall not be payment made from retired pay to any member, spouse, or former spouse of a member, or for a court order that is regular on its face if such payment is made under the section and the regulations prescribed pursuant to subsection (i).

(2) An officer or employee of the United States who, under regulations prescribed pursuant to subsection (i), has the duty to respond to interrogatories shall under any law to any disciplinary action or civil or criminal liability or, because of, any disclosure of information made by him in carrying out any such directly or indirectly pertain to answering such interrogatories.

(g) Notice to member of service of court order on secretary concerned.—A member receiving effective service of a court order under this section shall, as soon as possible but not later than 30 days after the date on which effective service is made, send written notice of such court order (together with a copy of such order) to the member affected by the court order at his last known address.

(h) Benefits for dependents who are victims of abuse by members losing right to retired pay.—(1) If, in the case of a member or former member of the armed forces referred to in paragraph (2)(A), a court order provides (in the manner applicable to a division of property) for the payment of an amount from the disposable retired pay of that member or former member (as certified under paragraph (4)) to an eligible spouse or former spouse of that member or former member, the Secretary concerned, beginning upon effective service of such court order, shall pay that amount in accordance with this subsection to such spouse or former spouse.

(2) A spouse or former spouse of a member or former member of the armed forces is eligible to receive payment under this subsection if—

(A) the member or former member, while a member of the armed forces and after becoming eligible to be retired from the armed forces on the basis of years of service, has eligibility to receive retired pay terminated as a result of misconduct while a member involving abuse of a spouse or dependent child (as defined in regulations prescribed by the Secretary of Defense or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Transportation); and

(B) the spouse or former spouse—

(i) was the victim of the abuse and was married to the member or former member at the time of that abuse; or

(ii) is a natural or adopted parent of a dependent child of the member or former member who was the victim of the abuse.

(3) The amount certified by the Secretary concerned under paragraph (4) with respect to a member or former member of the armed forces referred to in paragraph (2)(A) shall be deemed to be the disposable retired pay of that member or former member for the purposes of this subsection.

(4) Upon the request of a court or an eligible spouse or former spouse of a member or former member of the armed forces referred to in paragraph (2)(A) in connection with a civil action for the issuance of a court order in the case of that member or former member, the Secretary concerned shall determine and certify the amount of the monthly retired pay that the member or former member would have been entitled to receive as of the date of the certification—

(A) if the member or former member's eligibility for retired pay had not been terminated as described in paragraph (2)(A); and

(B) if, in the case of a member or former member not in receipt of retired pay immediately before that termination of eligibility for retired pay, the member or former member had retired on the effective date of that termination of eligibility.

(5) A court order under this subsection may provide that whenever retired pay is increased under section 1401a of this title (or any other provision of law), the amount payable under the court order to the spouse or former spouse of a member or former member described in paragraph (2)(A) shall be increased at the same time by the percent by which the retired pay of the member or former member would have increased if the member or former member were receiving retired pay.

(6) Notwithstanding any other provision of law, a member or former member of the armed forces referred to in paragraph (2)(A) shall not be considered to have lost ownership of the property in, or

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claim against, any amount payable under this section to a spouse or former spouse of the member or former member.

(7)(A) If a former spouse receiving payments under this subsection with respect to a member or former member referred to in paragraph (2)(A) marries again after such payments begin, the eligibility of the former spouse to receive further payments under this subsection shall terminate on the date of such marriage.

(B) A person's eligibility to receive payments under this subsection that is terminated under subparagraph (A) by reason of remarriage shall be resumed in the event of the termination of that marriage by the death of that person's spouse or by annulment or divorce. The resumption of payments shall begin as of the first day of the month in which that marriage is so terminated. The monthly amount of the payments shall be the amount that would have been paid if the continuity of the payments had not been interrupted by the marriage.

(8) Payments in accordance with this subsection shall be made out of funds in the Department of Defense Military Retirement Fund established by section 1461 of this title or, in the case of the Coast Guard, out of funds appropriated to the Department of Transportation for payment of retired pay for the Coast Guard.

(9)(A) A spouse or former spouse of a member or former member of the armed forces referred to paragraph (2)(A), while receiving payments in accordance with this subsection, shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to receive any other benefit that a spouse or a former spouse of a retired member of the armed forces is entitled to receive on the basis of being a spouse or former spouse, as the case may be, of a retired member of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(B) A dependent child of a member or former member referred to in paragraph (2)(A) who was a member of the household of the member or former member at the time of the misconduct described in paragraph (2)(A) shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to have other benefits provided to dependents of retired members of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(C) If a spouse or former spouse or a dependent child eligible or entitled to receive a particular benefit under this paragraph is eligible or entitled to receive that benefit under another provision of law, the eligibility or entitlement of that spouse or former spouse or dependent child to such benefit shall be determined under such other provisions of law instead of this paragraph.

(10)(A) For purposes of this subsection, in the case of a member of the armed forces who has been sentenced by a court-martial to receive a punishment that will terminate the eligibility of that member to receive retired pay if executed, the eligibility of that member to receive retired pay may, as determined by the Secretary concerned, be considered terminated effective upon the approval of that sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice).

(B) If each form of the punishment that would result in the termination of eligibility to receive retired pay is later remitted, set aside, or mitigated to a punishment that does not result in the termination of that eligibility, a payment of benefits to the eligible recipient under this subsection that is based on the punishment so vacated, set aside, or mitigated shall cease. The cessation of payments shall be effective as of the first day of the first month following the month in which the Secretary concerned notifies the recipient of such benefits in writing that payment of the benefits will cease. The recipient may not be required to repay the benefits received before that effective date (except to the extent necessary to recoup any amount that was erroneous when paid).

(11) In this subsection, the term "dependent child", with respect to a member or former member of the armed forces referred to in paragraph (2)(A), means an unmarried legitimate child, including an adopted child or a stepchild of the member or former member, who—

(A) is under 18 years of age;

(B) is incapable of support because of a mental or physical incapacity that existed before becoming 18 years of age and is dependent on the member or former member for one-half of the child's support; or

(C) if enrolled in a full-time course of study in an institution of higher education recognized by the Secretary of Defense for the purposes of this subparagraph, is under 23 years of age and is dependent on the member or former member for over one-half of the child's support.

(i) **Regulations.**—The Secretaries concerned shall prescribe uniform regulations for the administration of this section.

(As amended Pub.L. 98-525, Title VI, § 643(a)-(d), Oct. 19, 1984, 98 Stat. 2547, 2548; Pub.L. 99-661, Div. A, Title VI, § 644(a), Nov. 14, 1986, 100 Stat. 3887; Pub.L. 100-26, § 8(3), Apr. 21, 1987, 101 Stat. 278; Pub.L. 100-26, § 7(h)(1), Apr. 21, 1987, 101 Stat. 282; Pub.L. 101-189, Div. A, Title VI, § 653(a)(5), Title XVI, § 1622(e)(6), Nov. 29, 1989, 103 Stat. 1462, 1606; Pub.L. 101-510, Div. A, Title V, § 555(a)-(d), (f), (g), Nov. 5, 1990, 104 Stat. 1569, 1570; Pub.L. 102-190, Div. A, Title X, § 1061(a)(7), Dec. 5, 1991, 105 Stat. 1472; Pub.L. 102-484, Div. A, Title VI, § 653(a), Oct. 23, 1992, 106 Stat. 2426; Pub.L. 103-160, Div. A, Title V, § 555(a), (b), Title XI, § 1182(a)(2), Nov. 30, 1993, 107 Stat. 1666, 1771.)

HISTORICAL AND STATUTORY NOTES

References in Text

Section 3402(i) of the Internal Revenue Code of 1986, referred to in subsec. (a)(4)(D), is classified to section 3402(i) of Title 26, Internal Revenue Code.

Section 462 of the Social Security Act, referred to in subsec. (e)(4)(B) is section 462 of Act Aug. 14, 1935, c. 531, Title IV, as added May 23, 1977, Pub.L. 95-30, Title V, § 501(d), 91 Stat. 159 and is classified to section 662 of Title 42, The Public Health and Welfare.

Codification

Section 3(3) of Pub.L. 100-26 made a technical amendment to the directory language of section 644(a) of Pub.L. 99-661 by substituting "title 10, United States Code," for "such title," which amendment required no change in text. Such amendment by section 3 of Pub.L. 100-26 effective as if included in Pub.L. 99-661 when enacted on Nov. 14, 1986, see section 12(a) of Pub.L. 100-26, set out as a note under section 774 of this title.

1992 Amendments

Subsec. (h). Pub.L. 102-484, Title VI, § 653(a)(2), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub.L. 102-484, Title VI, § 653(a)(1), redesignated former subsec. (h) as (i).

1991 Amendments

Heading. Pub.L. 102-190 inserted "or retainer" following "retired".

1990 Amendment

Subsec. (a). Pub.L. 101-510, § 555(g)(1), substituted "(a) Definitions.—" for "(a)".

Subsec. (a)(4)(A). Pub.L. 101-510, § 555(b)(1), inserted provisions specifying the payments owed by a member to the U.S. as those payments owed for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay.

Subsec. (a)(4)(B). Pub.L. 101-510, § 555(b)(2), substituted provisions identifying amounts deducted from the retired pay of a member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required in order to receive compensation under Title 5 or Title 38, for provisions identifying amounts deducted

the retired or retainer pay of a member, including fines and forfeitures ordered by courts-martial, Federal employment taxes, and amounts waived in order to receive compensation under Title 5 or Title 38.

Subsec. (a)(4)(C). Pub.L. 101-510, § 555(b)(3), struck out former subpar. (C), which identified amounts properly withheld for Federal, State, or local income taxes. Former subpar. (E) redesignated (C).

Subsec. (a)(4)(D). Pub.L. 101-510, § 555(b)(3), struck out former subpar. (D), which identified amounts withheld under section 3402(i) of Title 26. Former subpar. (F) redesignated (D).

Subsec. (a)(4)(E), (F). Pub.L. 101-510, § 555(b)(4), redesignated former subpars. (E) and (F) as (C) and (D), respectively.

Pub.L. 101-510, § 555(f)(2), substituted "retired pay" for "retired or retainer pay" wherever appearing in section catchline and in subsecs. (a)(2)(C), (4), (B), (c)(1), (4), (d)(1)-(5), (e)(1), (2), (3)(A)(i), (ii), (II), (iii)(I), (II), (4)(A)-(6) and (f)(1).

Subsec. (a)(7). Pub.L. 101-510, § 555(f)(1), added par. (7).

Subsec. (b). Pub.L. 101-510, § 555(g)(2), substituted "(b) Effective service of process.—" for "(b)".

Subsec. (c). Pub.L. 101-510, § 555(g)(3), substituted "(c) Authority for court to treat retired pay as property of the member and spouse.—" for "(c)".

Subsec. (c)(1). Pub.L. 101-510, § 555(a), added provisions relating to a prohibition on a court from treating retired pay as property in any proceeding to divide or partition any amount of retired pay if a final decree of divorce, etc. was ratified and issued before June 15, 1981, and did not treat any amount of retired pay of the member as retired pay of both the member and the member's spouse or former spouse.

Subsec. (c)(2). Pub.L. 101-510, § 555(c), inserted provisions relating to payments by the Secretary concerned under subsec. (d) to a spouse or former spouse with respect to a division of retired pay under this section not being treated as amounts received as retired pay for service in the uniformed services.

Subsec. (d). Pub.L. 101-510, § 555(g)(4), substituted "(d) Payments by Secretary concerned to former member.—" for "(d)".

Subsec. (e). Pub.L. 101-510, § 555(g)(5), substituted "(e) Limitations.—" for "(e)".

Subsec. (e)(1). Pub.L. 101-510, § 555(d)(1), substituted "payable under all court orders pursuant to subsection (c)" for "payable under subsection (d)".

Subsec. (e)(4)(B). Pub.L. 101-510, § 555(d)(2), substituted "the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act (42 U.S.C. 682) to be remuneration for employment that is payable by the United States" for "the disposable retired or retainer pay payable to such member".

Subsec. (f). Pub.L. 101-510, § 555(g)(6), substituted "(f) Immunity of officers and employees of United States.—" for "(f)".

Subsec. (g). Pub.L. 101-510, § 555(g)(7), substituted "(g) Notice to member of service of court order on Secretary concerned.—" for "(g)".

Subsec. (h). Pub.L. 101-510, § 555(g)(8), substituted "(h) Regulations.—" for "(h)".

1989 Amendment

Subsec. (a). Pub.L. 101-189, § 1622(e)(6), inserted "The term" after the paragraph designation in each of pars. (1) to (6), and revising the first word in the term defined in quotes so that the initial letter of that word is lower case.

Subsec. (a)(4)(D). Pub.L. 101-189, § 553(a)(5)(A), struck out "(26 U.S.C. 3402(i))".

Subsec. (a)(5). Pub.L. 101-189, § 553(a)(5)(B), inserted "entitled to retired pay under section 1331 of this title" after "a former member".

1987 Amendment

Subsec. (a)(4)(D). Pub.L. 100-26, § 7(h)(1), substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1986 Amendment

Subsec. (a)(4). Pub.L. 99-661, § 644(a)(1), struck out "(other than the retired pay of a member retired for disability under chapter 61 of this title)" preceding "less amounts".

Subsec. (a)(4)(E). Pub.L. 99-661, § 644(a)(2), added subpar. (E). Former subpar. (E), which read "are deducted as Government life insurance premiums (not including amounts deducted for supplemental coverage); or" was struck out.

1984 Amendment

Subsec. (a)(2)(C). Pub.L. 98-525, § 643(a), added "in the case of a division of property," before "specifically provides for".

Subsec. (b)(1)(C). Pub.L. 98-525, § 643(b), added "if possible," after "include".

Subsec. (d)(1). Pub.L. 98-525, § 643(c)(1), substituted "providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired or retainer pay from a member to the spouse or a former spouse of the member" for "with respect to the portion of the retired or retainer pay of a member to the spouse or a former spouse of the member" and substituted "in an amount sufficient to satisfy the amount of

child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired or retainer pay specifically provided for in the court order." for "specifically provided for in the court order." in the first sentence.

Subsec. (d)(5). Pub.L. 98-525, § 643(c)(2), substituted "child support or alimony or the payment of an amount of disposable retired or retainer pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired or retainer pay of the member to the spouse or former spouse of the member, any part" for "disposable retired or retainer pay, the Secretary concerned shall, subject to the limitations of this section, pay to the spouse or former spouse of the member, from the disposable retired or retainer pay of the member, any part".

Subsec. (e)(2). Pub.L. 98-525, § 643(d)(1), substituted "the disposable retired or retainer pay of the member" for "from the disposable retired or retainer pay of a member, such pay" before "shall be used to satisfy".

Subsec. (e)(3)(A). Pub.L. 98-525, § 643(d)(2)(A), struck out "from the disposable retired or retainer pay" before "of the same member".

Subsec. (e)(3)(A)(i). Pub.L. 98-525, § 643(d)(2)(B), substituted "from the member's disposable retired or retainer pay the least amount" for "the least amount of disposable retired or retainer pay" before "directed to be paid".

Subsec. (e)(3)(A)(ii)(I). Pub.L. 98-525, § 643(d)(2)(C), struck out "of retired or retainer pay" before "required by any conflicting".

Subsec. (e)(4)(A). Pub.L. 98-525, § 643(d)(3)(A), struck out "the retired or retainer pay of" before "the same member".

Pub.L. 98-525, § 643(d), substituted "satisfaction of such court orders and legal process from the retired or retainer pay of the members shall be" for "such court orders and legal process shall be satisfied" before "on a first-come".

Subsec. (e)(5). Pub.L. 98-525, § 643(d)(4)(A), struck out "of disposable retired or retainer pay" in two places in the first sentence.

Pub.L. 98-525, § 643(d)(4)(B), substituted "disposable retired or retainer pay" for "such pay" before "available for payment" in the first sentence.

Effective Date of 1993 Amendments

Section 555(c) of Pub.L. 103-160 provided that: "The amendments made by this section [enacting subsec. (h)(10) of this section, amending subsecs. (h)(2)(A) and (8) of this section and redesignating former subsec. (h)(10) of this section as (11)] shall take effect as of October 23, 1992, and shall apply as if the provisions of the paragraph (10) of section 1408(h) of title 10, United States Code, added by such subsection [probably means section 555(a)(2) of Pub.L. 103-160] which enacted sec. (h)(10) of this section] included in the amendment by section 553(a)(2) of Public Law 102-592 (106 Stat. [which effective Oct. 23, 1992]."

Effective Date of 1990 Amendment

Section 555(e) of Pub.L. 101-510, as amended Pub.L. 102-190, Div. A, Title X, § 1062(a)(1), Dec. 5, 1991, 105 Stat. 1475, provided that:

"(1) The amendment made by subsection (a) [amending subsec. (c)(1) of this section] shall apply with respect to judgments issued before, on, or after the date of the enactment of this Act [Nov. 5, 1990]. In the case of a judgment issued before the date of the enactment of this Act [Nov. 5, 1990], such amendment shall not relieve any obligation, otherwise valid, to make a payment that is due to be made before the end of the two-year period beginning on the date of the enactment of this Act [Nov. 5, 1990].

"(2) The amendments made by subsections (b), (c), and (d) [amending subsecs. (a), (c), and (e) of this section] apply with only respect to divorces, dissolutions of marriage, annulments, and legal separations that become effective after the end of the 90-day period beginning on the date of the enactment of this Act [Nov. 5, 1990]."

Effective Date of 1986 Amendment

Section 644(b) of Pub.L. 99-661 provided that: "The amendments made by subsection (a) [amending subsec. (a)(4), prec. subpar. (A) and (a)(4)(E) of this section] shall apply with respect to court orders issued after the date of the enactment of this Act [Nov. 14, 1986]."

Effective Date of 1984 Amendment

Section 643(e) of Pub.L. 98-525 provided that: "The amendments made by this section [amending subsecs. (a), (b), (d) and (e) of this section] shall apply with respect to court orders for which effective service (as described in section 1408(b)(1) of title 10, United States Code, as amended by subsection (b) of this section [subsec. (b)(1) of this section]) is made on or after the date of enactment of this Act [Oct. 19, 1984]."

Effective Date: Transition Provisions

Section 1006 of Pub.L. 97-252, as amended by Pub. L. 98-94, Title IX, § 941(c)(4), Sept. 24, 1983, 97 Stat. 654; Pub.L. 98-525, Title VI, § 645(b), Oct. 19, 1984, 98 Stat. 2549, provided that:

[See main volume for text of (a) to (c)]

"(d) The amendments made by section 1004 of this title [enacting sections 1072(2)(F) and 1086(c)(3) and amending section 1076(b) of this title] and the provisions of section 1005 of this title [set out as a note under section 1408 of this title] shall apply in the case of any former spouse of a member or former member of the uniformed services whether the final decree of divorce, dissolution, or annulment of the marriage of the former spouse and such member or former member is dated before, on, or after February 1, 1983.

"(e) For the purposes of this section—

[See main volume for text of (1) and (2)]

"(3) the term 'uniformed services' has the same meaning as provided in section 1072 of title 10, United States Code [section 1072 of this title]."

Savings Provisions

Reference to law replaced by Pub.L. 100-370 to refer to corresponding provision enacted by such public law; regulation, rule, or order in effect under law so replaced to continue in effect under provision enacted until repealed, amended, or superseded; and action taken or offense committed under law replaced treated as taken or committed under provision enacted, see section 4 of Pub.L. 100-370, set out as a note under section 101 of this title.

Accrual of Payments

Section 653(c) of Pub.L. 102-484 provided that: "No payments under subsection (h) of section 1408 of title 10, United States Code (as added by subsection (a) [subsec. (h) of this section]), shall accrue for periods before the date of the enactment of this Act [Oct. 23, 1992]."

Study Concerning Benefits for Dependents Who are Victims of Abuse

Section 653(e) of Pub.L. 102-484 provided that:

"(1) The Secretary of Defense shall conduct a study in order to estimate—

"(A) the number of persons who will become eligible to receive payments under subsection (h) of section 1408 of title 10, United States Code (as added by subsection (a) [subsec. (h) of this section]), during each of fiscal years 1993 through 2000; and

"(B) for each of fiscal years 1993 through 2000, the number of members of the Armed Forces who, after having completed at least one, and less than 20, years of service in that fiscal year, will be approved in that fiscal year for separation from the Armed Forces as a result of having abused a spouse or dependent child.

"(2) The study shall include a thorough analysis of—

"(A) the effects, if any, of appeals and requests for clemency in the case of court-martial convictions on the entitlement to payments in accordance with subsection (h) of section 1408 of title 10, United States Code (as added by subsection (a) [subsec. (h) of this section]);

"(B) the socio-economic effects on the dependents of members of the Armed Forces described in subsection (h)(2) of such section [subsec. (h)(2) of this section] that result from terminations of the eligibility of such members to receive retired or retainer pay; and

"(C) the effects of separations of such members from the Armed Forces on the mission readiness of the units of assignment of such members when separated and on the Armed Forces in general.

"(3) Not later than one year after the date of the enactment of this Act [Oct. 23, 1992], the Secretary shall submit to Congress a report on the results of the study."

Commissary and Exchange Privileges

Section 1006 of Pub.L. 97-252 which provided that: "The Secretary of Defense prescribe regulations to provide unmarried spouses commissary and post office privileges to the

extant and on the as the surviving spouse of retired member of the uniformed services, was repealed by Pub.L. 100-370, § 1(c)(5), July 19, 1988, 102 Stat. 841.

Legislative History

For legislative history and purpose of Pub.L. 98-525, see 1984 U.S. Code Cong. and Adm. News, p. 1836.

WEST'S FEDERAL PRACTICE MANUAL

Extension of pension benefits for spouses of military personnel, see § 16897B.

CODE OF FEDERAL REGULATIONS

Former spouse payments from retired pay, see 32 CFR 63.1 et seq.

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Applying Louisiana's community property principles to pensions. Dian Tooley Arruabarrena, 33 Loyola (La.) L.Rev. 241 (1987).

Determining benefits for former spouses of military personnel. Edwin C. Schilling, III, 10 Colo.Law. 1073 (1990).

Doctrine of preemption as it applies to ERISA and community property settlements. J. Lee Baldwin, 54 Tex.B.J. 18 (1991).

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News, p. 4174. See, also, Pub.L. 99-661, 1986 U.S. Code Cong. and Adm. News, p. 6413; Pub.L. 101-189, 1989 U.S. Code Cong. and Adm. News, p. 888; Pub.L. 101-510, 1990 U.S. Code Cong. and Adm. News, p. 2931; Pub.L. 102-190, 1991 U.S. Code Cong. and Adm. News, p. 918; Pub.L. 102-484, 1992 U.S. Code Cong. and Adm. News, p. 1836.

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Uniform Services Former Spouses Protection Act. Stephanie K. Cardoso, Mary V. Perry and Timothy S. Sinnott, 33 Fed.Bar News 33 (1986).

military retirement benefits could not be distributed as community or marital property in state court divorce proceedings, and before Uniform Services Former Spouses' Protection Act, which overruled that decision, had no authority to divide military retirement benefits between husband and wife, absent fraud, mistake, irregularity, or clerical error justifying reopening divorce decree. *Andresen v. Andresen*, 1989, 564 A.2d 399, 317 Md. 380.

Former wife was entitled to relief from divorce judgment which did not address equitable distribution of former husband's military pension, where judgment was entered subsequent to United States Supreme Court ruling that such pensions were not includable in marital estate for purposes of equitable distribution and prior to legislative enactment of this section which, by its terms, was retroactive to date of the Supreme Court decision and provided for inclusion of military pensions in marital estates. *Castiglioni v. Castiglioni*, 1984, 471 A.2d 809, 192 Mich.App. 594.

In enacting this section, Congress intended to obliterate the adverse effect of *McCarty* upon a divorced spouse of military personnel by making it retroactive to the date of that decision. *Smith v. Smith*, Del.Fam.Ct. 458 A.2d 711.

Federal Uniformed Services Former Spouses' Protection Act, which permits application of state divorce laws to military retired pay, did not prohibit dissolution court's division of disability retired pay and, in any event, even if it did the Act could not be applied retroactively to an almost ten-year old dissolution decree, which awarded wife one half of husband's military retirement benefits, so as to preclude wife from recovering one half of husband's military disability retirement benefits; final dissolution judgment vesting wife's community property interest in husband's military retired pay was a property interest that could not be denied without due process; disagreeing with *In re Marriage of Costa*, 156 Cal.App.3d 781, 208 Cal.Rptr. 85. *In re Marriage of Stier*, 1986, 223 Cal.Rptr. 599, 178 C.A.3d 42.

For purpose of West's Ann.Cal.Civ.Code § 5124, governing modification of community property settlements to include division of military retirement benefits, term "final" as applied to judgments or decrees means final in sense of being free from further direct attack, regardless of any reservation of jurisdiction on pension issue, and, thus, statute permits modification of judgments and decrees where parties could not have sought retroactive application of curative provisions of Uniformed Services Former Spouses' Protection Act, 10 U.S.C.A. §§ 1408, 1408(c)(1), because federal legislation was not operative before time for direct attack had elapsed. *In re Marriage of Van Dyke*, 1986, 218 Cal.Rptr. 11, 172 C.A.3d 145.

This section, which allows state courts to treat disposable retired or retainer pay of retired member as community property, was retroactive to date of United States Supreme Court decision in *McCarty*, June 26, 1981, and was applicable to case not final on effective date of this section, Feb. 1, 1983; prior California decisions relative to treatment of military pensions as community property were controlling on all cases not yet final, whether they were filed before, on, or after June 26, 1981. *In re Marriage of Hopkins*, 1983, 191 Cal.Rptr. 70, 142 C.A.3d 350.

Amendments to Federal Uniform Services Former Spouses' Protection Act (FUSFSPA) under which state court could not reopen pre-1982 dissolution judgment in order to divide omitted military retirement benefits on or after effective date of amendments limited preamendment payment orders for future benefits to two-year period beginning on date of enactment of amendments. *In re Marriage of Curtis*, 1992, 9 Cal.Rptr.2d 145, 7 Cal.App.4th 1.

Uniformed Services Former Spouses' Protection Act provision allowing retirement pay of service personnel to be treated as a marital asset [10 U.S.C.A. § 1408(c)(1)] is retroactive to June 26, 1981, the date of the United States Supreme Court's *McCarty* decision precluding state courts from awarding nonmilitary spouses a portion of military spouse's government pension. *Keen v. Keen*, 1985, 378 N.W.2d 612, 145 Mich.App. 824.

Uniform Services Former Spouses Protection Act, could be retroactively applied, so as to require husband to pay military pro- to wife retroactively to date of Supreme Court decision that Act reversed rather than

date on which award was reinstated. *Thorpe v. Thorpe*, 1985, 387 N.W.2d 233, 123 Wis.2d 424.

Former wife was not entitled to collect share of former husband's military retirement benefits pursuant to effective date provision of amendment to Uniform Services of Former Spouses Protection Act (USFSPA), providing that enactment would not relieve valid obligation to make payment due to be made before expiration of two-year period, as trial court had not granted wife's motion for division of benefits and, consequently, did not place husband under obligation to pay share of benefits. *Johnson (Minnie L.) v. Johnson (Leroy Benjamin)*, Alaska 1992, 824 P.2d 1381.

Retroactive application of Uniform Services Former Spouses Protection Act [10 U.S.C.A. § 1408], permitting division of military retirement payments in final dissolution decrees, to dissolution decrees that were final and not appealed during 20-month interim period between judicial decision prohibiting distribution of military retirement payments as part of community property and passage of Act, did not divest husbands of any vested rights, particularly where husbands had been married throughout period prior to rendering of judicial decision when payments were considered community property. *Flannagan v. Flannagan*, 1985, 709 P.2d 1247, 42 Wash.App. 214, review denied 105 Wash.2d 1005.

Application of statute [10 U.S.C.A. § 1408] allowing division of military retired pay upon dissolution of marriage to case in which decree was filed prior to enactment of the statute but which was on appeal when the statute was enacted did not deprive husband, the former service member, of property without due process. *In re Marriage of MacDonald*, 1985, 709 P.2d 1196, 104 Wash.2d 745.

Retroactive application of Uniformed Services Former Spouses' Protection Act [10 U.S.C.A. § 1408], which authorizes state courts to treat military pensions as community property, to relieve former wife from amended dissolution decree entered during 20-month period when federal law prohibited state courts from treating military pensions as community property, would not deprive former husband of substantial right without due process of law, where throughout the parties' marriage, former husband could reasonably have expected that military pension would be treated as community property and where not applying the Act retroactively would deprive former wife of substantial property interest which all other similarly situated litigants had been awarded prior to 20-month period and were awarded subsequent thereto. *In re Marriage of Giroux*, 1985, 704 P.2d 160, 41 Wash. App. 315.

Pursuant to Uniformed Services Former Spouses Protection Act, Supreme Court will treat military retirement pay as community property to extent that it was derived from community efforts, and such treatment will be retroactive to date of *McCarty* decision which held that were no community property rights in military retirement benefits. *Edsall v. Superior (In and For Pima County)*, P.2d 895, 143 Ariz. 240.

100-189, Div. A, Title VII, § 732(a), (c), Dec. 4, 101 Stat. 1119, provided that:

"(a) Demonstration project.—(1) The Secretary of Defense shall conduct a project designed to demonstrate the feasibility of improving the effectiveness of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) through the competitive selection of contractors to financially underwrite the delivery of health care services under the program.

"(2) The demonstration project required by paragraph (1)—

"(A) shall begin not later than September 30, 1988, and continue for not less than one year;

"(B) shall include not more than one-third of covered beneficiaries; and

"(C) shall include a health care enrollment system that meets the requirements specified in section 1099 of title 10, United States Code [section 1099 of this title] (as added by section 701(a)(1)).

"(3)(A) The Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the development of the demonstration project required by paragraph (1). Such report shall include—

"(i) a description of the scope and structure of the project;

"(ii) an estimate of the costs of the care to be provided under the project; and

"(iii) a description of the health care enrollment system included in the project.

"(B) The report required by subparagraph (A) shall be submitted—

"(i) not later than 60 days before the initiation of the project, if the project is to be restricted to a contiguous area of the United States; or

"(ii) not later than 60 days before a solicitation for bids or proposals with respect to such project is issued, if the project will not be restricted to a contiguous area of the United States.

"(4) The Secretary of Defense shall develop a methodology to be used in evaluating the results of the demonstration project required by paragraph (1) and shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on such methodology.

"(b) Study of health care alternatives.—(1) The demonstration project required by subsec. (a)(1) shall include a study of—

"(A) methods to guarantee the maintenance of competition among providers of health care to persons under the jurisdiction of the Secretary;

"(B) the merits of the use of a voucher system or a fee schedule for provision of health care to such persons; and

"(C) methods to guarantee that community hospitals are given equal consideration with other health care providers for provision of health care services under contracts with the Department of Defense.

"(2) The Secretary shall submit to Congress a report discussing the matters evaluated in the study required by paragraph (1) before the end of the 90-day period beginning on the date of the enactment of this Act [Nov. 14, 1986].

"(c) Phased implementation of CHAMPUS reform initiative.—(1) The Secretary of Defense may proceed with implementation of the CHAMPUS reform initiative, to be carried out in two phases during a period of not less than two years, if—

"(A) the Secretary determines, based on the results of the demonstration project required by subsection (a)(1), that such initiative should be implemented;

"(B) not less than one year elapses after the date on which the demonstration project required by subsection (a)(1) is initiated; and

"(C) 90 days elapse after the date on which the Secretary submits to the Committees on Armed Services of the Senate and House of Representatives a report that includes—

"(i) a description of the results of the demonstration project, evaluated in accordance with the methodology developed under subsection (a)(4);

"(ii) a description of any changes the Secretary intends to make in the initiative during the proposed implementation; and

"(iii) a comparison of the costs of providing health care under CHAMPUS with the costs of providing health care under the demonstration project and the estimated costs of providing health care under the CHAMPUS reform initiative if fully implemented.

"(2) The Secretary may not issue a request for proposals with respect to the second (or any subsequent) phase of the CHAMPUS reform initiative until—

"(A) all principal features of the demonstration project, including networks of providers of health care, have been in operation for not less than one year; and

"(B) the expiration of 60 days after the date on which the report described in paragraph (1)(C) has been received by the committees referred to in such paragraph.

"(d) Definitions.—In this section:

"(1) The term 'CHAMPUS reform initiative' means the competitive selection of contractors to financially underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services.

"(2) The term 'Civilian Health and Medical Program of the Uniformed Services' has the meaning given such term in section 1072(4) of title 10, United States Code [section 1072(4) of this title] (as added by section 701(b)).

"(3) The term 'covered beneficiary' has the meaning given such term in section 1072(5) of title 10, United States Code [section 1072(5) of this title] (as added by section 701(b))."

Legislative History

For legislative history and purpose of Pub.L. 98-557, see 1984 U.S. Code, Cong. and Adm. News, p.

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Eligibility for medical and dental care at—
Civilian facilities, see 32 CFR 732.1 et seq.
Naval facilities, see 32 CFR 723.1 et seq.

Implementation of Civilian Health and Medical Program of Uniformed Services, see 32 CFR 199.1 et seq.

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C.J.S. Armed Services § 107.

WESTLAW Topic No. 34.

§ 1074. Medical and dental care for members and certain former members

(a) Under joint regulations to be prescribed by the administering Secretaries, a member of a uniformed service who is on active duty is entitled to medical and dental care in any facility of any uniformed service.

(b) Under joint regulations to be prescribed by the administering Secretaries, a member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay may, upon request, be given medical and dental care in any facility of any uniformed service, subject to the availability of space and facilities and the capabilities of the medical and dental staff. The administering Secretaries may, with the agreement of the Secretary of Veterans Affairs, provide care to persons covered by this subsection in facilities operated by the Secretary of Veterans Affairs and determined by him to be available for this purpose on a reimbursable basis at rates approved by the President.

(c) Funds appropriated to a military department may be used to provide medical and dental care to persons entitled to such care by law or regulations, including the provision of such care (other than elective private treatment) in private facilities for members of the armed forces. If a private facility or health care provider providing care under this subsection is a health care provider under the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense, after consultation with the other administering Secretaries, may by regulation require the private facility or health care provider to provide such care in accordance with the same payment rules (subject to any modifications considered appropriate by the Secretary) as apply under that program.

(As amended Pub.L. 98-525, Title XIV, § 1401(e)(1), Oct. 19, 1984, 98 Stat. 2616; Pub.L. 98-557, § 19(3), Oct. 30, 1984, 98 Stat. 2869; Pub.L. 101-189, Div. A, Title VII, § 729, Title XVI, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1481, 1603; Pub.L. 101-510, Div. A, Title XIV, § 1484(j)(1), Nov. 5, 1990, 104 Stat. 1718.)

HISTORICAL AND STATUTORY NOTES

Prior Provisions

Provisions similar to subsec. (c) of this section were contained in Pub.L. 98-212, Title VII, § 735 in part, Dec. 8, 1983, 97 Stat. 1444 (set out as a section 138 note), prior to deletion of the provisions from section 735, effective Oct. 1, 1985, by sections 1403(a)(2), 1404 of Pub.L. 98-525.

1990 Amendment

Subsec. (b). Pub.L. 101-510 substituted "Secretary of Veterans Affairs" for "Administrator".

1989 Amendment

Subsec. (b). Pub.L. 101-189, § 1621(a)(2), substituted "Secretary of Veterans Affairs" for "Administrator of Veterans Affairs" wherever appearing.

Subsec. (c). Pub.L. 101-189, § 729, added provision that if a private facility or health care provider providing care under this subsection is a health care provider under the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense, after consultation with the other administering Secretaries, may by regulation require the private facility or health care provider to provide such care in

accordance with the same payment rules (subject to any modifications considered appropriate by the Secretary) as apply under that program.

1984 Amendments

Subsec. (a). Pub.L. 98-557, § 19(3) substituted reference to administering Secretaries, for reference to Secretary of Defense and Secretary of Health and Human Services.

Subsec. (b). Pub.L. 98-557, § 19(3) substituted references to the administering Secretaries, for references to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (c). Pub.L. 98-525, § 1401(e)(1), added subsec. (c).

Effective Date of 1984 Amendment

Amendment by Pub.L. 98-525, effective Oct. 1, 1985, see section 1404 of Pub.L. 98-525, set out as a note under section 520b of this title.

Persian Gulf Illness

Pub.L. 103-337, Div. A, Title VII, §§ 721, 722, Oct. 5, 1994, 108 Stat. 2804-2808, provided that:

"Sec. 721. Programs related to Desert Storm Mystery Illness.

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employed) and members of the Armed Forces as the Secretary considers appropriate.

"(c) Chairman.—The Secretary of Defense shall appoint a chairman of the advisory committee from among the members of the committee.

"(d) Functions.—(1) The advisory committee shall develop and recommend to the Secretary regulations on procedural protections that should be afforded to any member of the Armed Forces who is referred by a commanding officer for a mental health evaluation by a mental health professional. The recommended regulations shall apply uniformly throughout the Department of Defense and shall include appropriate procedural protections according to whether the evaluations are to be carried out on an outpatient or inpatient basis and whether, based on the results of the evaluation, the member is to be involuntarily hospitalized in a mental health treatment facility. In developing the regulations with respect to procedural protections for evaluations conducted on an inpatient basis, the committee shall take into account any guidelines regarding psychiatric hospitalization of adults prepared by professional civilian mental health organizations.

"(2)(A) The regulations developed under paragraph (1) shall include both of the following:

"(i) A prohibition on the inappropriate referral for a mental health evaluation of a member of the Armed Forces as a reprisal against the member for making or preparing to make a communication described in subparagraph (B).

"(ii) Procedural protections to be afforded to a member who is referred for a mental health evaluation following a communication described in subparagraph (B). Such protections shall provide the member with an appropriate opportunity to allow for a timely, prompt challenge to the referral.

"(B) A communication referred to in subparagraph (A) is a lawful communication by a member of the Armed Forces of the type described in section 1034(c)(2) of title 10, United States Code [section 1034(c)(2) of this title], except that, for purposes of this section, such a communication shall include a communication to any appropriate authority in the chain of command of the member (as defined by the Secretary of Defense in regulations under subsection (g)).

"(e) Definitions.—In this section:

"(1) 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 a member's state of mental health.

"(2) The term 'mental health professional' means a psychiatrist, a psychologist, a person with a master's degree in social work, or any other individual who conducts mental health evaluations for the Department of Defense.

"(f) Report.—(1) Not later than six months after the date of the enactment of this Act [Nov. 5, 1990], the advisory committee shall submit to the Secretary of Defense a report containing the recommended regulations and such other information as the committee considers appropriate.

"(2) Not later than 80 days after receipt of the report under paragraph (1), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives the report of the advisory committee, along with such additional comments and recommendations by the Secretary as the Secretary considers appropriate.

"(g) Repealed. Pub.L. 102-484, Div. A, Title V, § 546(j), Oct. 23, 1992, 106 Stat. 2419]

"(h) Termination of committee.—The advisory committee shall terminate on the date on which the Secretary prescribes regulations under subsection (g)."

Two-Year Prohibition on Fee for Outpatient Care at Military Medical Treatment Facilities

Pub.L. 101-189, Div. A, Title VII, § 721, Nov. 29, 1989, 103 Stat. 1477, provided that: "During fiscal years 1990 and 1991, the Secretary of Defense may not impose a charge for the receipt of outpatient medical or dental care at a military medical treatment facility."

Pub.L. 100-180, Div. A, Title VII, § 722, Dec. 4, 1987, 101 Stat. 1116, provided that: "During fiscal years 1988 and 1989, the Secretary of Defense may not impose a fee for the receipt of outpatient medical or dental care at a military medical treatment facility."

Restriction on Use of Information Obtained During Certain Epidemiologic Assessment Interviews

Pub.L. 99-661, Div. A, Title VII, § 705(c), Nov. 14, 1986, 100 Stat. 3904 provided that:

"(1) Information obtained by the Department of Defense during or as a result of an epidemiologic assessment interview with a serum-positive member of the Armed Forces may not be used to support any adverse personnel action against the member

"(2) For purposes of paragraph (1):

"(A) The term 'epidemiologic assessment interview' means questioning of a serum-positive member of the Armed Forces for purposes of medical treatment or counseling or for epidemiologic or statistical purposes.

"(B) The term 'serum-positive member of the Armed Forces' means a member of the Armed Forces who has been identified as having been exposed to a virus associated with the acquired immune deficiency syndrome.

"(C) The term 'adverse personnel action' includes—

"(i) a court-martial;

"(ii) non-judicial punishment;

"(iii) involuntary separation (other than for medical reasons);

"(iv) administrative or punitive reduction in grade;

"(v) denial of promotion;

"(vi) an unfavorable entry in a personnel record;

"(vii) a bar to reenlistment; and

"(viii) any other action considered by the Secretary concerned to be an adverse personnel action."

Legislative History

For legislative history and purpose of Pub.L. 98-525, see 1984 U.S. Code Cong. and Adm. News, p. 4174. See, also, Pub.L. 98-557, 1984

U.S. Code Cong. and Adm. p. 4831; Pub.L. 101-189, 1989 U.S. Code Cong. and Adm. News, p. 838; Pub.L. 101-510, 1990 U.S. Code Cong. and Adm. News, p. 2931.

CODE OF FEDERAL REGULATIONS

Implementation of Civilian Health and Medical Program of Uniformed Services, see 32 CFR 199.1 et seq.

LIBRARY REFERENCES

Armed Services ¶107.

C.J.S. Armed Services §§ 257, 264, 267.

WESTLAW Topic No. 34.

NOTES OF DECISIONS

Delegation of authority 8

3. Persons entitled to care

Commissioned officer of public health service could not sue Government for service-connected injuries arising from elective surgery; plaintiff was entitled to free medical care at military and public health service facilities and to disability payments. *Scheppan v. U.S., C.A.4 (Va.) 1987, 810 F.2d 461.*

Insured, who was veteran, but not military retiree, did not have right to free medical care at Veteran's Administration hospital for non-service-connected injury. *U.S. v. Dairyland Ins. Co., N.D.Ga.1986, 644 F.Supp. 702.*

Reservist who had been involuntarily released from active duty within two years of becoming eligible for retirement pay was not entitled to compensation for medical bills incurred after date of his constructive release from active duty. *Ulmet v. U.S., 1989, 17 Cl.Ct. 679, affirmed 935 F.2d 290.*

7. United States as third-party beneficiary

Under Mississippi law, United States was third-party beneficiary of boating and automobile policies issued to various members of military, such that it was entitled to reimbursement from insurer for value of medical care provided to members pursuant to statutory obligations; insurer was obligated to pay costs of reasonable

medical services, whether such costs were borne personally by insured or directly by medical care provider. *U.S. v. State Farm Mut. Auto. Ins. Co., C.A.5 (Miss.) 1991, 936 F.2d 206.*

United States was third-party beneficiary of boating and automobile policies issued to various active duty and retired members of military, such that it was entitled to reimbursement from insurer for reasonable value of medical care it provided to members, pursuant to its statutory obligation, after members were involved in accidents covered by policies; absent showing that lesser premium was charged for servicemen and their dependents, failure to reimburse Government for reasonable medical services would constitute windfall to insurer. *U.S. v. State Farm Mut. Auto. Ins. Co., S.D.Miss.1989, 717 F.Supp. 1207, affirmed 936 F.2d 206.*

8. Delegation of authority

Delegation of authority by office of civilian health and military program of uniformed services (CHAMPUS) to independent contractor to undertake inspection and utilization review services and services relating to development of regulations was not improper; such delegation was not inconsistent with CHAMPUS statute, and office of CHAMPUS retained and exercised all final decision-making authority. *National Ass'n of Psychiatric Treatment Centers for Children v. Mendez, D.D.C.1994, 857 F.Supp. 86.*

§ 1074a. Medical and dental care: members on duty other than active duty for a period of more than 30 days

(a) Under joint regulations prescribed by the administering Secretaries, the following persons are entitled to the benefits described in subsection (b):

(1) Each member of a uniformed service who incurs or aggravates an injury, illness, or disease in the line of duty while performing—

(A) active duty for a period of 30 days or less; or

(B) inactive-duty training.

(2) Each member of a uniformed service who incurs or aggravates an injury, illness, or disease while traveling directly to or from the place at which that member is to perform or has performed—

(A) active duty for a period of 30 days or less; or

(B) inactive-duty training.

(b) A person described in subsection (a) is entitled to—

(1) the medical and dental care appropriate for the treatment of the injury, illness, or disease of that person until the resulting disability cannot be materially improved by further hospitalization or treatment; and

The White House



COUNSEL'S OFFICE

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Marvin:-

Look at 10 USC § 1074
(attached)

and how it is interpreted
in Doe v. Marsh.

As far as I can tell,
this provision is still on the
books and not repealed
in the DOD authorization
(but this doesn't make sense, I know)

—C

Otherwise, yellow sheet
summarized attached
cases.