



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON

March 26, 2003

MEMORANDUM FOR THE OFFICE OF THE SURGEON GENERAL

SUBJECT: Army Medical Department Exemption Request

References:

- a. Memorandum, Office of The Surgeon General (OTSG), (DASG-PAE-M), 15 January 2003, subject: Resubmission of Third Wave Exemption Request.
- b. Memorandum, Assistant Secretary of the Army, (Manpower and Reserve Affairs) (ASA (M&RA)), 28 November 2000, subject: Medical Exemption.

Function. This decision applies to veterinary specialties, medical logistics management, medical civilians in direct patient care, medical research and development, overseas medical, optical laboratory specialists, civilians in medical education and training, medical equipment specialists, and safety and occupational health. Other functional areas included in the exemption request, such as inspector general, program analysis, and financial management are dealt with in separate determinations.

Decision. Although the medical functions which are the subject of this exemption request are not inherently Governmental, certain medical functions do constitute core Army competencies. Specifically, I recognize that many of the medical functions contribute directly to Army Force Health Protection. Although medical functions do not require military-unique knowledge and skills and recent experience in the operating forces to be performed, the function does need to be performed in theater since reliance on Host-Nation contracting for medical support would place significant risks on Army forces. The medical mission is a critical element of the Army's ability to accomplish its core competencies. This office previously granted an exemption for those aspects of the medical functional area that are needed to maintain a core capability of uniformed military trained in military medical principles that is ready and available to deploy to theaters of potential conflicts. The basis of the previous exemption determination was well-grounded and does not require expansion, but its scope requires clarification. The previous decision exempted most of the Army Medical community from the A-76 process. The Army Medical community will explore further outsourcing opportunities using "alternatives to A-76" based on best value economic considerations and geographic considerations (For example, Government-owned contractor-operated medical activities in the Continental United States (CONUS), or low

volume and high cost medical services). Pursuant to Title 10 U.S. Code, Section 1091 personal services contracts for health care are permissible. To the extent that the request covers functions relating to the Inspector General, OCONUS, analysis, training, information technology, financial management, force management, public affairs, safety/occupational health, and career progression, these topics are covered in separate decisions.

OTSG will initiate an assessment of its civilian medical personnel supporting direct patient care, medical education and training, product lines, and other potential opportunities to determine viability for outsourcing. If it is determined after the conduct of this assessment that these spaces are not conducive to further study, then I will consider an exemption on that basis at that time.

The limitations and scope of this decision are discussed in detail below.

At enclosure are instructions on how to implement this decision in the Inventory of Commercial and Inherently Governmental Activities (including the Federal Activities Inventory Reform Act Inventory), to be developed by DCS, G-1 in coordination with our responsible staff officers. Medical and dental specialties not included in the earlier decision, which meet the criteria of maintaining a specific capability with a war-fighting application have been added to the enclosure as an administrative correction.

Requestors Positions on Issues. The Office of the Surgeon General requests expanding the scope of a previously granted exemption decision to selected medical and dental specialties, veterinary specialties, medical logistics management, medical civilians in direct patient care, inspector general, medical research and development, overseas medical, optical laboratory specialists, program management and analysis, civilians in medical education and training, civilian engineers and scientists, information and communications technology functions, financial management, medical equipment specialists, career counselors, chaplain assistants, executive secretaries, human resource management, public affairs, and safety and occupational health.

Standard of Review. The senior HQDA functional official for a function must describe and substantiate specifically how preparation and implementation of a Third Wave implementation plan for each course of action poses substantial and specific risks to a core war-fighting mission of the Army (i.e., a core competency) or violates a statutory requirement affecting a function. The following are the risk factors to evaluate this request: force management risk; operational risk; future challenges; and institutional risk. How these risk criteria are applied may vary based on each course of action evaluated (i.e., A-76; alternatives to A-76; military conversions; transfer to another agency; divestiture). Therefore, exemption requests and decisions must assess the potentially adverse impact of each course of action.

Core Competency Relevant to Risk Issue. Medical care in support of the operating forces is a core war-fighting competency of the Army. The medical function directly falls within all but one (forcible entry operations) of the six recognized core competencies of the Army, as provided for in Army Field Manual 1 and The Army Plan: Shape the Security Environment (Deter Forward); Prompt Response; Forcible Entry Operations; Mobilize the Army; Sustained Land Dominance; or Support Civil Authority. Fair Act Exemption Decision Number 2000-0003 determined that the medical function performed by military personnel in the MEDCOM and in the Operating Forces is exempt based on risk to national security. To the extent that there are any additional medical specialties which are core functions and were not covered by this prior decision, these items will be handled as administrative corrections to the data base. However, this does not expand the basis of the prior decision, but clarifies its scope. Those areas include selected physician AOCs, dental AOCs, veterinary AOCs, medical logistics management, and medical equipment specialists. The prior decision did not exempt medical civilians in direct patient care or medical research and development on national security grounds relating to the core competency issue, but rather exempted these functions from the A-76 process. Medical logistics is a unique class of supply requiring its own specialized skill set and processes: blood items, potency and datable items. Optical fabrication in support of operational forces provides the ability to produce eye ware (replacement spectacles and protective mask inserts) close to the point of need in the area of engagement. On the other hand, CONUS-based optical fabrication is not a core competency and can be reviewed for divestiture or privatization. Functions, such as the management of breast cancer research and other Congressionally-mandated medical research that may not have a direct military application are not core competencies.

Statutory Requirement Relevant to Divestiture Issue. Pursuant to Title 10 U.S. Code, Sections 1071 et seq. the health care function may not be divested.

Inherently Governmental Relevant to Outsourcing Issue. An inherently Governmental function includes those activities that require either the exercise of substantial discretion in applying Government authority or the making of value judgments in making decisions for the Government. An inherently Governmental function is so intimately related to the public interest as to require performance by Federal Government employees. FAIR Act Challenge Decision Number 2000-0001 determined that since the purpose of the medical function is to provide health care to patients, these activities would not involve applying Government authority or making value judgments. Moreover, medical services are commonly available in the private sector and the exemption request acknowledges that much of the function currently relies on contract support.

Statutes Relevant to Sourcing Decision. Apart from medical functions exclusively performed by military, medical functions are subject to the normal process provided by Section 2461, Title 10 and section 8014 of appropriations acts mandating public-private competition in certain circumstances, subject to the standard exceptions for 10 or fewer civilian employees, and preferential procurement programs.

Personal Services. Title 10, United States Code, section 1091 provides an exception allowing the Department of Defense to enter into personal services contracts to carry out health care responsibilities in Department of defense medical facilities. Therefore, there are no grounds for this exemption.

Conflicts of Interest. No conflict of interest issues have been substantiated in referenced exemption requests. Should any such issues arise during the implementation planning process, I am prepared to entertain an exemption request at that time.

Military Conversions. Although significant aspects of the medical function are a very important core competency in the operating forces, it is significantly contracted already. To the extent that medical personnel carry out their duties in sustainment areas rather than in the actual area of engagement, these functions can be carried out by civilians. Indeed, non-military personnel are currently doing many jobs in areas close to the battlefield. The DoD Inventory of Commercial and Inherently Governmental Activities Guide to Inventory Submission (Inventory Guide), Enclosure 6, page 6-3 provides guidance regarding manpower mix criteria. “[Manpower] that perform duties and responsibilities that are integral to military command and control of combat and crisis situations” shall be designated as Military Operations (Code A). See Enclosure 6, page 6-3, paragraph 1. Components that perform combat and service support functions shall be designated Code A only if there is such a high likelihood of hostile fire or collateral damage that: 1) military authority, discipline, and training are needed to maintain control and, if necessary, reconstitute the unit, and 2) use of civilians or contract support constitutes an inappropriate or unacceptable risk.

Enclosure 8 of the Guide contains guidance for risk assessment. Applying the guidelines on p.8, paragraph 1-1, use of non-military personnel in combat support roles must be assessed in terms of risk to “the support mission and the missions dependent on that support.” Combat mission failure or loss of life are severe risks, while “loss of support elements that augment or enhance operations in theatre during a conflict often have minor impact on combat operations.” When a person is deployed forward of a division, where refusal to obey a commander’s orders would create a risk of loss of life or mission failure, UCMJ authority will be needed in order to compel performance, so that person must be military. Otherwise, civilian employees or contractors may perform this function. (Although UCMJ jurisdiction applies to civilians accompanying the operating forces, which could include contractors, that jurisdiction only applies during a

“declared war,” and most military operations augmented by civilians are operations other than war.)

Outside of military theater operational areas the central issue concerns whether adequate performance of the medical function in the infrastructure requires military unique knowledge and skills. According to Office of Secretary of Defense Guidance for compiling the Inventory of Commercial and Inherently Governmental Activities, military unique knowledge and experience can only be derived from *recent* first-hand involvement in military activities – i.e., through commanding military forces or conducting or participating in military operations or exercises. This knowledge and experience must be more substantial than familiarity with doctrine, tactics, operations, or regulations; capabilities that can be developed by civilians; or, advice military retirees can provide based on their knowledge and experiences.

Adequate performance of medical work on the beneficiary population in CONUS does not credibly require recent knowledge obtained from experience in the operating forces. However, the utilization of a core capability of uniformed military ready to deploy to theaters of potential conflicts to help provide peacetime medical care to retirees, military dependents and non-deployed military assigned to garrisons in peacetime is a sound business decision that also maintains the proficiency and currency of the medical skills also required in theater. The Office of the Secretary of Defense (OSD) Inventory Guidance recognizes this as a basis for exemption on a number of grounds, such as career progression, rotation base, and dual status exemptions.

In addition, MEDCOM utilizes a significant number of uniformed personnel to perform its medical research function. The utilization of military in a research and development environment has been subjected to special scrutiny by the OSD, and that scrutiny is expected to continue. As of the date of this decision, the OTSG identified a significant number of military positions that have potential for conversion to civilian employees or contract performance. The review will continue through Total Army Analysis and other venues consistent with this policy. In addition, the AMEDD community should explore expanding opportunities for use of deployed civilian employees, such as they already do in the case of environmental scientists and hydrologists.



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CODING RULES for Medical Activities

Previous exemptions for Direct Patient Care, National Security and Medical R&D remain in effect – this decision appends to earlier decisions.

1. Physician AOCs in the following Officer AOCs

Code D – Dual Status War-time designation (military)

60D: Occupational Medicine	61B: Medical Oncologist/Hematologist
60F: Pulmonary Disease	61C: Endocrinologist
60G: Gastroenterologist	61D: Rheumatologist
60H: Cardiologist	61E: Clinical Pharmacologist
60M: Allergist/Clinical Immunologist	61L: Plastic Surgeon
60Q: Pediatric Cardiologist	61P: Psychiatrist
60R: Child Neurologist	61Q: Therapeutic Radiologist
60U: Child Psychiatrist	61W: Peripheral Vascular Surgeon

2. Dental AOCs in the following Officer AOCs

Code D – Dual Status War-time designation (military)

63K: Pediatric Dentist
63M: Orthodontists
63P: Oral Pathologists

3. Veterinary AOCs in the following Officer AOCs

Code D – Dual Status War-time designation (military)

64C: Veterinary Laboratory Animal Medicine Officer
64E: Veterinary Comparative Medicine Officer
64F: Veterinary Clinical Medicine Officer
64Z: Veterinary Command Immaterial Positions

4. Enlisted CMFs

Code D – Dual Status War-time designation (military)

91A: Medical Equipment Repairer
91H: Optical Laboratory Specialist
91J: Medical Logistics Specialist
91W: Health Care Specialist
91Z: Chief Medical NCO

5. Medical Research and Development at U.S. Army Medical Research and Materiel Command (W03JAA)
- 231 military RDTE (P6) positions (identified by billet by MEDCOM) Code X – Candidates
 - 791 remaining military and civilian positions Code P – Pending Restructuring Decision
6. Civilian Medical Equipment Specialists Code M – DoD Management Decision
- a. All civilian GS-1670 in MEDCOM units
7. Medical Logistics Management Code M – DoD Management Decision
- Civilian Personnel performing Medical Logistics Management Functions in MEDCOM units
- a. All civilian GS-0346 (GS-11 and above)
 - b. All civilian GS-2001 (GS-7 and above)
 - c. All civilian GS-2003 (GS-11 and above)
 - d. All civilian GS-2005 (all grades)
 - e. All civilian GS-2010 (all grades)