

IN REPLY REFER TO BUMEDINST 6300.16A BUMED-M3 28 Apr 2014

BUMED INSTRUCTION 6300.16A

From: Chief, Bureau of Medicine and Surgery

Subj: NAVY ABORTION POLICY

- Ref: (a) Title 10, U.S. Code, Section 1093 and 1565b
 - (b) ASD(HA) memo of 9 May 1994
 - (c) ASD(HA) Policy Memo 96-03 of 13 Feb 1996
 - (d) ASD(HA) Policy Memo 13-010 of 12 Mar 2013
 - (e) TRICARE Policy Manual 6010.54-M of 1 Aug 2002
 - (f) DoD Instruction 6495.02 of 28 Mar 2013
 - (g) OPNAVINST 6000.1C
 - (h) BUMEDINST 6310.11A

1. <u>Purpose</u>. To establish Department of the Navy policy regarding abortions in Navy medical treatment facilities (MTFs). This instruction implements reference (a) and Department of Defense (DoD) health care policy provided in references (b) through (e). Different approval processes exist for the provision of abortion services when the pregnancy is the result of an act of rape or incest, and when the life of the mother would be endangered if the fetus were carried to term.

2. Cancellation. BUMEDINST 6300.16.

3. <u>Scope</u>. This policy applies to all ships and stations having medical department personnel on board.

4. <u>Background</u>. Reference (a) restricts the use of DoD funds and facilities for performing abortions. Reference (b) provides DoD policy requiring valid consent for abortions on minors, a determination regarding their maturity, exempts health care providers from performing abortions when, as a matter of conscience or moral principle, they prefer not to perform elective abortions (a provider may be required to perform an abortion to save the life of the mother), and requires locating an alternate facility when it is not feasible to provide prepaid abortions services in an MTF. Reference (c) revises DoD overseas policy regarding prepaid abortions in MTFs when the pregnancy is the result of an act of rape or incest. References (b) and (c) are located at: http://www.health.mil/~/media/MHS/Policy%20Files/Import/96-030.ashx. Reference (d) updates DoD policy regarding the provision of abortion services in MTFs. Reference (d) is available at: http://www.health.mil/~/media/MHS/Policy%20Files/Import/13-011.ashx. Reference (e) provides TRICARE policy on abortions. Reference (e) is available at: http://manuals.tricare.osd.mil/. Reference (f) revises DoD policy regarding Sexual Assault Prevention and Response Program procedures.

5. Policy

a. <u>DoD policy, consistent with reference (a), prohibits the use of DoD facilities and</u> <u>appropriated funds (including MTF supplemental care funds and TRICARE) for performing</u> <u>abortions, except under the following circumstances:</u>

(1) Abortions may be performed on DoD beneficiaries in naval MTFs in the Continental United States (CONUS) and Outside the Continental United States (OCONUS) when the pregnancy is the result of an act of rape or incest. CONUS beneficiaries include active duty members and their dependent family members, and retirees and their dependent family members. OCONUS DoD beneficiaries may also include General Schedule and DoD Dependents Schools employees, and contractors.

(2) Abortions may be performed in CONUS and OCONUS naval MTFs, and Federal funds may be expended for abortions performed in civilian health care facilities, when the pregnancy is the result of an act of rape or incest; or, when the life of the mother would be endangered if the fetus were carried to term. A physician's note in the patient's medical record must support that it is the provider's good faith belief, based on all of the information available to the provider, that the patient was the victim of rape or incest; or, when the life of the mother would be endangered if the fetus were carried to term. Physician certification attesting that the abortion was performed because the mother's life would have been endangered if the fetus were carried to term is required.

(3) Charges for abortions under these circumstances shall be covered in the purchased care sector per reference (e). Additionally, coding within the direct care system shall conform to the requirements outlined in reference (e) to support appropriate data collection and auditing. No other prepaid abortions are authorized.

(4) All medically and psychologically necessary services and supplies related to a covered abortion are covered. This may include ultrasound performed prior to the abortion, pathology services, pregnancy tests, office visits, and any applicable requirements mandated by state and/or local laws. It also may include otherwise covered follow-up care, such as psychotherapy.

b. Abortion services when the pregnancy is the result of an act of rape or incest:

(1) Medical care timeline. Women seeking abortions for pregnancies that are the result of rape or incest must receive the requested treatment as swiftly as possible or within 7 days of when the service is first requested, except in cases where operational exigencies or natural disasters prevent this. Convalescent leave and (Temporary Additional Duty for travel) will be recommended by the physician providing the abortion services.

(2) Conscientious exemption. Health care providers who, as a matter of conscience or moral principle, do not wish to perform abortions shall not be required to do so. These clinicians

will immediately refer patients to a participating colleague or civilian care. This shall apply only to providers directly involved in performing the abortion procedure itself, such as physicians, nurses, anesthesia personnel, and operating room personnel. Health care providers may be required to perform abortion procedures to save the life of the mother in an emergent situation if no other practitioners are available.

(3) Second Opinions. If the physician has a good faith belief the pregnancy is not the result of an act of rape or incest, then the case will be promptly referred to another physician who can provide abortion services.

(4) MTF-capable list. Office of Women's Health (BUMED-M3B24), in coordination with the Obstetrics/Gynecology Specialty Leader, will maintain a list of MTFs able to provide abortion services. This list will be updated every 6 months (January and June). Updates to this list will be sent to the Health Affairs Women's Health Consultant. The updated list will be sent to Regional TRICARE Activity Overseas by Assistant Secretary of Defense (Health Affairs).

(5) Federal Facilities. Abortions services may be limited by the availability of trained and willing personnel, equipment, ancillary services, or space. When a MTF is unable to perform authorized abortion services, arrangements should be made to ensure prompt access to these services at an alternate DoD MTF or civilian medical facility.

(6) Federal Funds. When Federal funds are used for abortions performed in a civilian health care facility, the civilian provider shall ensure the Medicare health insurance claim includes all required information per reference (e), chapter 4, section 18.3 prior to submission.

(7) Documentation. Per prevailing practice of other Federal health programs, sufficient documentation includes an appropriate note to indicate that based on the information available to the provider, it is the provider's good faith belief that the patient was a victim of rape or incest. Per reference (f), enclosure (7), the health care provider will document the following information in the medical record prior to referring a patient for an abortion in which the pregnancy is the result of an act of rape or incest:

(a) Physician's good faith assessment, including a statement from the patient that the pregnancy resulted from rape or incest, and the remainder of the medical history and physical exam. If the clinician who initially sees the patient is unable to provide abortion services, that clinician should complete a medical evaluation appropriate for the patient's complaints, and refer the patient to an MTF or civilian facility for determination of an appropriate care plan.

(b) Sexual Assault Response Coordinator (SARC) and/or Victim Advocate notification for adult patients; Family Advocacy Program for minors.

(c) Estimated date of confinement (EDC) based on an ultrasound dating, if the equipment and credentialed personnel are available. If an ultrasound cannot be performed, then the EDC shall be based on the patient's last menstrual period and physical examination.

(d) Counseling about and opportunity for sexually transmitted infection screening.

(e) Requirement for transfer or referral to an MTF or civilian health care facility for treatment, if the local MTF cannot provide abortion services.

(8) Medical (non-surgical) abortions. Medical abortions may be offered as an option for women who meet the medical criteria. Medical abortions will be performed with the use of Mifepristone, or other Food and Drug Administration approved abortifacient. Activity funds will be used to procure the product. If Mifepristone is used, the manufacturer/distributor business rules shall be followed. As of signature date, the business rules of the only manufacturer/ distributor (Danco) results in shipping only to qualified physicians with pre-registered locations, which consent to several policies including accounting of serialized doses given to each patient. If the MTF cannot provide services for medical terminations, then TRICARE will cover referrals for civilian care.

(9) State or Host Nation law compliance. Clinicians and MTF legal personnel will be familiar with local regulations concerning requirements about pre-procedural counseling, peri-operative procedures, and maximum gestational age eligibility for undergoing treatment. If local regulations prevent the provision of requested services, then women should receive expeditious transport to the nearest location able to provide the necessary abortion services where legally available. An overview of state abortion laws is available at: http://www.guttmacher.org/statecenter/spibs/spib_OAL.pdf. Clinicians shall consult with MTF legal personnel to confirm adherence to state or host nation laws when additional information is requested or required to provide abortion services.

(10) Disposition of the products of conception. Absent a court order or patient request, MTFs providing abortion services will follow established guidelines for preoperative evaluation, surgical management, and postoperative follow-up care, including routine disposal of the products of conception in accordance with local laboratory policy. In cases where there is a law enforcement request for the products of conception, the health care provider will coordinate with the SARC. The SARC or law enforcement investigator assigned to the case will maintain the chain of custody of the products of conception. If the patient requests to take possession of the products of conception, they may be provided to her with the understanding the MTF is absolved of all responsibility regarding testing.

(11) Patient privacy. Patient privacy will be maintained in all cases. Per reference (f), enclosure (4), abortion services requested by personnel who are pregnant as a result of rape or incest and who have initiated a restricted report are not required to notify their commanding officer or chain of command. Violations of patient privacy or confidentiality are subject to discipline pursuant to the Uniformed Code of Military Justice or state statute.

(12) Global Patient Movement Request. In the case where the patient requires activation of the Global Patient Movement Request Center (GPMRC) for transportation to a MTF able to

perform abortion services, medical record documentation will include appropriate diagnosis and procedure codes, per reference (e). The GPMRC is a joint agency which regulates and monitors the transfer of patients to MTFs using the AF IMT 3899, Patient Movement Record. A diagnosis is required for form completion in section IV(a) and should indicate Common Procedural Terminology (CPT) code 97139 ("Unlisted therapeutic procedure, gynecologic not otherwise specified") to protect patient privacy.

(13) Mandatory reporting requirements for minors. The nearest FAP will direct and oversee reporting requirements. Health care providers are to follow installation reporting requirements and immediately consult with local law enforcement authorities about reporting and other mandated activities.

(14) Paternal rights. For abortion services performed in which the pregnancy is the result of an act of rape or incest, no paternal rights exist.

(15) Physician liability. If any subsequent legal reviews fail to substantiate the patient's report that the pregnancy resulted from rape or incest, the treating physician will not be held liable for inappropriate use of federal funds, if the physician documented a good faith assessment of the patient's diagnosis.

c. <u>Abortion services when the pregnancy will endanger the life of the mother if carried to</u> term:

(1) Life of the mother. Per reference (d), MTF providers will document in the patient's medical record a physician certification that the procedure is medically necessary because the life of the mother will be endangered if the fetus is carried to term. Per reference (b), certification of medical need must be completed by the attending physician. Additional certification of medical need must be signed by the Chairman, Executive Committee of the Medical Staff or the Chair's designee and the hospital's commanding officer. Certification must be accomplished prior to the initiation of the procedure using either a SF 509, Medical Record - Progress Report for inpatient care or the SF 600, Medical Record - Chronological Record of Medical Care for outpatient care. The only exception to this policy is if the medical condition poses an imminent threat to the mother's life; in this circumstance, appropriate lifesaving maternal treatment should be prioritized, and the review subsequently completed. The original must be held in the patient's chart and a copy maintained by the commanding officer of the facility performing the abortion.

(2) Conscientious exemption. Health care providers who, as a matter of conscience or moral principle, do not wish to perform abortions shall not be required to do so. These clinicians will immediately refer patients to a participating colleague or civilian care. This shall apply only to providers directly involved in performing the abortion procedure itself, such as physicians,

nurses, anesthesia personnel, and operating room personnel. Health care providers may be required to perform abortion procedures to save the life of the mother in an emergent situation if no other practitioners are available.

(3) Second Opinions. If the physician has a good faith belief the pregnancy is not the result of an act of rape or incest, then the case will be promptly referred to another physician who can provide abortion services.

(4) Federal Funds. When Federal funds are used for abortions performed in a civilian health care facility, the civilian provider shall ensure the Medicare health insurance claim includes all required information per reference (e), chapter 4, section 18.3 prior to submission.

(5) Host Nation's Laws. Abortions performed overseas are subject to the laws of the host country. MTFs in foreign countries will follow the criteria in this instruction. Additionally, the MTF will respect the host nation's laws, and it will not perform an abortion which violates such laws. Consent procedures for minors in paragraph 6(c) apply in the absence of host nation's laws or legal requirements. Furthermore, abortions will not be performed in foreign countries where the United States has concluded an international agreement that imposes more restrictive criteria. In such situations, medical evacuation to another military MTF or disengagement to a civilian facility where the abortion can be performed is authorized, as per paragraph 5b(5).

(6) Federal Facilities. Abortions services may be limited by the availability of trained and willing personnel, equipment, ancillary services, or space. When a MTF is unable to perform authorized abortion services, arrangements should be made to ensure prompt access to these services at an alternate DoD MTF or civilian medical facility.

6. Informed Consent

a. Informed consent for surgical services is based on the general principles of consent for all medical and dental treatment. If competent to make health care decisions, the patient alone has the authority to consent. Legal capacity to consent will normally be determined by the law of the state in which the facility is located. A record of counseling, to include patient diagnosis, proposed procedure, common significant risks or complications of the procedure, indications for or benefits of the procedure, alternate care plans, as well as, time and date of this counseling, must be documented on either the SF 600 or SF 509 and signed by the primary surgeon. Include consent as part of the patient's medical record.

b. Provide the patient's written consent on the DoD Exception to the OF-522, Medical Record, Request for Administration of Anesthesia and for Performance of Operations and Other Procedures prior to any surgical or invasive procedures. The provider must describe the proposed procedure in lay terms along with an explanation of the expected results, the possibilities of failure, the risk of associated complications due to the procedures, and any alternatives to the proposed procedure.

c. For all minors, except in the case of legally emancipated minors, the health care provider will obtain and document a valid consent by one of the following methods:

(1) By the minor, if permitted by state or host nation law. An overview of minor's consent law as it pertains to abortions is available at <u>http://www.guttmacher.org/statecenter/spibs/spib_OMCL.pdf</u>. Clinicians shall consult with MTF legal personnel to confirm adherence to state or host nation laws when additional information is requested or required to provide abortion services for minors.

(2) Consent of at least one parent or legal guardian.

(3) Alternative consent process used at the MTF, when minors need medical care and a parent or guardian is unavailable.

7. <u>Counseling</u>. Counsel patients prior to the procedure, if medically feasible, and include documentation of such in the medical record. Counseling will include patient diagnosis, description of the procedure in lay terms, risks and complications associated with the procedure in lay terms, alternative treatment modalities in lay terms, and the offer of religious and psychological counseling as desired by the patient or recommended by the health care team.

8. <u>Compliance</u>. MTFs providing therapeutic abortion services shall use codes approved by the Centers for Medicare and Medicaid Services CMS for documenting diagnoses and procedures <u>http://www.cms.gov/Medicare/Coding/ICD9ProviderDiagnosticCodes/codes.html</u>. Numbers of therapeutic abortions performed when the life of the mother would be endangered if the fetus were carried to term, and when the pregnancy is the result of an act of rape or incest, shall be collected by data retrievals (de-identified) and reported to the Health Affairs Women's Health Consultant.

9. <u>Records</u>. Records created as a result of this instruction, regardless of media and format, shall be managed per SECNAV M-5210.1 of January 2012.

10. <u>Reports</u>. The reports required in paragraphs 5(b)2, are exempt from reports control per SECNAV M-5214.1 of 1 December 2005, part IV, paragraph 7p.

11. Forms

a. The following forms are available from the U.S. General Services Administration at: <u>http://www.gsa.gov/portal/forms/type/GSA</u>. Local reproduction is authorized.

(1) SF 509 (07-1991), Medical Record, Progress Notes.

(2) SF-600 (11-2010), Medical Record, Chronological Record of Medical Care.

b. AF IMT 3899, Patient Movement Record is available electronically from the Air Force E-Publishing Web site from the 'Forms' tab at: <u>http://www.e-publishing.af.mil/index.asp</u>.

c. DoD Exception to the OF-522 (07-2008), Medical Record, Request for Administration of Anesthesia and for Performance of Operations and Other Procedures is available electronically from the Navy Medicine Web site at the 'Forms' tab at: <u>http://www.med.navy.mil/Pages/default.aspx</u>.

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