

AFFILIATION AGREEMENTS

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1. History.

a. The current Affiliation Agreement had its inception at Letterman General Hospital. The School of Medicine, University of California had been negotiating since 1963 with the Commanding General of Letterman to establish a formal affiliation program with a target implementation date of 1968. The Surgeon General reported this negotiation to the Secretary of the Army on 6 August 1963, and solicited his support. He informed the Secretary that the proposed affiliation would involve placing some 20-50 students in their third and fourth years at the University of California Medical School on the wards at Letterman General Hospital to learn by supervised on-the-job training.

b. The Secretary of the Army asked if there were any legal problems involved in such an arrangement. The Surgeon General reported that The Judge Advocate General would have no legal objection provided there was compliance with the provisions of 5 U.S.C. § 1051-8 (now §§ 5351-5356) pertaining to "student-employees." Subsequently, the Draft Regulation "Affiliation of Civilian Institutions with Army Medical Facilities" was approved by the Under Secretary of the Army on 26 May 1965.

c. The regulation was first numbered AR 351-222, with The Surgeon General as approving authority. After the creation of the U.S. Army Health Services Command (HSC), a new regulation, AR 351-24, "Affiliation of Civilian Institutions with Army Medical Facilities Program" dated 4 October 1974 was published, with the requirement that affiliation agreements would be submitted to the Commander, HSC, ATTN: HSC-CM-R for approval. The Comptroller Division coordinated the agreements with the Clinical and Personnel Divisions and the Office of the Staff Judge Advocate. During reviews of the agreements, the SJA advised the HSC staff and The Surgeon General that we did not consider AR 351-24 to be in conformance with the statutory law because no stipends had been set as required by 5 U.S.C.

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§ 5352, and no official appointments of "student-employees" were being made. These problems were overcome when the HSC Staff Judge Advocate, Colonel Comeau, created a revised regulation under new statutory authority. The new authority and procedures required the appointment of the trainees concerned as "student volunteers" (instead of "student employees") under 5 U.S.C. § 3111 (Acceptance of volunteer service) and implementing personnel regulations. (See para 11 infra and Appendixes). The revised program, "Affiliation of Non-Federal Educational Institutions with Army Medical Facilities" was incorporated as Part Three in AR 351-3.²

2. Overview.

a. An "affiliation agreement" within the meaning of AR 351-3 is a written Memorandum of Agreement (MOA) between an Army medical facility and an accredited civilian educational institution under the authority of statutory law³ as implemented by the Office of Personnel Management.⁴ The Army Medical Department (AMEDD) affiliation program as described in AR 351-3 permits students of accredited educational institutions to obtain all or part of their required learning experience at an Army medical facility. They are appointed as "student volunteers" and are not considered to be Federal employees for any purpose other than compensation for injury⁵ and tort claims.⁶ Service of "student volunteers" is uncompensated, as distinguished from service of "student employees" who may receive a stipend.⁷

b. Section 301 of the Civil Service Reform Act of 1978, Public Law 95-454, authorized Federal departments and agencies to establish programs designed to provide educationally related work assignments for students in non-pay status, adding Section 3111 to Title 5, United States Code. This law provides a specific exemption from the prohibition in 31 U.S.C. § 1342 against the acceptance of voluntary service. Officers and employees of the United States Government who knowingly and willfully violate 31 U.S.C. § 1342 are subject to criminal

² AR 351-3, Professional Education and Training Programs of the Army Medical Department, 8 February 1988.

³ 5 U.S.C. § 3111, Acceptance of volunteer service.

⁴ 5 C.F.R. pt. 308, Volunteer service.

⁵ 5 U.S.C. ch. 81.

⁶ 28 U.S.C. §§ 2671-2680.

⁷ 5 U.S.C. §§ 5351-5356 and 5 C.F.R. pt. 534.

penalties under 31 U.S.C. § 1350 [Anti-Deficiency Act]. Therefore, care should be taken not to accept voluntary services of the institution's faculty or other employees who are not covered by this exemption. It is equally important to assure that students do not begin training until they are duly appointed under the governing personnel regulations. In the absence of the required appointment, both the student and the Army medical facility may encounter serious legal problems.

3. Governing Army Regulation.

a. AR 351-3, Part Three, prescribes the AMEDD Affiliation of non-Federal Educational Institutions with Army Medical Facilities Program. It sets policies, procedures, and responsibilities for establishing and operating training programs under the governing law and personnel regulations.

b. The regulation provides that an affiliation agreement in the form of an MOA between the educational institution and the Army medical facility will be used as the basis for the acceptance, appointment, and clinical assignment of students by the Army medical facility.⁸ Army medical facilities have no authority to deviate from the provisions in the prescribed format, and the authority to make exceptions to the format may not be delegated to them.⁹

4. Execution of the MOA.

The MOA for an AMEDD affiliation agreement is not a Government contract or a gratuitous agreement requiring the signature of a contracting officer.¹⁰ MOAs are signed by authorized representatives of the educational institution and the Army medical facility and require the approval of the designated approving authority. The Commander, U.S. Army Medical Command (MEDCOM), is the approving authority for Army medical facilities that are not assigned to other major commands; and has delegated to Army medical facility commanders under his jurisdiction, the authority to approve MOAs which have been drawn in accordance with the format prescribed in AR 351-3. (See para 9b for forwarding requests for deviations. These requests require consideration by the MEDCOM Commander

⁸ AR 351-3, para. 15-1 and fig. 15-1.

⁹ AR 351-3, para. 14-2.

¹⁰ See AR 351-3, para 4-7.

after consultation with his servicing judge advocate and civilian personnel officer.)

5. Student Eligibility.

a. Under the law and implementing regulations, "student" means an individual who is enrolled, not less than half-time, in a recognized/accredited educational institution. An individual is deemed to have ceased to be a student during an interim between school years of more than 5 months; or, if the individual has no intention to pursue a course of study in the same or different educational institution, immediately after the interim between school years or semesters.

b. The student must have the permission of the institution at which the student is enrolled to accept Federal appointment as a student volunteer at the Army medical facility concerned.

6. Student Support.

a. After appointment as a student volunteer, the trainee will serve without compensation and will not be reimbursed for traveling or living expenses. The student will, however, receive medical care for illness contracted or injury suffered while undergoing training at an Army medical facility as specified in AR 40-3 and applicable civilian personnel regulations.

b. Army medical facilities may provide the following items, not considered benefits, which are necessary to support the training effort.

(1) Meals, on a reimbursable basis at employee or guest rates, when the training schedule requires trainee presence during mealtime.

(2) Sleeping quarters in the facility during 24-hour call duty, when the training schedule requires the trainee to perform such duty.

(3) Transportation between Army medical facilities when required by the training schedule; but not from or to living quarters or the educational institution.

(4) Textbooks, supplies, and equipment required for use in training. Nonexpendable items will be hand-receipted and returned.

(5) Classroom, conference room, office, dressing room, locker, and storage space required for the conduct of training.

7. Role of the Office of Personnel Management (OPM) and the designated servicing Civilian Personnel Advisory Center (CPAC) and Civilian Personnel Operations Center (CPOC).¹¹

a. OPM is assigned responsibility under the law to prescribe regulations for the acceptance of voluntary service for the United States by eligible students. These regulations are prescribed in Title 5, Code of Federal Regulations, Part 308 (5 C.F.R. pt. 308).

b. Under the AMEDD affiliation program, the CPAC/CPOC will serve as the delegated appointing authority on behalf of the commander in carrying out civilian personnel actions. The CPAC/CPOC will provide their respective services, as appropriate. There will be established for each student volunteer an official personnel folder (OPF) to contain copies of the appointment and termination SF 50, copies of required licenses, statement of duties performed, and record of the dates and hours of training at the Army medical facility. When student volunteer service is terminated, the OPF will be sent to the National Personnel Records Center.

8. Responsibilities of the Educational Institution.

a. At least 30 days before the beginning of each training period, the educational institution must provide the names of the students and the dates, hours, and clinical activities in which training is requested.

b. The educational institution must permit the students to accept Federal appointment as student volunteers, verify that they meet minimum age requirements, and, on request, certify that they are enrolled at least half-time in the institution's program.

¹¹ Referred to in AR 351-3, para 15-2, as the civilian personnel office (CPO).

c. The institution must designate an appropriate point of contact to coordinate trainee activities and assure compliance with the administrative requirements and other assistance set forth in the MOA. These include, but are not limited to the following:

(1) Maintenance of personnel records and reports necessary to document the trainee's clinical learning experience for the purpose of academic credit.

(2) Assistance in enforcing the prohibition against the publication of any material related to the clinical learning experience without prior review and clearance by the Army medical facility.

9. Responsibilities of the Army Medical Facility.

a. The commander must assure that training programs under 5 U.S.C. § 3111 are in the best interest of the Army and do not detract from the facility's medical mission or the training needs of AMEDD personnel. The Army medical facility will cooperate with the educational institution as described in the MOA, but will not create special programs for the sole benefit of the educational institution or its students.

b. The commander must assure that the MOA does not deviate from the prescribed format without the written approval of the designated official at the MEDCOM. If deviations are considered necessary, the Commander will send the request together with his recommendations and justification for any proposed deviation through channels to reach the MEDCOM at least 30 days before the proposed starting date.

c. The Army medical facility must screen prospective trainees to ascertain their qualifications and suitability; and arrange for their appointment as student volunteers. Screening of student volunteers should take into consideration the activity and environment in which the students will be trained. They should not be placed in situations for which they are not qualified and suitable. The MTF will submit an SF 52 (Request for Personnel Action) to the servicing civilian personnel office for each appointment and termination action, as described in AR 351-3, para 15-2, and provided in controlling personnel regulations.

d. The Army medical facility staff must retain responsibility for patient care, and exercise supervision over the students consistent with the facility's quality assurance program. In the event a malpractice or tort claim arises which involves a student in the performance of his or her training duties, the claim will be processed in the same manner as similar claims involving government employees.

10. Effective Period and Termination of the MOA.

a. The terms of the agreement are effective on the date specified in the MOA; but training will not start before the MOA is approved and the students are appointed under applicable civilian personnel regulations as "student volunteers."

b. MOAs continue in effect until terminated. Either party may terminate the MOA before the beginning of a training period by giving 30 days written notice. It is understood that the approving authority may terminate arrangements under the MOA at any time to meet the mission needs of the Army Medical Department.

11. Summary of Legal Basis for Affiliation Agreements.

a. 5 U.S.C. § 3111 (Appendix A). This 1978 law made the Office of Personnel Management (OPM) responsible for the issuance of regulations governing the acceptance of a student's volunteer service.

b. 5 CFR Part 308 (Appendix B). This OPM regulation implemented 5 U.S.C. § 3111, and added a requirement that the selection of students should comply with either Federal, State, or local laws and standards governing the employment of minors.

c. AR 690-300, Subchapter 7 (Appendix C). This Army regulation permits appointing authorities to develop student volunteer programs. Such programs are required to be conducted through written agreements which must include, as a minimum, descriptive statements for the various elements prescribed in AR 690-300.

d. AR 351-3, Part Three (see para 3 supra). This Army regulation is the AMEDD's affiliation program that prescribes the required format for the Memorandum of Agreement between an

Army Medical Facility and a Non-Federal Educational Institution
(Appendix D).

APPENDIX A

UNITED STATES CODE ANNOTATED
TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES

§ 3111. Acceptance of volunteer service

(a) For the purpose of this section, "student" means an individual who is enrolled, not less than half-time, in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. An individual who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if such individual shows to the satisfaction of the Office of Personnel Management that the individual has a bona fide intention of continuing to pursue a course of study or training in the same or different educational institution during the school semester (or other period into which the school year is divided) immediately after the interim.

(b) Notwithstanding section 1342 of title 31, the head of an agency may accept, subject to regulations issued by the Office, voluntary service for the United States if the service-

(1) is performed by a student, with the permission of the institution at which the student is enrolled, as part of an agency program established for the purpose of providing educational experiences for the student;

(2) is to be uncompensated; and

(3) will not be used to displace any employee.

(c)(1) Except as provided in paragraph (2), any student who provides voluntary service under subsection (b) of this section shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

(2) In addition to being considered a Federal employee for the purposes specified in paragraph (1), any student who

provides voluntary service as part of a program established under subsection (b) of this section in the Internal Revenue Service, Department of the Treasury, shall be considered an employee of the Department of the Treasury for purposes of-

(A) section 552a of this title (relating to disclosure of records);

(B) subsections (a)(1), (h)(1), (k)(6), and (l)(4) of section 6103 of title 26 (relating to confidentiality and disclosure of returns and return information);

(C) sections 7213(a)(1) and 7431 of title 26 (relating to unauthorized disclosures of returns and return information by Federal employees and other persons); and

(D) section 7423 of title 26 (relating to suits against employees of the United States);

except that returns and return information (as defined in section 6103(b) of title 26) shall be made available to students under such program only to the extent that the Secretary of the Treasury or his designee determines that the duties assigned to such students so require.

APPENDIX B

Code of Federal Regulations

TITLE 5--ADMINISTRATIVE
PERSONNEL

CHAPTER I--OFFICE OF PERSONNEL MANAGEMENT

PART 308--VOLUNTEER SERVICE--Table of Contents

Sec. 308.101 Definitions.

In this part: Student is an individual who is enrolled not less than half-time in a high school, trade school, technical or vocational institute, junior college, college, university or other accredited educational institution. An individual who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if such individual shows to the satisfaction of the agency that the individual has a bona fide intention of continuing to pursue a course of study or training in the same or different educational institution during the school semester (or other period into which the school year is divided) immediately after the interim.

Volunteer Service under the Act is limited to services performed by a student, with the permission of the institution at which the student is enrolled, as part of an agency program established for the purpose of providing educational experience for the student. Such service is to be uncompensated and will not be used to displace any employee or to staff a position which is a normal part of the agency's work force.

Sec. 308.102 Eligibility and status.

(a) Minimum Age. The selection of students to participate under the program should be in conformance with either Federal, State, or local laws and standards governing the employment of minors.

(b) Status. A student participating under an agency volunteer program is not considered to be a Federal employee for any purposes other than injury compensation or laws related

to the Tort Claims Act. Service is not creditable for leave accrual or any other employee benefits.

Sec. 308.103 Authority.

Section 301 of the Civil Service Reform Act of 1978, Public Law 95-454, authorized Federal departments and agencies to establish programs designed to provide educationally related work assignments for students in non-pay status.

APPENDIX C

AR 690-300, Chapter 308
SUBCHAPTER 7. ACCEPTANCE OF VOLUNTEER SERVICE

7-4. Volunteer service agreements.

General guidance. Appointing authorities are authorized to develop student volunteer pro-grams best suited to meet their staffing needs. Student volunteer programs will be conducted through written agreements with educational institutions or nonprofit organizations officially designated by schools or boards of education to coordinate the placement of students in non-paid work assignments.

a. The written agreements will include, as a minimum, descriptive statements for the following:

- (1) Purposes of the program arrangement.
- (2) Number of students that will participate. It should also indicate the occupational areas involved.
- (3) Work schedules and duration of work periods.
- (4) Basic eligibility requirements. Include in this statement the minimum age in conformance with either Federal, State, or local laws and standards regarding the employment of minors.
- (5) Equal employment opportunity.
- (6) Written certification by the school in cases where there is doubt about a student being enrolled at least halftime under the school's academic program.
- (7) Methods used for selection of students.
- (8) The activity's responsibilities for appointment of a person who would orient students. Also, this person will notify the school of any intent to release a student.
- (9) The school's responsibilities for-

(a) Referring candidates;

(b) Providing data on students;

(c) Notifying the activity of a change in student status; and

(d) Identifying a person for coordination of student volunteer activities, where practicable.

(10) Status of students while performing volunteer services. Included will be coverage under Federal Tort Claims provisions of Sections 2671 through 2680, Title 28 and chapter 81, Title 5 of the United States Code, relative to compensation for possible injuries sustained.

(11) Methods derived for maintaining attendance and performance records. Particularly, if the service is for course credit.

(12) Conditions required to change or terminate the agreement.

b. Also required is the signature of proper school and activity representatives.

7-5. Student eligibility and status.

b. *Status.* Student volunteers are not eligible for payment of costs of training and attendant expenses under Chapter 41, Title 5, United States Code. Volunteer service is limited to career-related educational experience. Because student volunteers are not considered Federal employees, restrictions on employing sons and daughters do not apply.

7-6. Documentation of service.

c. *Separations.* A period of volunteer service may be terminated by the employing activity at any time. Even when the termination is effected prior to the planned date of termination, the SF 50 must include a statement that the termination is based on expiration of assignment.

d. *Records.* Copies of SF 50s will not be sent to the Finance and Accounting Office.

7-7. Program evaluation.

The volunteer service program will be evaluated in regularly scheduled Army personnel management onsite reviews.

7-10. Relationship to other student programs.

Appointing authorities must design volunteer programs to avoid conflict with other locally established student employment programs. Appointing authorities may not authorize an individual to perform volunteer service in excess of a total of 6 months in any 1-year period, except when work is for school credit. In this case, volunteer service may not exceed the period of school enrollment in any 1-year period. Total period of volunteer service may not exceed 2 years. Exceptions to the limits on the amount of time a volunteer may serve must be approved by the level above the appointing authority. For cases in which HQDA is the level above the appointing authority, requests for approval should be sent to HQDA(PECC-FSS), Alexandria, VA 22332. Exceptions will be based on decisions that-

- a. The additional service is needed for completion of the objectives of the volunteer program, and
- b. The service is not intended to secure future paid employment for the volunteer.