



OFFICE OF THE UNDER SECRETARY OF DEFENSE

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PERSONNEL AND
READINESS

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Clarification that Section 1062 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 Does Not Change Clinical Practice Guidelines for Assessing Patient Risk of Harm to Self or Others

Under Section 1062 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, the Department of Defense (DoD) shall not prohibit, regulate, or collect or record any information relating to the otherwise lawful ownership of a privately owned firearm or other weapon by a member of the Armed Forces or DoD civilian employee on property that is not a military installation or DoD property. The law further requires that not later than 90 days after the date of enactment, DoD shall destroy any such existing record. There are exceptions to the new requirements, including: non-applicability in foreign countries; actions related to official duties; law enforcement and adjudication records; and records of fact finding regarding matters indicating a possible past, present, or future violation of law, including matters related to whether a member of the Armed Forces constitutes a threat to self or others. This memorandum is to clarify that this new law does not require changes to ongoing DoD programs and activities regarding suicide prevention, domestic violence, child protection, day care screening, sexual assault response, school counseling, and similar activities; that these matters are within the exceptions in the statute.

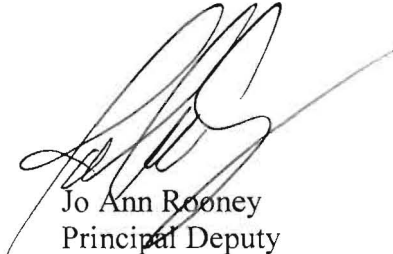
For example, in the clinical context, a DoD health care provider would be expected to ask a patient who is a member of the Armed Forces and who the clinician believes is a suicide risk or a potential threat to others if the patient has lethal weapons at home. It is well established that for a military member, receipt of health care is in the line of duty. Consequently, the member's participation in the development of his or her health record is in the line of duty. The clinical standard of care requires that a health care provider inquire sufficiently to assess the seriousness of a risk of self-harm or harm to others for a patient exhibiting such indications. Ease of access to firearms is a recognized contributing risk factor in some cases for suicide or domestic violence and is thus a proper clinical subject of inquiry. It is a clinician's professional and legal duty to maintain accurate and complete patient medical records.

Similarly, a Family Advocacy Program victim advocate or social worker would engage in safety planning with a spouse who has been or is a potential victim of domestic abuse, including discussion of lethal weapons at home. An applicant to be a home-based day care provider would also need to address issues of safe storage of weapons in that home. Reporting, including restricted reporting, in sexual assault or domestic abuse cases are additional examples where factual information concerning weapons may need to be recorded, even if police are not involved. In circumstances such as these, factual inquiries and record keeping regarding lethal



weapons in the possession of members of the Armed Forces relate to whether a member constitutes a threat to self or others, and thus are unaffected by Section 1062.

It is therefore concluded that the standard professional practices of health care providers, social workers, counselors, and similar personnel to obtain and record information on privately owned firearms and other lethal weapons in order to prevent or reduce risk of self-harm or harm to others are unaffected by Section 1062. Existing professional standards and established procedures in such cases remain in effect, and existing records made under such standards and procedures are not to be destroyed pursuant to Section 1062.



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