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Department of Defense

DIRECTIVE AD-A271 761



September 14, 1993
NUMBER 6490.1

ASD(HA)

SUBJECT: Mental Health Evaluations of Members of the Armed Forces

- References:
- (a) Public Law 101-510, "National Defense Authorization Act for Fiscal Year 1991," November 5, 1990
 - (b) Public Law 102-484, "National Defense Authorization Act for Fiscal Year 1993," October 23, 1992
 - (c) DoD Directive 7050.6, "Military Whistleblower Protection," September 3, 1992
 - (d) National Center for State Courts' Guidelines for Involuntary Civil Commitment, 1986¹
 - (e) through (i), see enclosure 1

A. PURPOSE

This Directive:

1. Implements congressional requirements in references (a) and (b) to:

a. Establish the rights of members referred by their commands for mental health evaluations.

b. Establish procedures for outpatient and inpatient mental health evaluations that provide protection to members referred by their commands for such evaluations.

2. Prohibits the use of referrals by commands for mental health evaluations in reprisal against whistleblowers for disclosures protected by references (b) and (c).

3. Incorporates into DoD procedures information in references (d) through (f) that contain guidelines on psychiatric hospitalization of adults prepared by professional civilian health organizations.

B. APPLICABILITY AND SCOPE

This Directive applies to:

1. The Office of the Secretary of Defense, the Military Departments (including the National Guard), the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Inspector General

¹ Available from the National Center for State Courts, Williamsburg, VA.

of the Department of Defense (IG, DoD), and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

2. The procedures for referral for mental health evaluation of members of the Armed Forces in situations OTHER THAN those related to responsibility and competence inquiries conducted pursuant to Rule for Court-Martial 706 of MCM, 1984 (reference (g)).

C. DEFINITIONS

Terms used in this Directive are defined in enclosure 2.

D. POLICY

It is DoD policy that:

1. A commanding officer shall consult with a mental health professional before referring a member for a mental health evaluation to be conducted on an outpatient basis. (See enclosure 3.)

2. A member has certain rights when referred for a mental health evaluation and additional rights when admitted to a treatment facility for an emergency or involuntary mental health evaluation. (See enclosure 3.)

3. No person shall refer a member for a mental health evaluation as a reprisal for making or preparing a lawful communication to a Member of Congress, any appropriate authority in the chain of command of the member, an inspector general (IG), or a member of a DoD audit, inspection, investigation, or law enforcement organization.

4. No person shall restrict a member from lawfully communicating with an IG, attorney, Member of Congress, or others about the member's referral for a mental health evaluation.

5. Any violation of subsections D.3. or D.4., above, by any person subject to the UCMJ (reference (h)) is punishable in accordance with the provisions of paragraph E.4.a. below. Any violation of these subsections by a civilian employee is punishable under regulations governing civilian disciplinary or adverse actions.

6. Nothing in these procedures shall be construed to limit the authority of a commander to refer members for emergency mental health evaluation and/or treatment when circumstances suggest the need for such action.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Personnel and Readiness) shall exercise oversight for compliance with this Directive on personnel issues.

2. The Assistant Secretary of Defense (Health Affairs) shall exercise oversight for compliance with this Directive on mental health services.

3. The Inspector General of the Department of Defense shall:

a. Conduct or oversee an investigation of an allegation submitted to an IG that the member was referred for a mental health evaluation in violation of this Directive.

b. Include assessments reported to him or her that a mental health evaluation was used in violation of this Directive in the IG's semiannual report to the Congress.

4. The Secretaries of the Military Departments shall:

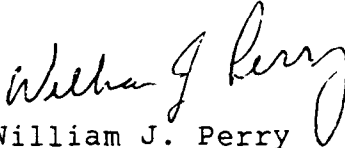
a. Within 120 days of the date of this Directive, publish an implementing regulation that provides that violations of the prohibitions referenced in subsections D.3. or D.4., above, by persons subject to the UCMJ (reference (h)) are punishable as a violation of Article 92 of the UCMJ (reference (h)), and that such violations by civilian employees are punishable under regulations governing civilian disciplinary or adverse actions.

b. Ensure that commanders are knowledgeable about their responsibility for ensuring that members are not referred for mental health evaluations as reprisal for whistleblowing; commanders follow the requirements in enclosure 3; and commanders shall consult with mental health professionals before referring members for mental health evaluations.

c. Establish procedures for reporting any assessments that a mental health evaluation was used in a manner in violation of this Directive to the IG, DoD.

F. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. The Military Departments shall forward two copies of implementing documents to the Assistant Secretary of Defense (Personnel and Readiness) within 120 days.


William J. Perry
Deputy Secretary of Defense

Enclosures - 3

1. References
2. Definitions
3. Mental Health Evaluation Requirements

REFERENCES, continued

- (e) The American Psychiatric Association's Task Force Report, "Involuntary Commitment to Outpatient Treatment," 1987
- (f) The American Psychiatric Association's Report, "Guidelines for Legislation on the Psychiatric Hospitalization of Adults," 1983
- (g) Manual for Courts-Martial, United States, 1984
- (h) Chapter 47 of title 10, United States Code, "Uniform Code of Military Justice" (UCMJ)
- (i) The American Psychiatric Association, "Diagnostic and Statistical Manual of Mental Disorders" (Third Edition, revised), 1987¹

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¹ Available from the American Psychiatric Association, 1400 K Street, N.W., Washington, DC 20005

DEFINITIONS

1. Communication. "Communication" means a communication in which a member of the armed forces makes a complaint or discloses information that a member reasonably believes constitutes evidence of: (a) a violation of a law or regulation or (b) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety.
2. Emergency. An "emergency" or involuntary admission for a mental health evaluation may occur when an individual is found, by a privileged mental health provider, to be suffering from a mental disorder that makes the individual a danger to self, to others, or to government property.
3. Inspector General (IG). The Inspector General, DoD, and a military or civilian employee assigned or detailed under DoD Component regulations to serve as an IG at any command level in one of the DoD Components.
4. Least Restrictive Alternative Principle. A principle under which a member of the Armed Forces committed for hospitalization and treatment shall be placed in the most appropriate and therapeutic available setting that is no more restrictive than is conducive to the most effective form of treatment, and in which treatment is available and the risks of physical injury or property damage posed by such a placement are warranted by the proposed plan of treatment.
5. Member. Any member of the Army, the Navy, the Air Force, or the Marine Corps.
6. Mental Disorder. As defined by the Diagnostic and Statistical Manual of Mental Disorders (reference (i)), a mental disorder is: "A clinically significant behavioral or psychological syndrome or pattern that occurs in a person that is associated with present distress (a painful symptom) or disability (impairment in one or more important areas of functioning) or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom. In addition, this syndrome or pattern must not be merely an expectable response to a particular event; e.g., the death of a loved one. Whatever its original cause, it must currently be considered a manifestation of a behavioral, psychological, or biological dysfunction in the person. Neither deviant behavior; e.g., political, religious, or sexual, nor conflicts that are primarily between the individual and society are mental disorders unless the deviance or conflict is a symptom of a dysfunction in the person, as described above."
7. Mental Health Evaluation. 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. It does not include interviews about family advocacy programs or Services' drug and alcohol abuse rehabilitation programs.

8. Mental Health Professional. A psychiatrist or clinical psychologist, a person with a doctorate in clinical social work, or a psychiatric clinical nurse specialist with appropriate credentials who are properly privileged to conduct mental health evaluations for DoD activities.

MENTAL HEALTH EVALUATION REQUIREMENTS

1. Referrals for outpatient and inpatient (other than in an emergency) evaluation.

a. When a commander determines it is necessary to refer a member for a mental health evaluation, the commander shall first consult with a mental health professional and then shall ensure that the member is provided with a written notice of the referral. The notice shall, AT A MINIMUM, include the following:

(1) The date and time the mental health evaluation is scheduled.

(2) A brief factual description of the behaviors and/or verbal expressions that caused the commander to determine a mental health evaluation is necessary.

(3) The name or names of the mental health professionals with whom the commanding officer has consulted before making the referral. If such consultation is not possible, the notice shall include reasons why.

(4) The positions and telephone numbers of authorities, including attorneys and IGs, who can assist a member who wishes to question the referral.

(5) The member must be provided with a copy of the rights listed in paragraph 1.b. of this enclosure, below.

(6) The member's signature attesting to having received the notice described in subparagraphs 1.a.(1) through (5) of this enclosure, above. If the member refuses to sign the attestation, the commander shall so indicate on the notice.

b. Members Rights. In any case in which a member of the Armed Forces is referred for a mental health evaluation, other than in an emergency, the following provisions apply:

(1) Upon the request of the member, an attorney who is a member of the Armed Forces or employed by the Department of Defense and who is designated to provide advice under this section shall advise the member of the ways in which the member may seek redress.

(2) If a member of the Armed Services submits to an IG an allegation that the member was referred for a mental health evaluation in violation of this Directive or implementing Directives, the IG, DoD, shall conduct or oversee an investigation of the allegation.

(3) The member shall have the right to also be evaluated by a mental health professional of the member's own choosing if reasonably available. Any such evaluation, including an evaluation by a mental health professional who is not an employee of the Department of Defense, shall be conducted within a

reasonable period of time after the member is referred for an evaluation and shall be at the member's own expense.

(4) No person may restrict the member in communicating with an IG, attorney, Member of Congress, or others about the member's referral for a mental health evaluation. This provision does not apply to a communication that is unlawful.

(5) In situations other than emergencies, the member shall have at least 2 business days before a scheduled mental health evaluation to meet with an attorney, IG, chaplain, or other appropriate party. If a commanding officer believes the condition of the member requires that a mental health evaluation occur sooner, the commanding officer shall state the reasons in writing as part of the request for consultation.

(6) If the member is aboard a naval vessel or in circumstances related to a member's military duties that make compliance with any of the procedures in subsection 1. of this enclosure, above, impractical, the commanding officer seeking the referral shall prepare a memorandum stating the reasons for the inability to comply with such procedures.

c. Upon request by a member for advice from an attorney, an attorney shall be appointed at no cost to the member to advise the member of ways in which they may seek redress (including, but not limited to, Article 138 of the UCMJ (reference (h))). In those instances where an attorney is not reasonably available, the Services shall specify an alternative source of advice, typically the local IG. IGs shall investigate allegations that a member received inadequate advice regarding the member's rights under this Directive or means to seek redress; and shall ensure that appropriate superiors in the chain of command take proper action to resolve complaints of wrong against commanding officers. Complaints about judge advocates shall be referred to the appropriate representative of the Service's Department of the Judge Advocate General.

d. During the outpatient mental health evaluation, the mental health professionals shall assess the circumstances surrounding the request for a mental health evaluation to ensure that the evaluation does not appear to have been used as a reprisal for whistleblowing. Evidence that indicates that the evaluation may have been requested inappropriately shall be reported by the mental health professional through his or her command channels to the superiors of the referring commander. Additionally, the mental health professionals shall also ensure that members are advised of the purpose, nature, and likely consequences of the evaluation, and make clear to the member that evaluation lacks confidentiality. When a mental health professional performs both evaluative and therapeutic roles, the possible conflict of loyalties should be clearly explained to the member-patient at the outset of the therapeutic relationship. See the Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry (1989), e.g., Section 4; and the Ethical Principles of Psychologists (1992), e.g., Principle B

(Integrity), Principle D (Respect for People's Rights and Dignity) and Principle E (Concern for Other's Welfare).

2. Admissions for emergency or involuntary inpatient evaluation and additional rights of members.

a. Inpatient mental health evaluations should be used only if and when such evaluations cannot appropriately or reasonably be conducted on an outpatient basis, in accordance with the least restrictive alternative principle. Only a psychiatrist, or, in cases in which a psychiatrist is not available, another mental health professional or a physician, may admit a member of the Armed Forces for a mental health evaluation to be conducted on an inpatient basis.

b. When a member is admitted to a treatment facility for an emergency or involuntary mental health evaluation, the following provisions apply:

(1) Reasonable efforts shall be made, as soon after admission as the member's condition permits, to inform the member of the reasons for the evaluation, the nature and consequences of the evaluation and any treatment, and the member's rights.

(2) The member shall have the right to contact, as soon after admission as the member's condition permits, a friend, relative, attorney, or IG.

(3) The member shall be evaluated by the attending psychiatrist or a physician within 2 business days after admittance to determine if continued hospitalization and treatment is justified or if the member should be released from the facility.

(4) If a determination is made that continued hospitalization and treatment is justified, the member must be notified orally and in writing of the reason for such determination.

(5) A review of the admission of the member and the appropriateness of continued hospitalization and treatment shall be conducted in accordance with paragraph 2.c. this enclosure, below.

c. The review procedure shall be conducted as follows:

(1) Within 72 hours of an involuntary-emergency psychiatric admission initiated under this Directive, a review of the admission and of the appropriateness of continued hospitalization shall be conducted. The review shall be conducted by an officer NOT in the member's immediate chain of command, who is neutral and disinterested, and appointed by an appropriate commander in the grade of O-5 or above.

(2) The review procedure shall include the specified reviewer's introduction of her or himself to the member and

indicate the reasons for the interview. The reviewer shall notify the member of the right to have legal representation during the review by a judge advocate, or at his own expense by an attorney of the member's choosing who is available within a reasonable time. The reviewer shall specify the length of the review process necessary before a determination regarding hospitalization will be rendered and the need for any subsequent reviews.

(3) The reviewer shall determine whether continued evaluation, treatment, or discharge is appropriate. This is accomplished in part by reviewing the evaluation set forth in subparagraph 2.b.(3) this enclosure, above. Also, the reviewer shall determine if there is reasonable cause to believe the referral for evaluation was used in an inappropriate, retributive, or punitive manner; that is, in violation of this Directive or implementing Service regulations. If the reviewer determines the referral was inappropriate, the reviewer shall report the finding to appropriate authorities for further investigation using the procedures established by each Service.