

### Subpart N—Hospital Recovery Claims (42 U.S.C. 2651-2653)

#### § 842.115 Scope of this subpart.

This subpart explains how the United States asserts and settles claims for costs of medical care, against third parties under the Federal Medical Care Recovery Act (FMCRA) and various other laws.

#### § 842.116 Definitions.

This paragraph defines terms which are used within this subpart.

(a) *Base Staff Judge Advocate (SJA)*. The SJA of the base providing legal services to the Air Force medical facility which furnished initial medical care to the injured party is responsible for processing the hospital recovery claim. If an Air Force facility did not furnish the initial medical care, the SJA of the Air Force base within the claims jurisdiction of the initial treating facility is responsible for processing the claim.

(b) *Compromise*. A mutually binding agreement where payment is made and accepted in an amount less than the full amount of the claim.

(c) *Injured party*. The person who received medical care for injury or disease as a result of the incident on which the claim is based. The injured party may be represented by a guardian, personal representative, estate, or survivor.

(d) *Medical care*. Includes medical and dental treatment, prostheses, and medical appliances the US furnished or reimbursed other sources for providing.

(e) *Reasonable value of medical care*. Either:

(1) An amount determined by reference to rates set by the Director of the Office of Management and Budget for the value of necessary medical care in US medical facilities.

(2) The actual cost of necessary care from other sources which was reimbursed by the United States.

(f) *Third party*. An individual, partnership, business, corporation (including insurance carriers), which is indebted to the United States for medical care provided to an injured party. (In some cases, a state or foreign government can be the third party.)

(g) *Waiver*. The voluntary relinquishment by the United States of the right to collect for medical care provided to an injured party.

#### § 842.117 Delegations of authority.

(a) *Settlement authority*: (1) The following individuals have delegated authority to settle, compromise, or waive claims for \$40,000 or less and to accept full payment on any claim:

(i) The Judge Advocate General.

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

(iv) Chief, Deputy Chief, and Branch Chiefs, Claims and Tort Litigation Staff.

(2) The SJA of HQ 9AF for CENTCOM, and SJAs of PACAF and USAFE have delegated authority to compromise or waive claims for \$30,000 or less and to accept full payment on any claim.

(3) SJAs of single base GCMs, the SJAs of GMCs in PACAF and USAFE, and the SJAs of each Air Force base, station, or fixed installation have delegated authority to compromise or waive claims for \$15,000 or less and to accept full payment on any claim.

(b) *Authority to assert a claim*. Each settlement authority has authority to assert a claim in any amount for the reasonable value of medical care.

(c) *Redelegation of authority*. A settlement authority may redelegate to a subordinate judge advocate or civilian attorney, in writing, his or her authority to assert, compromise, or waive claims.

(d) *Authority to reduce, withdraw, and restore settlement authority*. Any superior settlement authority may reduce, withdraw, or restore delegated authority.

(e) *Settlement negotiations*. A settlement authority may settle a claim filed for an amount within the delegated settlement authority. Claims in excess of the delegated authority must be approved by the next higher settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

NOTE: Telephonic approvals, in the discretion of the higher settlement authority, are authorized.

(f) *Special exceptions.* Only the Department of Justice (DOJ) may approve claims involving:

(1) Compromise or waiver of a claim for more than \$40,000.

(2) Settlement previously referred to DOJ.

(3) Settlement where a third party files suit against the US or the injured party arising out of the same incident.

**§ 842.118 Assertable claims.**

A claim should be asserted when the Air Force has furnished or will furnish medical care in military health care facilities or when the Air Force is responsible for reimbursement to a private care provider and either of the following conditions are met:

(a) Third party liability in tort exists for causing an injury or disease.

(b) Local or foreign law permits the United States to recover or the United States is a third party beneficiary under uninsured motorist coverage, medical pay insurance coverage, worker's compensation, no-fault statutes, or other statutes.

A claim should only be asserted if the base SJA determines it merits assertion. Claims for \$150 or less need not be asserted; they should be asserted only if the base SJA or designee determines the collection will not exceed the cost to collect, the third party offers payment and demands a release from the United States before paying damages to the injured party, or the United States asserts a property damage claim under subpart L arising out of the same incident.

**§ 842.119 Nonassertable claims.**

(a) The following are considered nonassertable claims and should not be asserted:

(1) *Claims against any department, agency, or instrumentality of the United States.* "Agency or instrumentality" includes any self-insured non-appropriated fund activity whether revenue producing, welfare, or sundry. The term does not include private associations.

(2) *Claims for care furnished a veteran by the Department of Veterans Affairs (VA) for service connected disability.* However, claims may be asserted for the reasonable value of medical care an

Air Force member receives prior to his or her discharge and transfer to the VA facility.

(3) *Claims for care furnished a merchant seaman under 42 U.S.C. 249.* A claim against the seaman's employer should not be filed.

(b) Claims should not be asserted without HQ USAF/JACC's approval against:

(1) *Government contractors.* In claims in which the United States must reimburse the contractor for a claim according to the terms of the contract, an investigation into the claim is sent to HQ USAF/JACC by the base SJA. The file should contain recommendations regarding assertion and include citations to the specific contract clauses involved.

(2) *Foreign governments.* An investigation is made regarding any claim against foreign governments, their political subdivisions, armed forces members, or civilian employees. The claims files containing the investigation are sent to HQ USAF/JACC along with the base SJA's recommendations regarding assertion.

(3) *US personnel.* Claims are not asserted against members of the uniformed services; employees of the US, its agencies or instrumentalities; or an individual who is a dependent of a service member or employee at the time of assertion unless liability insurance will pay the claim.

(4) *Manufacturers of products in products liability cases.*

**§ 842.120 Asserting the claim.**

When asserting the claim, the base SJA will:

(a) Assert it against the third parties whose liability is based in tort using an SF 96, Notice of Claim. Mail the original and one copy to each of the third parties and a copy to the third parties' insurers, if known.

(b) Assert it against third parties or insurers whose liability is not based in tort using a formal letter written on Air Force stationery. The letter will include the facts and legal basis for liability. Bases for liability could include local foreign law, US status as a third party beneficiary under uninsured or underinsured motorist coverage, workers' compensation laws, and