

## § 757.13

## 32 CFR Ch. VI (7–1–05 Edition)

### § 757.13 Responsibility for MCRA action.

(a) *JAG designees.* (1) Primary responsibility for investigating, asserting, and collecting Department of the Navy (DON) MCRA claims and properly forwarding MCRA claims to other Federal departments or agencies rests with the following officers:

(i) Commanding officers and officers in charge, Naval Legal Service Command (NLSC) activities, in their areas of geographic responsibility;

(ii) Officer in charge, U.S. Sending State Office, Rome in his area of geographic responsibility.

(2) JAG designees may assert and receive full payment on any MCRA claim. They may, however, agree to compromise or waive only claims for \$40,000.00 or less. Claims in excess of \$40,000.00 may be compromised or waived only with DOJ approval. Such claims will be forwarded to the Judge Advocate General in accordance with § 757.6. See § 757.7 for further discussion of waiver and compromise.

(b) *Navy Medical Treatment Facilities (MTF).* (1) Naval MTF's are responsible for ensuring potential MCRA claims are brought to the attention of the appropriate NLSC activity or U.S. Sending State Office (USSSO).

(2) The MTF reports all potential MCRA cases by forwarding a copy of the daily injury log entries and admissions records to the cognizant NLSC activity or USSSO within 7 days of treatment for which a third party may be liable. The NLSC activity or USSSO makes the determination of liability.

(i) MTF computes the value of the care it provided on NAVJAG Form 5890/12. Rates used to compute this value are published annually in the FEDERAL REGISTER by the Office of Management and Budget.

(ii) Block 4 of NAVJAG Form 5890/12 requires a statement from the patient describing the circumstances of the injury or disease.

(iii) An "interim" report is prepared for inpatients only. An interim report is prepared every 4 months until the patient is released, transferred or changed to an outpatient status.

(iv) A "final" report is prepared for all patients when inpatient and outpatient treatment is completed or the

patient's care is transferred to another facility. A narrative summary should accompany the final report in all cases involving inpatient care. In addition, the back side of NAVJAG Form 5890/12 is completed as part of the final report when the value of Federal Government care exceeds \$1,000.00.

(c) *The Office of Medical and Dental Affairs (OMA).* The office pays emergency civilian medical expenses incurred by active duty members. This office furnishes MCRA claims information to the NLSC activity or USSSO. The address is Bldg. 38H, U.S. Naval Training Center, Great Lakes, IL 60088-5200.

(d) *Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) contractors.* CHAMPUS contractors forward reports of payments in injury cases to the appropriate NLSC activity. Responsible JAG designees should, however, initiate regular contact with contractors within their geographic area to ensure all relevant cases have been reported.

(e) *Department of Justice (DOJ).* Only the DOJ may authorize compromise or waiver of an MCRA claim in excess of \$40,000.00; settle an MCRA claim which was previously forwarded by the DON to DOJ for action; or settle an MCRA claim in which the third party has filed a suit against the United States or the injured person as a result of the incident which caused the injury.

### § 757.14 Claims asserted.

(a) *General.* The DON asserts MCRA claims when medical care is furnished to Navy and Marine Corps active duty personnel, retirees, or their dependents, and third-party tort liability for the injury or disease exists. Claims are asserted when the injured party is treated in a military MTF or when the DON is responsible for reimbursing a non-Federal care provider. Claims for medical care furnished are also asserted using alternate theories of recovery if the MCRA does not apply. See § 757.14(e).

(b) *Independent cause of action.* The MCRA creates an independent cause of action for the United States. The Government can administratively assert and litigate MCRA claims in its own

## Department of the Navy, DoD

## § 757.16

name and for its own benefit. Procedural defenses, such as a failure of the injured person to properly file and/or serve a complaint on the third party, that may prevent the injured person from recovering, do not prevent the United States from pursuing its own action to recover the value of medical treatment provided to the injured person. The right arises directly from the statute; the statutory reference to subrogation pertain only to one mode of enforcement. In creating an independent right in the Government, the Act prevents a release given by the injured person to a third party from affecting the Government's claim.

(c) *Liable parties.* MCRA claims may be asserted against individuals, corporations, associations and non-Federal Government agencies subject to the limitations described in § 757.15.

(d) *Reasonable value of medical care.* The reasonable value of medical care provided to an injured person is determined:

(1) By using the rates set by the Office of Management and Budget and published in the FEDERAL REGISTER for care provided in Federal medical care facilities; or

(2) By the actual amount paid by the Federal Government to non-Federal medical care providers.

(e) *Alternate Theories of Recovery.* Often, recovery under the MCRA is not possible because no third-party tort liability exists. For example, if a member, retiree, or dependent is driving a vehicle and is injured in a single-car accident, there is no tortfeasor. State law, including insurance, workers' compensation, and uninsured motorist coverage provisions, determines the DON's right to recover in situations not covered by the MCRA. If, under the law where the injury occurred, the injured party is entitled to compensation for medical care received, usually the Federal Government may recover. The two most common alternate theories are described below.

(1) Recovery may be possible under the injured party's automobile insurance policy. In most cases, the Federal Government should seek recovery as a third-party beneficiary under the medical payments or the underinsured/uninsured portion of the injured party's

policy. The ability of the Federal Government to recover as a third-party beneficiary has been upheld in some states, while other states have taken the contrary position.

(2) Recovery may also be possible under State workers' compensation laws. Case law in this area is still emerging, but in most jurisdictions, the United States stands in the position of a lien claimant for services rendered.

### § 757.15 Claims not asserted.

In some cases, the MCRA or public policy considerations limit the DON's assertion of claims against apparent third-party tortfeasors. MCRA claims are not asserted against:

(a) *Federal Government agencies.* Claims are not asserted against any department, agency or instrumentality of the United States. "Agency or instrumentality" includes self-insured, non-appropriated-fund activities but does not include private associations.

(b) *Injured servicemembers, dependents and employers of the United States.* Claims are not asserted directly against a servicemember, the dependent of a servicemember, or an employee of the United States who is injured as a result of his willful or negligent acts. The United States does assert, however, against medical care and treatment insurance coverage the member, employee, or dependent might have.

(c) *Employers of merchant seamen.* Claims are not asserted against the employer of a merchant seaman who receives Federal medical care under 42 U.S.C. 249.

(d) *Department of Veterans Affairs care for service-connected disability.* Claims are not asserted for care provided to a veteran by the Department of Veterans Affairs when the care is for a service-connected disability. The United States will, however, claim for the reasonable value of care provided an individual before he is transferred to a Department of Veterans Affairs hospital.

### § 757.16 Claims asserted only with JAG approval.

The responsible NLSC activity or USSSO will investigate potential MCRA claims against the following