

## 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

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third parties and forward a copy of their claims file, along with recommendations on assertion, to the Judge Advocate General:

(a) *Certain Government contractors.* JAG approval is required before asserting an MCRA claim against a Federal Government contractor when the contract provides that the contractor will be indemnified or held harmless by the Federal Government for tort liability.

(b) *Foreign Governments.* JAG approval is required before asserting MCRA claims against foreign governments, their political subdivisions, Armed Forces members, or civilian employees.

(c) *U.S. personnel.* JAG approval is required before asserting MCRA claims against U.S. servicemembers, their dependents and employees of the United States, or their dependents for injury to another person.

**§ 757.17 Statute of limitations.**

(a) *Federal.* The United States, or the injured party on behalf of the United States, must file suit within 3 years after an MCRA action accrues. 28 U.S.C. 2415. Generally this is 3 years from the date of initial Federal treatment or Federal Government payment to a private care provider, whichever is first.

(b) *State.* Some State statutes of limitations may also apply where recovery is based on authority such as workers' compensation statutes, no-fault insurance statutes, no-fault medical payments, or uninsured motorist provisions of insurance contracts.

**§ 757.18 Asserting the claim.**

(a) *Initial action by JAG designee.* When advised of a potential MCRA claim, the JAG designee will determine the Federal agency or department responsible for investigating and asserting the claim.

(1) When the DON has reimbursed a non-Federal provider for health care or when CHAMPUS has made payment for a Navy health care beneficiary, the DON will assert any resulting MCRA claim.

(2) When care is provided in a Federal treatment facility, the status of the injured person will determine the agency

which will assert a resulting MCRA claim.

(i) Where Navy or Marine Corps members, retirees, or their dependents receive medical treatment from another Federal agency or department, the DON will usually assert any MCRA claim on behalf of the United States based on information provided by the treating agency or department.

(ii) Similarly, where a Navy MTF provides care to personnel of another Federal agency or department, that other agency or department will usually assert any claim on behalf of the United States.

(3) If the claim is not one which the DON should assert, the JAG designee will forward all available information to the appropriate department or agency.

(4) If the claim is one which the DON should assert, the JAG designee will ensure an appropriate investigation into the circumstances underlying the claim is initiated and will provide notice to the injured party and all third parties who may be liable to the injured person and the United States under the MCRA.

(b) *Investigating the claim.* While there is no prescribed form or content for investigating these claims, the claims file will contain sufficient information on which to base valuation, assertion, settlement, waiver, and/or compromise decisions. Usually the file will contain:

(1) Identification of each person involved in the incident including name, address, occupation, and nature of involvement;

(2) Police, social service, and other Federal, State and local agency reports on the incident;

(3) Completed copies of NAVJAG Form 5890/12<sup>3</sup> or equivalent forms from other agencies and departments;

(4) Inpatient summaries and outpatients records of treatment of the involved injury in non-Federal facilities;

(5) Documents reflecting Federal payment for non-Federal treatment of the injured person;

(6) Calculations of the reasonable value of the Government's MCRA claim;

<sup>3</sup>See footnote 3 to § 757.2.