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32 CFR Ch. VI (7-1-05 Edition)

(iii) The injured person is required to furnish a statement regarding the circumstances surrounding the care and treatment;

(iv) The injured person may seek legal guidance concerning any possible claim for personal injury;

(v) The injured person is required to furnish information concerning legal action brought against any individual involved in the incident and provide the name of counsel representing the parties to such an action; and

(vi) The injured person should not execute a release or settle a claim arising from the incident causing the injury without first notifying the JAG designee.

(f) *Administering the claim.* (1) After investigating and asserting the claim, the JAG designee will maintain contact with all parties, their legal representatives, and insurers.

(2) An effort should be made to coordinate collection of the Federal Government's MCRA interest with the injured person's action to collect his own claim for damages.

(i) Attorneys representing an injured person may be authorized to include the Federal Government's MCRA claim as an item of special damages with the injured person's claim or suit.

(ii) An agreement that the Government's claim will be made a party of the injured person's action should be in writing and state that counsel fees will not be paid by the Government or computed on the basis of the Government's portion of recovery.

(3) If the injured person is not bringing an action for damages or is refusing to include the Federal Government's MCRA interest, the JAG designee will pursue independent collection. The United States is specifically allowed to intervene or join in any action at law brought by or through the injured person against the liable third person or bring an original suit in its own name or in the name of the injured person. The JAG designee will ensure all parties are aware that the United States must be a party to all subsequent collection negotiation.

(4) When the MCRA interests are not being represented by the injured person and independent collection efforts have failed, the JAG designee will request

JAG to refer the claim to the DOJ for possible suit. In such cases, the JAG designee will forward the complete file to JAG in accordance with §§ 757.18 (b) and (c).

(g) *Access to DON records and information.* (1) The medical records of the injured person will be released to the injured person or his legal representative upon request. This release will be without cost except in unusual circumstances. These records may not be released to anyone else outside the DON except in accordance with the provisions of the Privacy Act, 5 U.S.C. 552a. Usually such a release will require authorization from the injured individual or legal representative or an order from a court of competent jurisdiction. A clerk or attorney signed subpoena is not "an order from a court of competent jurisdiction."

(2) In appropriate cases, military health care providers who have examined or treated the injured person may be made available by their commands to testify regarding the medical care provided to the injured person. Requests for such testimony will be processed in accordance with DOD Directive 5405.2, 28 CFR part 725, and 32 CFR part 725, except when the injured party is asserting the Federal Government's MCRA claim as part of his action for damages. In that situation, the injured person or legal representative is considered also to be a representative of the United States and the foregoing regulations are not applicable. In such a case, the JAG designee may, if appropriate, request the command of an involved military health care provider to make the provider available for testimony on behalf of the injured person.

§ 757.19 Waiver and compromise.

(a) *General.* A JAG designee may authorize waiver or compromise of any MCRA claim under his authority which does not exceed \$40,000.00. A third party's liability for medical costs to the United States arising from a particular incident will be considered as a single claim in determining whether the claim is more than \$40,000.00 for the purpose of waiver and compromise. When the JAG designee considers waiver or compromise appropriate in a claim which exceeds \$40,000.00, the

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claim file will be forwarded to JAG in accordance with §§757.18 (b) and (c).

(b) *Waiver.* The JAG designee may waive the Federal Government's MCRA interest when a responsible third-party tortfeasor cannot be located, is judgment proof, or has refused to pay and litigation is not feasible. Waiver is also appropriate when, upon written request by the injured person or legal representative, it is determined that collection would cause undue hardship to the injured person. In assessing undue hardship, the following circumstances of the injured person should be considered:

- (1) Permanent disability or disfigurement;
- (2) Lost earning capacity;
- (3) Out-of-pocket expenses;
- (4) Financial status;
- (5) Disability, pension and similar benefits available;
- (6) Amount of settlement or award from third-party tortfeasor; and

(7) Any other factors which objectively indicate fairness requires waiver.

(c) *Compromise.* The JAG designee may, upon written request of the injured person or legal representative, compromise the Federal Government's MCRA interest using the criteria listed above.

§ 757.20 Receipt and release.

(a) *Payment.* The JAG designee may receive payment in part or in full for any claim for which he is responsible. Written acknowledgment of this receipt will be mailed to the party making payment and a copy of the acknowledgement kept in the claim file.

(b) *Release.* The JAG designee will execute and deliver a release to third parties making full or compromised payment on the Federal Government's MCRA interest. A copy of the release will be kept in the claims file.