

(e) Federal employees assigned to the contract.

§ 900.193 Does FTCA coverage extend to individuals who provide health care services under a personal services contract providing services in a facility that is owned, operated, or constructed under the jurisdiction of the IHS?

Yes. The coverage extends to individual personal services contractors providing health services in such a facility, including a facility owned by an Indian tribe or tribal organization but operated under a self-determination contract with IHS.

§ 900.194 Does FTCA coverage extend to services provided under a staff privileges agreement with a non-IHS facility where the agreement requires a health care practitioner to provide reciprocal services to the general population?

Yes. Those services are covered, as long as the contractor's health care practitioners do not receive additional compensation from a third party for the performance of these services and they are acting within the scope of their employment under a self-determination contract. Reciprocal services include:

- (a) Cross-covering other medical personnel who temporarily cannot attend their patients;
- (b) Assisting other personnel with surgeries or other medical procedures;
- (c) Assisting with unstable patients or at deliveries; or
- (d) Assisting in any patient care situation where additional assistance by health care personnel is needed.

§ 900.195 Does FTCA coverage extend to the contractor's health care practitioners providing services to private patients on a fee-for-services basis when such personnel (not the self-determination contractor) receive the fee?

No.

§ 900.196 Do covered services include the conduct of clinical studies and investigations and the provision of emergency services, including the operation of emergency motor vehicles?

Yes, if the services are provided in carrying out a self-determination contract. (An emergency motor vehicle is a vehicle, whether government, contractor, or employee-owned, used to transport passengers for medical services.)

§ 900.197 Does FTCA cover employees of the contractor who are paid by the contractor from funds other than those provided through the self-determination contract?

Yes, as long as the services out of which the claim arose were performed in carrying out the self-determination contract.

§ 900.198 Are Federal employees assigned to a self-determination contractor under the Intergovernmental Personnel Act or detailed under section 214 of the Public Health Service Act covered to the same extent that they would be if working directly for a Federal agency?

Yes.

§ 900.199 Does FTCA coverage extend to health care practitioners to whom staff privileges have been extended in contractor health care facilities operated under a self-determination contract on the condition that such practitioner provide health services to IHS beneficiaries covered by FTCA?

Yes, health care practitioners with staff privileges in a facility operated by a contractor are covered when they perform services to IHS beneficiaries. Such personnel are not covered when providing services to non-IHS beneficiaries.

§ 900.200 May persons who are not Indians or Alaska Natives assert claims under FTCA?

Yes. Non-Indian individuals served under the contract whether or not on a fee-for-service basis, may assert claims under this subpart.

PROCEDURE FOR FILING MEDICAL-RELATED CLAIMS

§ 900.201 How should claims arising out of the performance of medical-related functions be filed?

Claims should be filed on Standard Form 95 (Claim for Damage, Injury or Death) or by submitting comparable written information (including a definite amount of monetary damage claimed) with the Chief, PHS Claims Branch, Room 18-20, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, or at such other address as shall have been provided to the contractor in writing.

§ 900.202 What should a self-determination contractor or a contractor's employee do on receiving such a claim?

They should immediately forward the claim to the PHS Claims Branch at the address indicated in § 900.201 and notify the contractor's tort claims liaison.

§ 900.203 If the contractor or contractor's employee receives a summons and/or a complaint alleging a tort covered by FTCA, what should the contractor do?

As part of the notification required by 28 U.S.C. 2679(c), the contractor should immediately inform the Chief, Litigation Branch, Business and Administrative Law Division, Office of General Counsel, Department of Health and Human Services, 330 Independence Avenue SW., Room 5362, Washington, DC 20201, and the contractor's tort claims liaison, and forward the following materials:

- (a) Four copies of the claimant's medical records of treatment, inpatient and outpatient, and any related correspondence, as well as reports of consultants;
- (b) A narrative summary of the care and treatment involved;
- (c) The names and addresses of all personnel who were involved in the care and treatment of the claimant;
- (d) Any comments or opinions that the employees who treated the claimant believe to be pertinent to the allegations contained in the claim; and
- (e) Other materials identified in § 900.188(c).

NON-MEDICAL RELATED CLAIMS

§ 900.204 Is FTCA the exclusive remedy for a non-medical related tort claim arising out of the performance of a self-determination contract?

Yes. Except as explained in § 900.183(b), no claim may be filed against a self-determination contractor or employee based upon performance of non-medical-related functions under a self-determination contract. Claims of this type must be filed against the United States under FTCA.

§ 900.205 To what non-medical-related claims against self-determination contractors does FTCA apply?

It applies to:

- (a) All tort claims arising from the performance of self-determination contracts under the authority of the Act on or after October 1, 1989; and
- (b) Any tort claims first filed on or after October 24, 1989, regardless of when the incident which is the basis of the claim occurred.

§ 900.206 What employees are covered by FTCA for non-medical-related claims?

- (a) Permanent employees;
- (b) Temporary employees;
- (c) Persons providing services without compensation in carrying out a contract;
- (d) Persons required because of their employment by a self-determination contractor to serve non-IHS beneficiaries (even if the services are provided in facilities not owned by the contractor); and
- (e) Federal employees assigned to the contract.

§ 900.207 How are non-medical related tort claims and lawsuits filed for IHS?

Non-medical-related tort claims and lawsuits arising out of the performance of self-determination contracts with the Indian Health Service should be filed in the manner described in § 900.201 (for both § 900.207 and § 900.208).