

## Department of the Navy, DoD

## § 757.15

tort or contract liability exists for payment of medical expenses resulting from an injury or disease. Claims are asserted when the injured party is treated in a MTF or when the DoN is responsible for reimbursing a non-Federal care provider.

(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 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 and 10 U.S.C. 1095 claims may be asserted against individuals, corporations, associations and non-Federal Government agencies subject to the limitation 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 rate set as described in § 757.13 (b)(2) in bills issued by the MTF; or

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

(e) *Alternate theories of recovery.* (1) 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 single-car accident, there is no tortfeasor. Title 10 U.S.C. 1095 provides the Government alternate means for recovery as a third-party beneficiary of an insurance contract of the injured party.

(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.

[57 FR 5072, Feb. 12, 1992, as amended at 72 FR 53428, Sept. 19, 2007]

### § 757.15 Claims not asserted.

In some cases, public policy considerations limit the DoN's assertion of claims against apparent third-party tortfeasors or a contract where the Government would be a third party beneficiary. 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 service members, dependents, and employees 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 own willful or negligent acts. The United States does assert, however, against policies that cover the injury.

(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. This policy does not apply in cases where the MTF referred the patient to the Veterans' Affairs hospital and then paid for the care.

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