

CHAPTER 12

THIRD PARTY RECOVERIES

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CHAPTER 12  
THIRD PARTY RECOVERIES

A. GENERAL

This chapter deals with the right of the United States to recover the costs of medical care furnished or paid for on behalf of CHAMPUS beneficiaries from third parties. These third parties may be individuals, or entities who are liable for tort damages to the injured CHAMPUS beneficiary or a liability insurance carrier covering the individual or entity. These third parties may also include other entities who are primarily responsible to pay for the medical care provided to the injured beneficiary by reason of an insurance policy, worker's compensation law or other source of primary payment.

B. AUTHORITY

1. Federal statutory authority. The Federal Medical Care Recovery Act (reference (jj)) provides the basis under which claims may be asserted or other actions taken under this chapter. The Federal Medical Care Recovery Act is a statute enacted to authorize the recovery of the reasonable value of medical care furnished or paid for by the United States to a person who is injured or suffers a disease under circumstances creating tort liability in a third party. This Act is implemented by Executive Order 11060 and an Attorney General Regulation, 28 CFR Part 43.

2. Other authority. Third party recoveries may arise in whole or in part under authorities other than the Medical Care Recovery Act. These include, but are not limited to:

- a. State worker's compensation laws.
- b. State hospital lien laws.
- c. State no-fault or uninsured motorist statutes.
- d. Contract rights under terms of insurance policies.

C. POLICY

CHAMPUS third party recovery claims can be complex and difficult to administer because they often involve recovery potential from multiple sources. It is essential that all persons responsible for taking action under this chapter have adequate training and support in this area. The Director, OCHAMPUS, or a designee, will insure that CHAMPUS personnel (including fiscal intermediary personnel) responsible for taking any action under this chapter are adequately trained and supported to take timely and effective action. Responsibility for taking third party **recovery** action at various times can rest with either fiscal intermediary personnel, OCHAMPUS employees, or Uniformed Service claims asserting authorities. For this reason close coordination between those responsible for any action under this chapter is essential. Care must also be taken to insure that appropriate action to assert any third party recovery right is taken in sufficient time

to preclude the running of any applicable statute of limitations or other bar to the government's right to recover.

#### D. APPEALABILITY

This chapter describes the procedures to be followed in the assertion and collection of third party recovery claims in favor of the United States arising from the operation of CHAMPUS. Actions taken under this chapter are not initial determinations for the purpose of the appeal procedures of Chapter 10 of this Regulation. However, "the proper exercise of the right to appeal benefit or provider status determinations under the procedures set forth in Chapter 10 may affect the processing of federal claims arising under this chapter. Those appeal procedures afford a CHAMPUS beneficiary or participating provider an opportunity for administrative appellate review in cases in which benefits have been denied and in which there is a significant factual dispute. For example, a fiscal intermediary may deny payment for services which are determined to be excluded as CHAMPUS benefits because they are found to be not medically necessary. In that event the fiscal intermediary will offer an administrative appeal as provided in Chapter 10 of this Regulation on the medical necessity issue raised by the adverse benefit determination. If the care in question results from an accidental injury and if the appeal results in a reversal of the initial determination to deny the benefit, a third party recovery claim may arise as a result of the appeal decision to pay the benefit. However, in no case is the decision to initiate such a claim itself appealable under Chapter 10 of this Regulation.

#### E. FEDERAL MEDICAL CARE RECOVERY ACT CLAIMS

1. General. The Federal Medical Care Recovery Act (FMCRA) (reference (jj)) provides that in any case in which the **United States** is authorized or required by law to furnish or pay for hospital, medical, surgical or dental care and treatment to a person who is injured or suffers a disease under circumstances creating tort liability in some third person to pay damages for that care, the United States has a right to recover from the third person the reasonable value of the care and treatment furnished or to be furnished.

2. Obligations of persons receiving treatment. To insure the expeditious and **efficient** processing of Federal Medical Care Recovery Act claims, any person furnished care and treatment under CHAMPUS, his or her guardian, personal representative, counsel, estate, dependents or survivors shall be required:

a. To provide complete information regarding the circumstances surrounding an injury as a condition precedent to the processing of a CHAMPUS claim involving possible third-party liability;

b. To assign in writing to the United States his or her claim or cause of action against the third person to the extent of the reasonable value of the care and treatment furnished, or to be furnished, or any portion thereof;

c. To furnish such additional information as may be requested

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concerning the circumstances giving rise to the injury or disease for which care and treatment are being given and concerning any action instituted or to be instituted by or against a third person;

d. To notify the responsible recovery judge advocate, the CHAMPUS fiscal intermediary or General Counsel, **OCHAMPUS**, or other officer who is representing the interests of the government at the time, of a settlement with, or an offer of settlement from a third person; and,

e. To cooperate in the prosecution of all claims and actions by the United States against such third person.

3. Responsibility for recovery. The Director, **OCHAMPUS**, or a designee, is responsible for insuring that CHAMPUS claims arising under the Federal Medical Care Recovery Act (reference **(jj)**) are properly referred to and coordinated with the Uniformed Services. Generally, federal claims arising under this statute will be processed as follows:

a. Identification and referral of Federal Medical Care Recovery Act claims

(1) CHAMPUS fiscal intermediaries. In most cases where medical care is provided by civilian providers and payment for such care has been made by a CHAMPUS fiscal intermediary, initial identification of potential third-party liability will be by the CHAMPUS fiscal intermediary. In such cases, the CHAMPUS fiscal intermediary is responsible for conducting a preliminary investigation and referring the case to designated appropriate legal officers of the Uniformed Services.

(2) Initial identification by other agencies. Occasionally, cases involving potential third-party liability may be initially identified by offices, agencies or individuals other than a CHAMPUS fiscal intermediary. When this occurs, these cases should be initially referred to the General Counsel, **OCHAMPUS**, Aurora, CO 80045-6900 for evaluation. If appropriate, the General Counsel, **OCHAMPUS**, may refer the case to the fiscal intermediary or the designated Uniformed Service legal office for action.

b. Processing CHAMPUS claims. When the CHAMPUS fiscal intermediary initially identifies a claim as involving potential third-party liability, it shall request additional information concerning circumstances of the injury or disease from the beneficiary or other responsible party unless adequate information is submitted with the claim. The information normally is obtained by requesting the beneficiary to complete a personal injury questionnaire. The CHAMPUS claim will be suspended and no payment issued pending receipt of the third-party liability information. If the requested third-party liability information is not received, the claim will be denied. A CHAMPUS beneficiary may expedite the processing of his or her CHAMPUS claim by submitting a completed third-party liability questionnaire with the first claim for treatment of an accidental injury. Third-party liability information normally is required only once concerning any single accidental injury. Once the third-party liability information pertaining to

a single incident. or episode of care **is** received, subsequent claims associated with the same incident or episode of care may be processed to payment in the usual manner. If, however, the requested third-party liability information is not received subsequent claims involving the same incident or episode of care will be suspended or denied as stated above.

c. Ascertaining total potential liability. It is essential that the legal office responsible for **asserting** the claim against the third party receive from the CHAMPUS fiscal intermediary a report of all amounts expended by the United States for care resulting from the incident upon which potential liability in the third party is based (including amounts paid by CHAMPUS for both inpatient and outpatient care). Prior to assertion and final settlement of a claim, it will be necessary for the responsible legal office to secure from the CHAMPUS **fiscal** intermediary updated information to insure that all amounts expended under CHAMPUS are included in the government's claim. It is equally important that information on future medical payments be obtained through the investigative process and included as a part of the government's claim. No CHAMPUS-related claim will be settled, compromised or waived without full consideration being given to the possible future medical payment aspects of the individual case.

4. Representing the government's interest. The government's right to recover the amounts expended for the patient's medical care is independent of the right the patient has to assert a claim against the third person for damages. The existence of the government's right, however, is dependent upon establishing the liability of the third person under ordinary principles of law.

a. Department of Justice. Frequently, collection actions under the Federal Medical Care Recovery Act (reference (jj)) must **be** referred to the Department of Justice for litigation. This is usually necessary because either the administrative collection action has been unsuccessful or the injured party has initiated suit and the government must be joined to protect its interests. When such referrals involve significant cases in which the dollar amount of the potential recovery on CHAMPUS claims exceeds \$40,000 or involve a unique or significant legal issue, notice of the referral will be provided to the General Counsel, **OCHAMPUS**. Upon request by the Uniformed Service involved, the General Counsel, **OCHAMPUS**, will assist in the coordination of any case with the Department of Justice.

b. Private attorneys. The attorney for the injured beneficiary may be requested to **represent** the interests of the government and join both claims in a single action against the third person. Such representation of the government's interest normally must be made at no expense to the government. However, when such representation of the government's interest is undertaken by the injured party's attorney for the government, offices and agencies involved will extend full cooperation to the injured party's attorney to insure that the government's interests are fully protected. The coordination of such cases is normally the responsibility of the designated Uniformed Service claims office. However, the General Counsel, **OCHAMPUS**, *may* be requested to provide assistance in coordinating CHAMPUS matters relating

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to these cases. If the attorney representing the injured beneficiary does not wish to join the government's claim with that of his or her client, and court action is required to recover the amount expended for the patient's medical care, intervention or an independent suit may be initiated by the United States for the reasonable value of the care or treatment provided.

5. Settlement and waiver of Federal Medical Care Recovery Act claims

a. Authority of the Uniformed Services legal offices. Uniformed Services legal offices may, under the authority and provisions of regulations prescribed by their respective departments, (1) accept the full amount of a claim and execute a release therefore, (2) compromise or settle and execute a release of any claim, not in excess of \$40,000, which has been referred to it under the provisions of this chapter, or (3) waive, and in this connection, release any claim not **in excess** of \$40,000 in whole or in part, either for the convenience of the government, or if it is determined that collection would result in undue hardship upon the person who suffered the disease or injury resulting in the care and treatment provided under the CHAMPUS.

b. Department of Justice approval required. A claim in excess of \$40,000 may be compromised, settled, waived and released only with the prior approval of the Department of Justice. The Department of Justice is **also** to be consulted in all cases involving (1) unusual circumstances, (2) a new point of law which may serve as a precedent, or (3) a policy question where there is or may be a difference of views between federal departments and agencies.

c. Limitation on the authority of the Uniformed Services legal offices. The authority of compromise, settlement, waiver and release described by this subsection can not be exercised in any case in which (1) the claim of the United States for such care and treatment has been referred to the Department of Justice, or (2) a suit **by** the third party has been instituted against the United States or the individual who received or is receiving the care and treatment described herein and the suit arises out of the occurrence which gave rise to the third-party claim of the United States.

6. Reporting requirements. The Department of Defense is required to submit an annual report to the Attorney General stating the number and dollar amount of claims asserted against, and the number and dollar amount of **recoveries from third persons for third-party federal claims arising from the** operation of the CHAMPUS. To facilitate the preparation of this report and to maintain program integrity, the following reporting requirements are established:

a. CHAMPUS fiscal intermediaries. Each CHAMPUS fiscal intermediary shall **submit** on or before January 31 of each year an annual report to, the Director, OCHAMPUS, or a designee, covering the 12 months of the **previous** calendar year. This report shall contain, as a minimum, the **number and total dollar amount** of cases investigated for potential third-party liability and the number and dollar amount of cases referred to Uniformed Services claims offices for further investigation and collection.

These latter figures are to be itemized by the states and Uniformed Services to which the cases are referred.

b. Uniformed Services. Each Uniformed Service will submit an annual report covering the 12 calendar months of the previous year, setting forth, as a minimum, the number and total dollar amount of cases involving CHAMPUS payments received from CHAMPUS fiscal intermediaries, the number and dollar amount of cases involving CHAMPUS payments received from other sources, and the number and dollar amount of **claims** actually asserted against, and the dollar amount of recoveries from, third persons. The report, itemized by state and foreign claims jurisdictions, shall be provided no later than February 28 of each year, by each Uniformed Service to the Director, **OCHAMPUS**, or a designee.

c. Implementation of the reporting requirements. The reporting requirements prescribed by **paragraph E.6.a.** above are to be implemented by the Director, **OCHAMPUS**, or a designee, by an appropriate action. The reporting requirements prescribed by **paragraph E.6.b.** above are to be implemented as soon as practicable by agreement between the Director, **OCHAMPUS**, or a designee, and the affected reporting agency. In no event will the reporting requirements prescribed in **paragraph E.6.b.** above be implemented later than December 23, 1988.

F. AUTOMOBILE OR OTHER MEDICAL PAYMENT INSURANCE, NO-FAULT INSURANCE, OR UNINSURED MOTORIST INSURANCE

Payment may not be made under CHAMPUS for any medical service or supply to the extent that payment has been made or can reasonably be expected to be made for the service or supply under medical insurance or other plan, automobile medical payment insurance policy or plan, uninsured motorist insurance, no-fault insurance or other forms of medical payments protection. Unless all or a portion of a payment under a no-fault or uninsured motorist insurance policy is designated as reimbursement for medical expenses or for some other policy benefit, the full amount of all such undesignated payments shall be deemed to be for medical expenses incurred by the policy beneficiary. Where a CHAMPUS beneficiary is covered by no-fault or uninsured motorist insurance, CHAMPUS benefits will not become available until the CHAMPUS beneficiary furnishes written documentation that he or she has incurred medical expenses equal to the full amount of the payment received under the policy, or to that portion of the total payment received which was designated for medical expenses. Based upon the results of the investigation described in **paragraph E.3.b.** of this chapter, the fiscal intermediary will segregate all claims involving treatment of personal injuries for which it is likely that such other insurance is available. These claims will be processed initially as double coverage claims under the provisions of Chapter 8 of this Regulation. Any CHAMPUS payments made after the double coverage provisions have been fully complied with will be considered for possible third-party liability recovery under the provisions of this chapter.

G. WORKER'S COMPENSATION CLAIMS

Based upon the results of the investigation described in paragraph

E.3.b. of this chapter, the fiscal intermediary will segregate all claims involving treatment of work-related injuries. These claims will be processed initially as double coverage claims under Chapter 8 of this Regulation dealing with worker's compensation claims. Any CHAMPUS payments made after the double coverage provisions have been fully complied with will **be** considered for possible third-party liability recovery under the provisions of this chapter. Unless all or a portion of a payment made pursuant to a worker's compensation claim is designated as reimbursement for medical expenses or for some other policy benefit, the full amount of **all** such undesignated payments shall be deemed to be for medical expenses incurred by the policy beneficiary.

#### H. MIXED CLAIMS

Occasionally, a claim arising under the Medical Care Recovery Act. will be referred to a claims collection authority which also has some other potential for recovery. A typical example of such a claim is one arising as the **result of** an automobile accident in which there is a likely tortfeasor and the injured party is also covered by some combination of other health insurance which is primary to CHAMPUS, such as, worker's compensation, or a medical payments provision of an automobile policy. These claims will also initially be processed as double coverage claims. In addition, agency claims collection authorities should take **full** cognizance of all avenues of potential recovery as long as there is any potential for recovery from the tortfeasor. Once final action has been taken, any remaining possible recovery under the Federal Claims Collection Act (reference (ii)) may be referred to the General Counsel, **OCHAMPUS**, for further action in accordance with Chapter 11 of this Regulation. Such referrals should contain a complete report of all actions taken on the case and full and complete documentation of the claims involved.