

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
PUBLIC HEALTH SERVICE  
INDIAN HEALTH SERVICE**

**Refer to: ADM**

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**ALBUQUERQUE AREA INDIAN HEALTH SERVICE CIRCULAR NO. 2001-01**

**FEDERAL MEDICAL CARE RECOVERY ACT  
THIRD PARTY LIABILITY CASES P. L. 87-693**

SEC.

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1. **PURPOSE.** The purpose of this circular is to establish a policy for the Albuquerque Area Indian Health Service (AAIHS) on the procedures for identifying and reporting Federal Medical Care Recovery Act (FMCRA) Third Party Liability cases within the State of New Mexico, Colorado and Utah. This policy is consistent with Public Law 87-693 and 42 United States Code, Section 2651-2653.
  
2. **BACKGROUND.** FMCRA provides the Indian Health Service (IHS), through the Office of General Counsel (OGC), with a legal basis for recovery of funds for services provided to eligible beneficiaries whose care is necessitated by the negligent act of third persons. IHS has a distinct right of recovery against negligent third parties for the reasonable value of medical care provided to injured beneficiaries. The only two conditions precedent to such right of recovery are (1) the furnishing of medical care to the injured person at Government expense and (2) circumstances creating a tort liability upon some third party. When these two conditions are met, the Government's right to recover comes into being and from that point on the injured person and the Government have independent rights to recovery against the tortfeasor.

The AAIHS is committed to reporting claims for recovery. The reauthorization of the Indian Health Care Improvement Act with Public Law 100-713 provided under Section 207(a) states "...all reimbursements received or recovered, under authority of this act...by reason

of provision of health services by the Service or by a tribe or tribal organization...shall be available for the facilities, and to carry out the programs of the Service or that tribe or tribal organization to provide health care services to Indians...."

3. POLICY. It shall be the policy of AAIHS to adhere to the FMCRA regulations, and to identify and recover funds used in the delivery of health care services for patients whose injury was due to a negligent third party. All third party cases shall be reported to the Albuquerque Area Office FMCRA Coordinator (AAO) for determining recovery claims in favor of the facilities. AAIHS health care providers are not authorized to make legal determinations of tort liability. This responsibility rests solely with the OGC.

4. DEFINITIONS.

Albuquerque Area Office FMCRA Coordinator. Coordinates all third party cases with OGC by establishing a monitoring system of all third party cases received from the service units.

Automated FMRCRA Reporting System. A computerized system used by the service units, Medical Records Department, Contract Health Services (CHS) and the Business Office to gather information for billing purposes for all FMCRA cases.

Federal Medical Care Recovery Act.(42 USC, Section 2651-2653). FMCRA permits the IHS to participate in litigation against third parties in which the action of the third party has caused harm or financial damage to patients who we have treated in our facilities and/or referred to another facility by CHS.

Liability Insurance. Insurance (including tribal self-insured plans) that provides payment based on legal liability for injuries or illness or damages to property. It includes, but is not limited to, automobile liability insurance, insured and uninsured motorist insurance, homeowners liability insurance, malpractice insurance, product liability insurance and general casualty insurance. It also includes payments under the State "wrongful death" statute.

Office of General Counsel. Designated Department of Health and Human Services Regional Attorney entrusted with collecting third party tort claims.

Right to Recovery. FMCRA gives the legal basis for recovery of funds for the furnishing of medical care to eligible beneficiaries whose care is necessitated by the negligent acts of third persons. It is constituted when the furnishing of medical care to the injured person is at government expense, and there is created a tort liability upon a third party.

Service Unit FMCRA Coordinator. Medical Records Department at each respective service units who are responsible for coordinating potential third party cases received at the service unit and to oversee the reporting of third party cases to the AAO FMCRA Coordinator.

Third Party. An individual or group of individuals who, by an act or omission of an act, causes injury, expense, or harm to another person.

Tort. A private or civil wrong or injury, other than breach of contract, for which the court will provide a remedy in the form of an action for damages.

Tortfeasor. A wrongdoer; one who commits or is guilty of a tort.

5. RESPONSIBILITIES. FMCRA is an important additional source of funds for IHS. The IHS operating managers should assure that equivalent effort is devoted to filing FMCRA claims as is devoted to filing claims against other third party resources. It will be the responsibility of the following Area and Service Unit personnel to identify potential third party cases and report them immediately and directly to the AAO FMCRA Coordinator.
  - A. Chief Executive Officer: Responsible for ensuring that all procedures for screening, processing and reporting third party cases are followed in accordance with FMCRA Regulations and in a timely manner.
  - B. Medical Records/Contract Health Service/Business Office Staff: Responsible for the prompt reporting of possible third party cases. Promptness in reporting cases will assure the early institution of appropriate third party action and will assist the Government considerably in its recovery efforts. Each facility will be responsible for screening, initiating and monitoring cases of injury to determine whether FMCRA applies. Coordination and communication among the Medical Records, CHS and Business Office Departments is critical when reporting third party cases.
  - C. Albuquerque Area Office FMCRA Coordinator: Responsible for coordinating all third party cases with OGC by establishing a monitoring system of all third party cases received from the service units.
  - D. Service Unit FMCRA Coordinator: The Medical Records Department is the designated office to act in the capacity as the Service Unit FMCRA Coordinator. This office is responsible for coordinating potential third party cases received at the service unit and to oversee the reporting of third party cases to the AAO FMCRA Coordinator.

6. PROCEDURES.

- A. Types of Cases To Be Reported. The screening process involves the selection of potential FMCRA cases. All cases should be reported when the patient's injury or illness was the result of a negligent act or omission of a third party. Types of potential third party cases include but are not limited to, motor vehicle accidents (single and multiple); injuries due to falls; animal bites; electrical shocks; alleged medical malpractice in non-Government hospitals; food poisoning; injuries due to exposure to noxious fumes or injuries due to faulty or defective equipment, excluding any work related injuries which fall under Workers Compensation. AAIHS will utilize the automated FMCRA Reporting System.
- B. Identification of Third Party Cases for IHS/Tribal/Urban. It will be the responsibility of the following departments to identify and report potential third party cases to the Service Unit FMCRA Coordinator:
1. Medical Records Department. Medical Records staff will refer all cases of injury for screening that meet the applicable requirements for third party reporting. Medical Records will:
    - a. Identify and screen for potential FMCRA cases, using the automated FMCRA Reporting System.
    - b. Notify the patient and/or attorney/insurance company via Notice of Claim (Exhibit I) that IHS has an interest in the recovery.
    - c. With the patient's authorization, disclose the medical records to the patient's attorney or his/her insurance company. Disclosure of medical records to attorneys or insurance companies are to be reported to the AAO FMCRA Coordinator. Upon receipt of the patient's written consent to release medical records, the Service Unit FMCRA Coordinator will ensure that the notice of claim is included with the release of medical records.
  2. Contract Health Services. It is important to note that CHS is NOT to consider automobile insurance coverage as an alternate resource. IHS cannot withhold payment to a non-IHS provider because of the possibility of recovery from a third party tortfeasor. The CHS Department must submit the bill to the IHS/CHS Fiscal Intermediary for payment and report the claim, including supporting documentation of services provided and payments made, to the AAO FMCRA Coordinator. CHS will report any cases in which patients have received care in any external health care facility.

Cases will be referred to the Service Unit FMCRA Coordinator in the following manner:

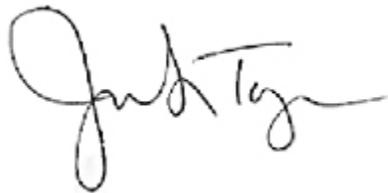
- a. CHS Managers will forward a copy of the CHS Notification of Referral to Contract Facilities (Exhibit II, Blue Slip, AAO-201) and/or the Referral Care Information System printout to the Service Unit FMCRA Coordinator.
- b. CHS Managers will notify and inform the AAO FMCRA Coordinator of all paid, unpaid purchase orders, or blanket purchase agreements via the FMCRA automated reporting system. The AAO FMCRA Coordinator will request assistance from the Director, CHS, AAO when the requested information cannot be readily received from the service units.

3. Business Office.

- a. Business Office Department will refer all requests or inquiries concerning third party cases to the Service Unit FMCRA Coordinator.
- b. IHS is not authorized to furnish any information regarding claims asserted, or to be asserted by OGC under FMCRA. All requests for billing information from any source are to be referred to the AAO FMCRA Coordinator. The requestor should be advised that the AAO FMCRA Coordinator will respond directly to him or her.

4. Division of Accounting Services. Division of Accounting Services, AAO will post the FMCRA reimbursements to the CORE Accounting System and send an Advice of Allowance to the Service Unit Administrative Officer notifying him or her of the FMCRA reimbursement. The Advice of Allowance will have on it the fact that this is a FMCRA reimbursement and the last name of the patient.

7. EFFECTIVE DATE. This circular is effective upon date of signature and shall remain in effect until canceled or superseded.



3/6/01

James L. Toya  
Director  
Albuquerque Area Indian Health Service

