The Federal Medical Care Recovery Act

Michael F. Noone Jr.

_Tortliga Medisinska Osvektelse Act_.
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by Michael F. Noone

Until the passage of the Federal Medical Care Recovery Act, which became effective in 1963, the Federal Government was not able to recover the expense of medical services extended to one who was entitled to those services when the injury was caused by the negligence of a third-party tortfeasor. The act now gives the Government the right to join in the suit of the injured party or to proceed on its own. Through co-operation with the injured parties’ attorneys, the Government has recouped millions of dollars.

EARLY ONE MORNING in February, 1944, Private John Etsel, Army of the United States, was struck by an oil truck as he crossed a Los Angeles street. He was hospitalized at a cost (to the United States) of $123.45, and during the period of his hospitalization the Government continued to pay his salary, which amounted to $69.31. His employer, the United States, sued the owner of the truck, Standard Oil of California, for these expenses. This claim, small as it was, ultimately reached the Supreme Court of the United States, for it raised fundamental questions concerning the Government’s relationship to its employees and grave constitutional issues regarding the impact of state law on cases heard in federal courts.

In United States v. Standard Oil Company, 332 U. S. 301 (1947), the Court rejected the Government’s request that the common law right of action per quod consortium et servitium amisit, which allocated a cause of action to a master for injury to his servant, be extended to cover the United States as an employer. The Court stated that it could not create a new basis for suit without some statutory authority. Apparently, a number of similar suits which were pending were withdrawn by the Government as a result of the Standard Oil decision.1

Although the Court gave Congress the opportunity to fill the statutory void, no action was taken for some years. During this period the Veterans Administration, under its general authority to issue regulations, required patients to assign their causes of action for medical treatment to the United States. There are a number of reported cases involving this procedure, which was applied not only to claims involving tort liability but to workmen’s compensation suits as well.2 The Veterans Administration’s collections were impressive; in fiscal year 1956: 3.1 million dollars; in fiscal year 1957: 2.7 million dollars; in 1958: 2.1 million dollars.

Other Government agencies relied on statutes authorizing the recovery of certain expenditures. For example, the Bureau of Employees’ Compensation, Department of Labor, acting under Sections 26 and 27 of the Federal Employees’ Compensation Act, recovered medical expenses and disability payments in excess of 1.5 million dollars in fiscal years 1958 and 1959. In some instances, however, the recoveries could not be turned over to the general fund of the Treasury.3

But the Government agencies authorized to render medical care without cost to the greatest numbers of beneficiaries—the Department of Defense and the Public Health Service—had neither a statutory nor regulatory basis for asserting such claims. In 1960 the Comptroller General estimated that from January 1, 1957, to June 30, 1959, the Department of Defense had spent 10.5 million dollars a year on treatment for military personnel in-

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1. 332 U. S. at 302, note 2.
3. The Longshoremen’s and Harbor Workers’ Compensation Act, 33 U.S.C. § 953, authorized assignment of this right to the employer or his insurer, while the Railroad Unemployment Insurance Act, 45 U.S.C. § 362(a), gave the Railroad Retirement Board a lien on the employee’s recovery from a third party and required that collections be returned to the board.
jured in accidents involving privately owned vehicles. He estimated that a significant portion of the cost of this treatment should have been recoverable by the Government. Not only was the Government excluded from seeking reimbursement, but under the collateral source doctrine the serviceman or his dependent received a windfall since he could recover the cost of treatment as special damages.4

Congress Responded With New Legislation

Congress responded to the Comptroller General's report by passing the Federal Medical Care Recovery Act, 42 U.S.C. §§ 2651-2653, which went into effect on January 1, 1963.5 The act gives the United States, in circumstances creating tort liability on a third person, an independent cause of action for the reasonable value of medical care rendered an injured party who is authorized to receive medical, surgical or dental treatment. The Government may intervene in the injured party's suit against the third party or may, after six months from the final day of treatment, institute a separate suit. The statute specifically states that no action taken by the United States can deny the injured party's claim for his damages.

The President was authorized to issue regulations establishing the cost of medical care and delegating authority to compromise and waive claims, and he subsequently directed the Director of the Bureau of the Budget to establish rates for the reasonable value of the care and treatment and the Attorney General to prescribe regulations to carry out the purposes of the act.6

The program's success can be measured by the fact that during the first year of operations (1963) all agencies reported collections of $259,227.62, while during 1967 collections of $4,036,946.75 were reported.

Government agencies' implementation of the program has been relatively uniform. Once notified of the potential third-party claim, the agency interviews the injured party or his representative, advises him of the Government's claim, requests that he or his attorney assert the Government's claim in conjunction with his own and informs him that once payment is received, the United States expects to be reimbursed. Although the United States cannot pay counsel fees for the attorney's services, the great majority of plaintiffs' lawyers co-operate in asserting the Government's claim since the agency promises its co-operation in producing official records and testimony and allows the attorney complete control over settlement negotiations and litigation. If the injured party or his attorney rejects the Government's request, the agency negotiates directly with the tortfeasor and, if necessary, refers the claim to the Department of Justice for suit.

Of course, the statute and implementing regulations have been challenged on a number of grounds. The first decision was an administrative one in which the Comptroller General held that the Government could not, in the absence of a judicial finding of liability, withhold the amount of its claim from a tortfeasor-employee's wages.7 The first reported judicial decision, United States v. Ammons, 242 F. Supp. 461 (N.D. Fla. 1965), arose when the injured party released the tortfeasor from liability; the insurer argued that the release bound the United States.8 However, the court noted that the injured party had failed to show authority from the Government to recover his special damages and the same court in United States v. Ammons, 269 F. Supp. 913 (E.D. Pa. 1967), held that its claim had not been released.

When the court dismissed the Government's claim against the injured party, stating that the Government's claim was solely against the tortfeasor, the insurer settled with the Government.

The fact that the insurer was not on notice of the Government's claim at the time of settlement with the injured party and receipt of a release from him has been held not to bar the Government's claim, although two district courts have disagreed.9

It is now established that the Government's rates for treatment cannot be challenged, although the unnecessary periods of hospitalization can be excluded.10

The United States has a right to intervene in the injured party's suit if its claim is not protected,12 and it has argued that since its position is analogous to that of a subrogor or partial assignor, the injured party has the right to sue for the full amount of the claim if the Government consents, the question of distribution being a matter exclusively between the United States and the injured party.13

A Louisiana court held that under state law the United States, as a subrogee, was the only party who could bring a suit for its medical expenses.14 However, the court noted that the injured party had failed to show authority from the Government to recover his special damages and the same court in United States v. Whitrock, 269 F. Supp. 225 (E.D. Pa. 1967), held that the claim had not been released.


5. Legislative history is discussed extensively in Bernweig, Public Law 87-693: An Analysis and Interpretation of the Federal Medical Care Recovery Act, 64 COLUM. L. REV. 1256 (1964).


subsequently recognized that an injured party's attorney may act for the Government in negotiating a joint settlement. While local law will determine the issues of legal liability and contribution, the local statute of limitations has been held not to apply.

Shortly after the passage of the act, it was suggested that the United States could have a claim under the injured party’s medical payments or uninsured motorist coverage. The response from the insurance industry was negative. However, the United States Court of Appeals for the Fourth Circuit subsequently decided that the United States was an insured within the definition of the typical uninsured motorist clause.

The Government has yet to litigate its right to assert a medical care claim under the injured party’s medical payments coverage, probably because the typical medical payment rider requires that the medical expenses be actually incurred. However, it has been suggested that American Indemnity Company v. Olesjuk, 353 S.W. 2d 71 (Texas Civ. App. 1961), stands for the proposition that expense is incurred when the treatment is rendered at a civilian medical facility, although the Government subsequently pays the bills under the provisions of 10 U.S.C. §6203. One writer argues that the serviceman’s right to free medical care is part of his pay, that his medical expenses in effect are prepaid, and that he does incur an expense within the meaning of the medical payment rider.

As a subrogee, the United States finds that its claim is in a sense only as valid as that of the injured party. On occasion, claims have been asserted for medical care rendered to the child or wife of the serviceman, and insurers have responded by rejecting the claim since the serviceman was contributorily negligent. The insurers’ argument is based on the generally accepted rule of law that a child or wife has no cause of action for medical expenses, that cause of action being considered to reside with the parent (or husband) whose contributory negligence, while not imputable, may preclude recovery for this item of damages. The Government argues that its claim is derived not from the sponsor (husband-parent) but from the injured party, who is someone authorized to receive medical care under the provisions of 42 U.S.C. § 2651, and that even though the injured party may not have a cause of action for procedural reasons, the United States’ claim is not impaired.

An unpublished decision considered the obligations of the United States to waive or compromise its claim. In State Farm Mutual Automobile Insurance Company v. Alston, the United States District Court for the Western District of Louisiana was confronted with four servicemen who had been injured in an automobile accident. The Government’s claim amounted to $4,573. The defendant’s insurer deposited its limited coverage with the court and requested that the court make distribution of what was admittedly a sum insufficient to compensate the injured parties fully. The Government refused to exercise its discretionary right to waive or compromise its claim, and the court ruled that this was not an abuse of discretion subject to judicial review.

English cases suggest that the United States might have a claim for medical treatment rendered overseas. The Government’s right to assert these claims has been affirmed by courts in France, Germany and the Republic of Togo. Suits are pending in Crete and Canada, while insurers in other foreign countries have routinely paid these claims without resorting to litigation.

The Government’s efforts to collect these claims, wherever they arise, should afford the taxpayers satisfaction, while the fruits of increased cooperation between private practitioners and government lawyers have been beneficial to both groups.

18. Bernsweig, supra note 5, at 1267.
21. Bailey, Hospital Recovery Claims—Problems in the Fringe Area, 7 AFJAG L.