

## Chapter 1

## Section 6

### Legal Matters

Revision:

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#### **1.0 LITIGATION**

**1.1** The Defense Health Agency (DHA) Office of General Counsel (OGC) shall be notified by telephone immediately upon receipt of any summons, writ, or other legal process which develops as a result of performance under a TRICARE contract. In no event, shall the telephonic notice to DHA OGC be more than three workdays following receipt of any such legal process which could involve TRICARE. Such notice shall include the nature of the legal process, the name of the court of jurisdiction, the parties named in the suit, the type of TRICARE issue or claim involved, the amount involved and any other relevant information. Additionally, copies of all documentation shall be transmitted to DHA by facsimile as soon as possible and followed up with hardcopy mailed to DHA OGC on the same workday as telephone notice is given.

**1.2** The United States (U.S.) reserves the right to render a determination concerning whether the Government should be a party to the legal process. Additionally, DHA will determine if the contractor is to be indemnified against judgments, settlements and costs in favor of an individual, or his or her assignee, in accordance with any applicable indemnification clauses in the TRICARE contract.

**1.3** In some cases, DHA OGC may determine that the Government is the real party in interest to an action which challenges a TRICARE determination. In such a case, the suit may be removed from a State court to the appropriate U.S. District Court, however, such action must be taken immediately. Therefore, it becomes imperative that the contractor fully cooperates with DHA counsel assigned to direct the case. DHA counsel may request the appropriate U.S. Attorney to the district court of the U.S. for the district and division embracing the place wherein the action is pending, dismiss the contractor, and substitute the United States of America (USA) as defendant in its place. In other cases, DHA OGC may determine the issue is a private matter between the plaintiff and the defendant contractor or subcontractor. Additionally, the court may decline to substitute parties. Nevertheless, in some cases, the contractor may remain fully responsible for defending the case.

**1.4** Acts of fraud, theft, embezzlement, or sabotage involving TRICARE funds or materials, may constitute violations of the U.S. Criminal Code and ensuing investigations may be matters within the jurisdiction of the Federal Government. In such cases, as stated above, immediate notice shall be given to DHA OGC. When the act clearly involves only contractor funds, action should be instituted by the contractor under the laws of the state with jurisdiction.

#### **2.0 SUBPOENAS**

Department of Defense (DoD) regulations restrict contractor disclosure of information obtained in carrying out its TRICARE functions. When a contractor is served with a subpoena in

connection with its TRICARE responsibilities, DHA OGC shall be notified in a timely manner to safeguard against the unauthorized disclosure of information. This procedure will be followed whether the subpoena is for reproduction of records which are, or may be protected, or for the personal appearance of a representative of the contractor. If a contractor is served a summons by the U.S. Internal Revenue Service (IRS) to produce and disclose any file, record, report or other paper, or information in connection with TRICARE and federal tax laws, the summons must be honored. The assistance of DHA shall be requested immediately if the contractor encounters any problems in complying with the IRS request (e.g., machine capability, cost).

### **3.0 ASSIGNMENTS OF PROVIDERS' RIGHTS TO PAYMENT**

A provider of services in need of funds might arrange for a commercial loan from a bank or other lending institution and, as collateral on the loan, attempt to assign its TRICARE payments to the creditor. Such TRICARE benefit payments shall be made only to providers of services which are eligible to file for such payment. The authorization given by Congress to expend TRICARE funds does not permit compliance with a commercial assignment, even though such arrangement may otherwise be in full compliance with the law of the appropriate state.

### **4.0 BANKRUPTCY**

When any TRICARE debtor files a petition in bankruptcy, contractors will follow the instructions in [Chapter 10, Section 3, paragraph 22.0](#). When a TRICARE provider files a petition in bankruptcy, regardless of whether there is an outstanding recoupment action against that provider, contractors will follow the applicable laws of the state in which the bankruptcy was filed.

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