Department of Veterans Affairs Veterans Health Administration Washington, DC 20420 VHA DIRECTIVE 1093 Transmittal Sheet July 17, 2014

## DELEGATION OF AUTHORITY TO PROCESS TORT CLAIMS

- **1. REASON FOR ISSUE:** This Veterans Health Administration (VHA) Directive establishes nationwide policy that Veterans Integrated Service Network (VISN) Directors and medical facility Directors may resolve any non-medical malpractice claim asserting damages for \$2,500 or less that arises out of VHA operations and is asserted under the Federal Tort Claims Act.
- **2. SUMMARY OF MAJOR CHANGES:** This revised Directive clarifies that VISN Director's and medical facility Directors' responsibilities to resolve claims are limited to certain claims that do not involve medical malpractice, and clarifies the responsibility for reporting all claims to Regional Counsel offices.
- 3. RELATED ISSUES: None.
- **4. RESPONSIBLE OFFICE:** The Office of Quality, Safety & Value, (10A4) is responsible for the contents of this Directive. Questions may be addressed to 202-461-1994.
- **5. RESCISSIONS:** VHA Directive 2010-004, dated January 14, 2010, is rescinded.
- **6. RECERTIFICATION:** This VHA Directive is scheduled for recertification on or before the last working day of July, 2019.

Carolyn M. Clancy, M.D. Interim Under Secretary for Health

**DISTRIBUTION:** E-mailed to the VHA Publications Distribution List on 07/22/2014.

## DELEGATION OF AUTHORITY TO PROCESS TORT CLAIMS

- **1. PURPOSE:** This Veterans Health Administration (VHA) Directive establishes nationwide policy that Veterans Integrated Service Network (VISN) Directors and Department of Veterans Affairs (VA) medical facility Directors may resolve any non-medical malpractice claim asserting damages for \$2,500 or less that arises out of VHA operations and is asserted under the Federal Tort Claims Act. **AUTHORITY:** 38 U.S.C. 512 and 515; 38 CFR 14.600 et seq.
- **2. POLICY:** It is VHA policy that VISN Directors and medical facility Directors consider, ascertain, adjust, determine, compromise, and deny or settle, as appropriate, any non-medical malpractice claim asserting damages for \$2,500 or less that arises out of VHA operations and is asserted under the Federal Tort Claims Act.

## 3. RESPONSIBILITIES:

- a. **Regional Counsel.** Regional Counsel with jurisdiction over the geographic area where the occurrence complained of arose, or other approved designee of the Office of General Counsel, upon request of a claimant, has the responsibility to reconsider a denial of a non-medical malpractice claim by a VISN Director or medical facility Director within their service area. Regional Counsel with jurisdiction over the geographic area where the occurrence complained of arose, or other approved designee of the Office of General Counsel, has the responsibility to resolve any claim where medical malpractice is alleged, regardless of whether the claim is for \$2,500 or less.
- b. **VISN Directors and Medical Facility Directors.** Each VISN or medical facility Director will:
- (1) Ensure that each person who inquires as to the procedure for filing a claim against the United States, predicated on a negligent or wrongful act or omission of an employee of the Department of Veterans Affairs acting within the scope of their employment, will be furnished a copy of Standard Form (SF) 95, Claim for Damage, Injury, or Death.
- (2) Refer tort claims alleging medical malpractice submitted on a SF-95, Claim for Damage, Injury, or Death (or through other accepted means) to Regional Counsel for processing, regardless of the settlement amount being sought or considered. *NOTE:* Regional Counsel attorneys may be consulted for advice or training regarding non-medical malpractice claims but, except as provided in paragraph a, do not have responsibility for processing and denying or settling such claims when they seek damages of \$2,500 or less.
- (3) Ensure that a decision to deny a claim filed under the Federal Tort Claims Act is issued as a letter signed by the VISN or medical facility Director, or designee. The denial letter must be mailed by certified or registered mail; a certified mail log should be kept by the facility to document all denial letters sent and the date of mailing. The denial letter must advise the claimant(s) of the right to request reconsideration by the Regional Counsel; it must also include the following language: "In the alternative, if you are dissatisfied with the action taken on your claim, you may file suit in accordance with the Federal Tort Claims Act, Title 28, United States Code, §§ 1346(b) and 2671-2680, which provide that a tort claim that is administratively denied may be presented to a Federal district court for judicial consideration. Such a suit must be

initiated within 6 months after the date of the mailing of this notice of final denial as shown by the date of this letter (Title 28, U.S.C., § 2401(b)). If you do initiate such a suit, you are further advised that the proper party defendant is the United States, not VA."

- (4) Provide Regional Counsel with notice of a settled tort claim. If a tort claim is denied, a copy of the denial letter must be furnished to Regional Counsel, along with a copy of the claim. **NOTE:** Information on non-medical malpractice settlements does not require reporting to the Office of Quality Safety and Value, Office of Medical-Legal Affairs.
- (5) Ensure Budget Object Code (BOC) 4220 is used for settled tort claims for purposes of data accessibility in the event of an audit.
  - (6) Ensure the local facility maintains a record of all filed claims, including their disposition.

## 4. REFERENCES:

- a. 28 CFR part 14.
- b. 38 CFR 14.600 et seq.
- c. 28 U.S.C. 2401(b).
- d. OGC Guidebook for Processing Small Claims under the FTCA (<a href="http://vaww.ogc.vaco.portal.va.gov/Documents/Small Tort Claims.pdf">http://vaww.ogc.vaco.portal.va.gov/Documents/Small Tort Claims.pdf</a>). NOTE: This is an internal VA Web site and not available to the public.