UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

HUMAN RESOURCES DIVISION

B-204641

JUNE 4, 1982

The Honorable Vic Fazio
House of Representatives

Dear Mr. Fazio:

Subject: Stronger VA and DOD Actions Needed to Recover Costs of Medical Services Provided to Persons With Work-Related Injuries or Illnesses (GAO/HRD-82-49)

In response to your March 19, 1981, request, we have reviewed the efforts of Veterans Administration (VA) and Department of Defense (DOD) medical facilities to recover the costs of medical services from workers' compensation insurance in cases involving a work-related injury or illness. As agreed with your office, we limited our study to selected VA and DOD medical facilities in the San Francisco area.

We traced a sample of claims back to the facilities that provided the medical care to determine whether VA and DOD officials (1) were aware of the claims and (2) had sought reimbursement from workers' compensation carriers or employers for the treatment provided. We obtained our claim sample from a private lien service company in California. 1/

VA and DOD failed to recover the costs of most health care services provided to beneficiaries covered by workers' compensation because (1) liens were not filed in about two-thirds of the cases we reviewed in which the facility should have been aware that a work-related injury had occurred and (2) VA and DOD attorneys did not actively pursue recoveries after a lien had been filed. The agencies recovered less than 12 percent of the cost of care provided in the cases for which we were able to estimate such costs. VA and DOD officials agreed that our findings in the San Francisco area would be representative of other VA and DOD medical facilities nationwide.

1/See enclosure I for additional details on our objectives, scope, and methodology.

(401908)

When a medical facility becomes aware of a potential workers' compensation claim, the information should be forwarded to a recovery office for possible action (e.g., filing a lien against the potential claim). In most of the cases reviewed, the facility was put on notice of the claim through a request for the individual's medical records by an attorney, an insurance company, a Workers' Compensation Appeals Board, or the individual. However, medical facilities frequently failed to notify the recovery unit of the potential claim. As a result, VA and DOD attempted to recover the costs of care provided in only 56 of the 148 cases in which the facility should have been aware that the injury was work related.

Once a lien had been filed, VA and DOD attorneys did not actively participate in the settlement process to insure that the Government's interests were protected. VA and DOD liens for the cost of medical services were reduced substantially when parties involved in the litigation agreed to a compromise. For example, a VA lien totaling $1,423 was reduced to $167 when a potential claim value of $94,000 was compromised for $11,000. In our opinion, Federal medical facilities should not be subject to such lien reductions under California law. However, neither VA nor DOD has objected to such reductions.

While we believe Federal medical facilities could have an effective in-house system to identify and pursue workers' compensation cases, they could, as an adjunct, use a private lien service. A private service could supplement the in-house effort in identifying work-related cases and recovering from third parties.

Enclosure I details the results of our review. VA and DOD comments are included as enclosures II and III, respectively.

We are making several recommendations to the Administrator of Veterans Affairs and the Secretary of Defense to improve their efforts to identify and pursue workers' compensation claims. (See pp. 11 and 12 of enc. I.)

As requested by your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

Gregory J. Ahart
Director

Enclosures - 3

Contents

ABBREVIATIONS

DOD	Department of Defense
OMB	Office of Management and Budget
VA	Veterans Administration

STRONGER VA AND DOD ACTIONS NEEDED TO RECOVER COSTS OF MEDICAL SERVICES PROVIDED TO PERSONS WITH WORK-RELATED INJURIES OR ILLNESSES

BACKGROUND

For decades the Federal Government has asserted a right to reimbursement from third parties for the cost of medical care furnished to injured beneficiaries at Government expense as a result of those third parties' actions. Federal efforts to obtain reimbursements have been based primarily on the Federal Medical Care Recovery Act (42 U.S.C. 2651) and the Federal Claims Collection Act (31 U.S.C. 951). Additional authority was provided by the Veterans' Health Care, Training, and Small Business Loan Act of 1981, enacted in November 1981 (Public Law 97-72).

The Federal Medical Care Recovery Act allows the Federal Government to collect sums equivalent to the "reasonable value" of the medical care it provides to eligible persons. However, recoveries under the act are limited to medical care provided as a result of some tort (civil) liability on the part of a third-party tort-feasor (a negligent third party who causes an injury). The act does not extend to recoveries under workers' compensation, automobile no-fault accident insurance, or other non-tort-feasor situations.

Before November 1981, no specific authority existed for the Veterans Administration (VA) or the Department of Defense (DOD) to recover the costs of care provided to veterans injured on the job. Recoveries, however, were pursued under the Federal Claims Collection Act, which provides that Federal agencies should attempt to collect all claims of the United States arising out of the agencies' activities. However, the Claims Collection Act lacks the procedural advantages contained in the Federal Medical Care Recovery Act, and Federal agencies must proceed according to the laws of the local jurisdiction to obtain reimbursement for expenses.

In California, section 4903 of the Labor Code allows a health care provider to file a lien 1/ against any sum to be paid to an employee as compensation for the medical expenses incurred because of an industrial injury when the employer refuses or neglects to provide the medical service.

1/A claim filed for the cost of services provided to the injured person.

ENCLOSURE I

Workers' compensation cases are under the jurisdiction of the California Department of Industrial Relations. Only cases in litigation are referred to the State for adjudication. Cases adjudicated by the State Workers' Compensation Appeals Board result in (1) an "award" if the Appeals Board judge decides that the injury or illness was work related, (2) a "dismissal," or (3) a "compromise and release" if the employer and employee, while failing to agree on one or more of the elements involved in the dispute, decide to settle the case for an agreed amount to avoid further litigation. Cases not adjudicated are handled privately between the employee and the employer, and the State has no record of such cases. We were informed that in California about 7 percent of all workers' compensation claims are adjudicated; other data show this proportion to be as high as 15 percent. According to an official from a lien service company, medical care is generally provided by the employer when cases are not adjudicated. Thus, VA and DOD recoveries are primarily from adjudicated cases.

After completion of our detailed review work, the Veterans Health Care, Training, and Small Business Loan Act of 1981 gave VA specific authority to pursue workers' compensation and other non-tort-feasor recoveries. The act, enacted in November 1981, provides, in part, that:

> "In any case in which a veteran is furnished care and services * * * for a non-service-connected disability that was incurred --
>
> (1) incident to the veteran's employment and the disability is covered under a workers' compensation law or plan that provides reimbursement for or indemnification of the cost of health care and services provided to the veteran by reason of the disability, * * *"
>
> * * * * *
>
> "the United States has the right to recover the reasonable costs of such care and services from the State, or political subdivision of a State, employer, employer's insurance carrier * * * to the extent that the veteran, or the provider of care and services to the veteran, would be eligible to receive reimbursement or indemnification for such care and services if the care and services had not been furnished by a department or agency of the United States."

Both VA and DOD have established procedures for identifying and pursuing workers' compensation claims. In 1980, VA recovered about $4,543,000 and the Air Force about $331,000 from workers' compensation. The Army and Navy did not separate workers' compensation collections from collections under the Federal Medical Care Recovery Act. In 1980, collections under the two programs totaled about $5.8 million and $4.7 million, respectively. However, Army and Navy officials said that most of the collections were under the Recovery Act.

OBJECTIVES, SCOPE, AND METHODOLOGY

In a March 19, 1981, letter, Congressman Vic Fazio requested that we determine whether VA and DOD medical facilities were protecting the Government's interests by filing liens in cases in which the persons treated were covered by workers' compensation insurance. Specifically, we were asked to determine:

--Whether VA and DOD actively pursue claims against workers' compensation insurance for medical services rendered in Federal hospitals.

--How much the Federal Government collects or could collect for such claims.

--Whether VA and DOD have the statutory authority to contract with private lien service companies to pursue workers' compensation claims.

As agreed with the Congressman's office, we limited our study to the following VA and DOD medical facilities in the San Francisco area:

VA medical centers:
Palo Alto
Martinez
San Francisco

DOD medical centers:
David Grant Air Force Medical Center,
Travis Air Force Base
Naval Regional Medical Center, Oakland
Letterman Army Medical Center, San Francisco

Our objectives were to determine (1) whether the facilities were aware of workers' compensation claims filed by persons who had received or were receiving medical treatment for work-related injuries or illnesses and (2) what actions VA and DOD took to recover the costs of the services provided to such persons.

Our approach was to identify workers' compensation cases filed for adjudication in which the medical services were provided at one of the six facilities and review VA and DOD records to determine what actions had been taken to recover the costs of care. We initially attempted to select for review a random sample of workers' compensation cases filed with the State. However, this approach was impractical because it would have required manually searching all claims filed for adjudication in order to identify cases in which the care was provided by one of the facilities selected for review. About 120,000 claims were filed for adjudication at the State's 22 district offices during 1980.

So, instead of selecting a random sample, we obtained a sample of cases from Lien Services of Northern California, a firm specializing in the discovery of workers' compensation cases and the filing and pursuit of liens on behalf of its clients. The company, which obtains a copy of each application filed for adjudication with the State, identified about 600 cases for which the application indicated that care was provided at a VA or DOD hospital. Of the 600 cases, we identified 184 in which care was provided at one of the six facilities in our review.

We visited the State Workers' Compensation Appeals Board offices at San Francisco, Oakland, San Jose, Santa Rosa, and Sacramento to review the case files for the 184 applicants. At the medical centers, we reviewed the medical and administrative records of the applicant to determine (1) what type of treatment was provided, (2) whether the facility was or should have been aware that a workers' compensation claim had been filed, and (3) what actions were taken to recover the costs of the services provided.

We met with representatives of the VA District Counsel, San Francisco; Judge Advocate General, U.S. Army, Presidio of San Francisco; Judge Advocate General, U.S. Navy, San Francisco; and Judge Advocate General, U.S. Air Force, Travis Air Force Base, to determine how they obtained recoveries for the costs of the services provided. In addition, we discussed our findings with VA and DOD headquarters officials, who agreed that the conditions in the San Francisco area should be representative of VA and DOD efforts nationwide.

In cases in which liens were not filed, we estimated the costs of the VA or DOD services provided. We did this by multiplying the number of days of inpatient care and the number of outpatient visits by the inpatient and outpatient rates established by the Office of Management and Budget (OMB) for recoveries under the Federal Medical Care Recovery Act. 1/ We used the rates in effect when the care was provided.

1/In December 1981, we reported that these rates were lower than the actual cost of care provided in VA and DOD hospitals (AFMD-82-2).

We performed our review in accordance with GAO's current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

RECOVERIES FROM WORKERS' COMPENSATION COULD BE SIGNIFICANTLY INCREASED

VA and DOD failed to recover the costs of most health care services provided to beneficiaries covered by workers' compensation because (1) liens were not filed in about two-thirds of the cases in which the facility should have been aware that a work-related injury had occurred and (2) VA and DOD attorneys did not actively pursue recoveries after a lien had been filed. The agencies recovered less than 12 percent of the cost of care provided in the 73 cases for which we were able to estimate such costs.

Stronger actions needed to insure filing of liens

While VA and DOD hospitals were generally trying to identify potential workers' compensation cases, recovery action was not initiated in many instances even though the medical facility should have been aware that a workers' compensation claim had been filed. In 148 of the 184 cases reviewed, the facility had indications that a claim had been filed. However, as shown by the table below, liens were filed in only 56 cases, and direct collections from third parties were made in only 2.

Agency/hospital	Cases reviewed	Records indicated potential workers' compensation case	Liens filed
VA:			
San Francisco Medical Center	40	35	19
Martinez Medical Center	38	29	13
Palo Alto Medical Center	31	28	19
	109	92	51
DOD:			
Naval Regional Medical Center, Oakland	32	22	4
Letterman Army Medical Center	21	17	0
David Grant Air Force Medical Center	22	17	a/3
	75	56	7
Total	184	148	58

a/Includes two direct collections from third parties.

Medical facilities can identify potential work-related cases by reviewing

--admission documents,

--notations in patients' medical records, and

--requests for medical records by outside parties.

Only the VA admission document recorded whether the need for care was work related. DOD admission documents recorded whether the need for care resulted from an injury but did not indicate whether the injury was work related.

In cases in which liens had been filed, the facility became aware of the workers' compensation claim apparently because of a request for the individual's medical records by an attorney, an insurance company, a Workers' Compensation Appeals Board, or the individual.

When a medical facility becomes aware of a case involving workers' compensation, the information should be forwarded to the agency's recovery office. 1/ However, medical facilities frequently failed to inform the recovery unit of a potential workers' compensation case. Although we identified unreported work-related injuries at each facility visited, VA facilities appear to be more diligent in referring workers' compensation cases. The following are examples of unreported cases:

--An automobile assembler fell while at work and was taken by ambulance to a community hospital. Two days later, she was transferred to the Naval Regional Medical Center at Oakland, where she remained for 9 days receiving pelvic traction, physical therapy, and medications. After her discharge, she continued physical therapy treatments at the medical center. Based on OMB medical care recovery rates (see p. 4), her medical care cost the Navy about $1,800. Although the medical records were subpoenaed and the attending physician reported that the accident happened at work, the case was not referred to the recovery office and no lien was filed. The assembler received $7,995 (less attorney's fees and certain liens) in workers' compensation for her injury.

1/VA facilities refer cases to the District Counsel; Letterman Army Medical Center refers cases to the Post Recovery Judge Advocate; the Naval Regional Medical Center refers cases to the Naval Legal Services Office; and the David Grant Air Force Medical Center refers cases to the Base Judge Advocate.

--An engineer suffered a back injury by lifting, climbing, bending, and stooping during an 8-month period. He consulted a private physician and was hospitalized. His condition did not improve, so he went to the San Francisco VA Medical Center for surgery. Based on OMB rates, his care cost VA about $1,600. Although the injured worker's attorney sent the hospital a blank lien form suggesting that VA file a lien to protect its interests, we found no evidence at the VA District Counsel's Office that a lien had been filed. The engineer received $2,950 (less attorney's fees and a lien) in workers' compensation for his injury.

--An auto body instructor injured his leg while sweeping the shop floor. The injury eventually led to amputation of the leg. Based on OMB rates, the medical care cost the Army about $9,700. Although medical records were requested and Letterman's Chief of General Surgery Service wrote directly to the injured worker's attorney, the Army did not file a lien. An entry in the medical legal log at the Patient Administration Department mentions the attorney's letter requesting documents but does not indicate that the case was referred to the recovery office. The instructor received $12,500 (less attorney's fees and a lien) in workers' compensation for his injury.

--A nurse's aide injured her back while lifting a patient. The injury caused a 48.5-percent permanent disability that will require further medical treatment. She was treated at the Naval Regional Medical Center, Oakland, as both an outpatient and an inpatient. Based on OMB rates, her medical care cost the Navy about $3,100. The patient's medical records indicated that the injury was work related, and a private physician's report filed with the workers' compensation claim indicated that the physician had examined Navy medical records. However, the recovery office had no record of the case, and the Navy did not file a lien. The nurse's aide was awarded $16,223 in workers' compensation.

VA and DOD should more actively pursue workers' compensation claims

Once a lien had been filed, VA and DOD attorneys did not actively participate in the settlement process to insure that the Government's interests were protected. The Government recovered only about $17,700 of the approximately $54,200 sought by DOD and VA in 33 of the 56 liens filed. Of the 33 liens,

--13 were honored for the full lien amount;

--16 were reduced, although the criteria used to reduce the liens should not, in our opinion, have been applied to VA and DOD liens; and

--4 were not honored or were not mentioned in the settlement.

Of the other 23 cases, 14 (totaling $72,700 in liens) had not been adjudicated at the time of our review, 7 (totaling $28,800 in liens) had been dismissed, and 2 (totaling $400 in liens) had been adjudicated but we were unable to determine whether the liens had been honored.

Under California law, VA and DOD are authorized to have a representative present at hearings or conferences to protect the Government's interests. In addition, before approving a compromise and release settlement, the California Workers' Compensation Appeals Board sends DOD or VA a "Notice of Intention to Approve Compromise and Release" showing the amount of the lien being approved. DOD or VA is given 10 days to object in writing to the proposed settlement. However, neither VA nor DOD is routinely represented at hearings or conferences, and our review of files provided to us by VA's District Counsel showed that VA did not object to any of the proposed lien reductions.

California Workers' Compensation Appeals Boards reduced the amount of 16 liens filed by VA or DOD. Generally, these reductions were made pursuant to California Labor Code Section 4903.1. Although the reduction criteria are intended to apply only to health care service plans and others specifically mentioned in the code, neither VA nor DOD has objected to the criteria being used to reduce their liens.

California Labor Code Section 4903.1 provides that, when a case is disposed of by way of compromise and release and the

> "* * * lien claimant does not agree to the amount allocated to it, then the referee shall determine the potential recovery and reduce the amount of the lien in the ratio of the applicant's recovery to the potential recovery and in full satisfaction of its lien claim."

This ratio is commonly referred to as the Gregory formula.

By its terms, the Gregory formula applies to benefits paid or services provided by health care service plans, group disability policies, self-insured employee welfare benefit plans, or hospital service contracts. Although medical care provided by VA and DOD is not explicitly included in the law as a type of medical plan to which the formula applies, neither VA nor DOD has presented the question to a court or the Appeals Board for resolution. However, in a March 27, 1981, decision, the Appeals Board ruled that Medi-Cal (Medicaid) liens were not subject to reduction under section 4903.1.

In the Medi-Cal decision, the Board found that the statutory definitions of health care plans contained in section 4903.1 did not include Medi-Cal. The Board said that the difference between group health plans and Medi-Cal was in their relationship with their recipients. Group health care plans are based on a direct contractual relationship between the plan and the person covered; the payment of a premium is involved. Medi-Cal has no such contractual relationship with its recipients. Likewise, no contractual relationship exists between VA or DOD and the beneficiaries for whom they seek reimbursement. Because of similarities between Medi-Cal, a public assistance program in which Federal law requires the State to seek reimbursement, and medical care provided by VA and DOD, we believe that VA and DOD liens should also be exempt from the Gregory formula.

The agencies' reliance on the claimant's attorney to protect the Government's interests may have compromised those interests. According to VA's District Counsel, he occasionally sends a staff attorney to conferences or hearings in connection with a case, but relies primarily on the claimant's attorney to represent the Government's interests. Similarly, Army, Navy, and Air Force regulations permit the services to rely on the claimant's attorney.

However, the claimant's attorney has little incentive to protect the Government's interests because (1) he may not legally be paid by the Government for any services rendered and (2) he can increase his client's settlement by reducing or ignoring the Government lien.

Under the Gregory formula, a high potential recovery in proportion to a low actual recovery reduces the amount paid to a lienholder. For example, in one case, the claimant's attorney estimated the potential recovery at $94,000, while the actual recovery was $11,000, or 12 percent. This ratio, when applied to the VA lien of $1,423, resulted in a VA recovery of only $167. In another case, the actual recovery was $7,500, or 20 percent of the $38,259 potential recovery. When the Gregory formula was applied to the VA lien of $2,388, VA recovered only $478. Thus, it is important that VA and DOD be represented at settlement hearings so that their interests are protected.

An Army newsletter on medical care recoveries advises that the key to a compromise is the determination of the reasonable potential recovery. The newsletter states that the person handling the claim should do his own evaluation because often the injured person's attorney will overestimate the claim. Further, the newsletter states that, in any equitable compromise, the injured person's hardship should not be considered.

The VA operations manual states that the District Counsel is responsible for seeing that VA's interests are protected before a Workers' Compensation Appeals Board. Further, it states that, in negotiating a settlement, hardship to the veteran is not normally a factor. However, VA's District Counsel told us that his office does not object to proposed settlements because it would take money away from the claimants.

VA AND DOD COULD CONTRACT WITH PRIVATE LIEN SERVICE COMPANIES TO IDENTIFY AND PURSUE WORKERS' COMPENSATION CLAIMS

Even if Federal medical facilities had an effective in-house system to identify and pursue recoveries in workers' compensation cases, many cases would not be identified. In 48 (26 percent) of the cases reviewed, VA or DOD records contained no evidence indicating that the beneficiary had a work-related injury. Such cases can be identified only by reviewing State records of cases filed for adjudication to determine whether care was provided in a Federal facility. One way to do this would be to use a private lien service to supplement in-house recovery efforts.

Because of growing losses on uncollected debts, we recently reexamined our legal position on the use of collection agencies and concluded that the Federal Claims Collection Act gives Federal agencies authority to hire private collectors. Accordingly, on April 17, 1981, the Code of Federal Regulations was amended to recommend that Federal agencies contract with private sources, when cost effective and otherwise practical, to supplement Federal collection programs (4 CFR Part 102).

A Government agency can contract with a collection agency if the following conditions, among others, are met:

--The service supplements but does not replace the agency's basic collection program.

--The agency retains the authority to resolve disputes, compromise claims, terminate collection actions, and initiate legal action.

The regulation permits VA and DOD to use a private lien service to supplement the medical facilities' workers' compensation collection efforts. A lien service company could (1) identify potential claims, (2) file liens, (3) represent agencies at appeals boards hearings, and (4) recover lien amounts. VA and DOD would have to retain final authority to resolve disputes, compromise claims, terminate collection actions, or initiate legal action.

The use of lien service companies to supplement collection efforts is being tested by the State of California. The results of this test may prove useful to VA and DOD in determining whether to supplement their in-house collection efforts. In 1981, the California legislature directed the State's Department of Health Services to enter into at least two no-risk contracts with private organizations having access to information on workers' compensation cases in which services were rendered under the Medi-Cal program. Accordingly, the State contracted on a pilot basis with a lien service company to discover and recover the lienable amounts owed by a third party for health care services provided by Medi-Cal. The contractor receives compensation on a contingency arrangement not to exceed 25 percent of the gross recovery on the claim, thereby supplementing the State's ongoing function in recovering lienable amounts.

CONCLUSIONS AND RECOMMENDATIONS

VA and DOD need to strengthen their programs for identifying and pursuing claims against workers' compensation. Specifically, they need to insure that potential work-related injury cases are referred to the recovery office and that the recovery office actively participates in settlement actions. They should also monitor the progress of the Medi-Cal pilot project in California to determine whether similar contracts with lien service companies could improve VA and DOD recoveries.

We recommend that the Administrator of Veterans Affairs and the Secretary of Defense:

--Reemphasize the need for medical facilities to refer potential work-related cases to the recovery office and issue instructions requiring that all requests for medical records from an attorney, Workers' Compensation Appeals Board, or insurance company be referred to the recovery office for possible recovery action.

--Revise regulations or written procedures to emphasize that Government representatives should actively participate in workers' compensation settlements.

--Monitor the progress of the Medi-Cal pilot project in California to determine whether a similar contract could improve VA and DOD recoveries.

--Direct recovery offices in California to object to the application of the Gregory formula to VA and DOD liens.

AGENCY COMMENTS AND OUR EVALUATION

VA generally agreed with our recommendations and said that actions had been taken or were being considered to strengthen its recovery program. (See enc. II.) DOD provided comments on our draft report from the Judge Advocates General for the Army, Navy, and Air Force, but did not specifically comment on what actions, if any, it plans to take to implement our recommendations. (See enc. III.)

Evaluation of Navy's general comments

The Navy's Office of the Judge Advocate General, in commenting on our draft report, questioned our

--efforts to show a widespread problem based on the results of our work in California,

--failure to mention efforts to recover medical care costs for Federal workers injured on the job, and

--methods of calculating the potential recoveries.

The Navy said that our report concerned problems with California workers' compensation but that we attempted to show a widespread claims collection problem based solely upon statements by VA and DOD officials that the conditions identified in the San Francisco area were representative of other VA and DOD facilities nationwide. The Navy pointed out that no further studies were done to confirm or deny the extent of any collection problems.

While our detailed review work was limited to VA and DOD facilities in the San Francisco area, we believe the problems identified are likely to exist elsewhere because of the failure of DOD and the services to provide effective guidance to the recovery program. Although most potential recoveries are identified when an attorney, Workers' Compensation Appeals Board, or insurance company requests medical records, neither DOD nor the services had required the medical centers to refer all such requests to recovery offices. Nor has DOD or the services instructed the recovery offices to actively participate in settlements. The instructions provided to recovery personnel are just the opposite--rely on the claimant's attorney. When we discussed these matters with the Deputy Director

for Budget Costs and Analysis, Office of the Assistant Secretary of Defense for Health Affairs, he agreed that the findings in the San Francisco area would be representative of other DOD facilities.

The Navy said that another weakness was our failure to mention that efforts to recover medical care costs for work-related injuries and illnesses of Federal workers employed by the military services were excluded from our report. The Navy correctly states that our review concerned only workers' compensation cases involving members, dependents, and retirees working at off-base jobs. We did not include Federal workers in our review because in such cases the Federal Government is liable for the cost of care. In the cases included in our review, the Federal Government provided the care, but a third party was liable for the cost.

The Navy also said that the 12-percent recovery figure was not representative of the Navy's collection efforts. According to the Navy, our report fails to mention which OMB rates we used in computing potential recoveries and whether those rates applied to the cases surveyed. According to the Navy, we used the OMB rates and multiplied those rates by the number of inpatient and outpatient visits. The Navy questioned this procedure because "Navy policy is not to assert a claim for inpatient costs which are considered unnecessary."

The Navy was correct that the 12-percent figure was not representative of the Navy's collection efforts. The 12-percent recovery rate was largely the result of VA's recovery efforts. VA had filed 51 of the 58 liens reviewed, while the Navy had filed only 4. Our draft report stated that we used the rates in effect at the time the care was provided in computing the potential recoveries. We agree with the Navy's policy of not asserting a claim for inpatient costs which are considered unnecessary. In estimating the potential recoveries, we included only inpatient stays and outpatient visits which the medical record clearly indicated involved care for the work-related injury.

Refer requests for medical records to recovery offices

VA

VA said that the identification of work-related cases and referral to the VA District Counsel Office begins at its medical facilities and that the VA operations manual will be revised to reemphasize the importance of pursuing all cost recovery actions promptly. VA added that interim instructions were issued on March 8, 1982, to implement the provision of Public Law 97-72 on medical care cost recovery actions.

VA's March 8 instructions do not address methods to identify work-related cases or provide guidelines for referral of cases to recovery offices. Thus, the planned revisions to the operations manual should not only reemphasize the importance of pursuing all cost recovery actions promptly, but also require medical centers to refer requests for medical records to recovery offices.

DOD

The Army, Navy, and Air Force indicated that greater emphasis has been placed on the assertion of workers' compensation claims.

The Navy's Office of the Judge Advocate General said that our recommendation has been implemented in the San Francisco area and that claims officers in other areas will be alerted to improved methods of identifying workers' compensation claims.

The Army's Office of the Judge Advocate General said that greater emphasis has recently been placed on the assertion of workers' compensation claims and that such emphasis will continue. He said that our report was informative and identified an area which required better coordination between the local recovery judge advocate and the military hospital personnel and Civilian Health and Medical Program of the Uniformed Services coordinators to insure that job-related injuries are forwarded for collection.

The Army said, however, that our report may not reflect the current status of the medical care recovery program at the Presidio of San Francisco because we did not specify the age of the claims investigated. According to the Army, the validity of our report may have also been affected by the Army's practice of asserting many claims directly against the injured person's employer and his workers' compensation carrier as opposed to using the State's adjudication procedures.

The Air Force Office of the Judge Advocate General said that it has placed additional emphasis on identifying potential cases to keep the number of unreported claims to a minimum. It added that Air Force claims and hospital regulations contain specific guidance for reporting and pursuing workers' compensation claims.

According to the Air Force, claims personnel at Travis Air Force Base report a good working relationship with David Grant Air Force Medical Center and most claims are identified except when the reason for treatment is based on a disease. The Air Force said that, when the reason for treatment is based on a disease, knowledge of the claim arises when there is a request for records. Base claims personnel, according to the Air Force, believe that all injuries are reported and that they investigate every case that comes to their attention. The Air Force said that despite these measures some workers' compensation cases may not come to the attention of claims personnel in California or other States.

While the services said that greater emphasis has recently been placed on the assertion of workers' compensation claims, neither DOD nor the services had implemented our recommendation that they issue instructions requiring that requests for medical records be referred to recovery offices. Because DOD's comments did not state how the services had placed greater emphasis on identifying workers' compensation cases, we contacted officials from DOD and the three services who were responsible for preparing the comments. The DOD official did not know what actions had been taken.

A Navy official told us that our report had resulted in an increased awareness in the San Francisco area of the problem in identifying and referring potential workers' compensation cases and that there had been several discussions between claims and medical center personnel about the need to refer potential cases.

He also said that admissions personnel now ask patients whether their injury was work related when they complete an admissions form. However, the Navy official said that there have been no changes in written procedures and that instructions have not been issued to require that all requests for medical records received from an attorney, Workers' Compensation Appeals Board, or insurance company be referred to the recovery office.

According to an Army official, the Army has emphasized workers' compensation recoveries in two newsletters issued since June 1981 and a third newsletter is being prepared. He said that the third newsletter will emphasize ways to identify workers' compensation claims, including requests for medical records. However, the official said that the newsletters do not have the force of regulations but provide "general guidance" to the recovery program.

We believe our report is representative of the current status of the Army's recovery program in the San Francisco area because (1) the Army had not filed a lien or asserted a claim directly against the injured person's employer or workers' compensation insurance carrier in any of the 21 cases filed between 1976 and 1981 that we reviewed and (2) the Army had issued nothing other than "general guidance" to strengthen its recovery program.

The Air Force official said that the Air Force "has done nothing different" because of our report recommendations, but that

--the Air Force claims manual makes direct references to workers' compensation claims,

--Air Force medical regulations require referral of potential workers' compensation cases and are being revised to provide more guidance on identifying such cases,

--hospital workshops have emphasized the problems of identifying and referring workers' compensation cases,

--a daily log of injury cases is maintained by hospital personnel and reviewed by claims personnel, and

--workers' compensation is periodically discussed in telephone calls between headquarters and base claims personnel.

Although the Air Force said that knowledge of many claims arises when there is a request for records, the claims and hospital regulations cited by the Air Force as containing specific guidance for reporting workers' compensation claims do not direct medical center personnel to refer requests for medical records to the claims office.

The Air Force official told us that there are no established procedures for handling requests for medical records. Further, the Air Force stated that claims personnel at Travis Air Force Base believe that most workers' compensation cases are identified and reported. However, claims personnel would generally be aware of only those claims that were identified and reported. At Travis, claims personnel were aware of only 3 of the 22 workers' compensation cases we reviewed, indicating that the Air Force's current emphasis on identification and referral of workers' compensation cases has not been effective.

Revise written procedures to emphasize active participation

VA

VA said that its operations manual addresses the participation of medical center clinical staff in workers' compensation settlement claims and did not believe that additional instructions were necessary. According to VA, its August 1, 1981, District Counsel's Manual emphasizes District Counsel participation in pursuing hospital cost collection efforts when veterans are treated for industrially incurred diseases or injuries. In addition, VA said that the District Counsels are judged by their cost collection efforts as part of the Merit Pay Performance Appraisal plan. VA said that the medical care cost recovery program, including workers' compensation recoveries, was strongly emphasized at a 1980 General Counsel National Collection Conference attended by field personnel and persons from other agency components.

VA's actions to emphasize the medical care cost recovery program and base merit pay appraisal of District Counsels on their cost collection efforts should improve VA's recovery actions. However, we do not agree that adequate written instructions have been issued to insure active participation by VA claims personnel in settlement actions.

VA's operations manual discusses the testimony of VA physicians at settlement hearings on behalf of the veteran, but does not discuss participation of VA attorneys or claims personnel in the hearings. Further, the District Counsel's Manual specifically provides for VA reliance on the veteran's attorney to protect the Government's interests. The manual states that

> "It is permissible to allow the veteran's attorney to handle the VA claim where the attorney will agree to represent VA interests without a fee."

The manual provides for the District Counsel to prepare pleadings and appear as an attorney for VA before Workers' Compensation Appeals Boards "where the veteran's attorney fails or refuses to represent our interest." As stated on page 9, the claimant's attorney has little incentive to protect the Government's interests. We believe the District Counsel's Manual should be revised to emphasize active participation by VA attorneys in workers' compensation cases.

DOD

The Air Force and Navy did not agree with our recommendation. The Army Office of the Judge Advocate General said that greater emphasis has recently been placed on the recovery of workers' compensation claims and that such emphasis will continue.

The Air Force Office of the Judge Advocate General said that once a lien is filed the Government's interest is protected and that the Air Force recovers without the appearance of counsel except in unusual circumstances. According to the Air Force, it generally compromises workers' compensation claims in California only when liability is questionable. The Air Force said that Travis Air Force Base reports that it has been collecting 100 percent from insurance companies at the time of settlement.

The problems identified in our report relate not to collecting from insurance companies once a case has been settled but to insuring that the Government's interests are protected in reaching the settlement. We were unable to adequately assess the Air Force's contention that it compromises workers' compensation cases in California only when liability is questionable because the Air Force had filed a lien in only 1 of the 22 cases we reviewed and that case was later dismissed. However, because the Air Force followed the same procedures followed by VA and the other services once a lien had been filed (i.e., relying on the claimant's attorney to protect the Government's interests), we doubt that the Air Force has had any greater success in collecting than those agencies have. As stated on page 8, the Government recovered the full lien amount in only 13 of the 33 liens reviewed. We found no indication in the 20 cases in which the Government lien was reduced that the claimant's attorney had acted to protect the Government's interests.

According to the Navy, its affirmative claims training and procedures already emphasize the importance of pursuing every potential claim. The Navy said that the methods and extent of pursuit, however, depend upon the relative size of the claim, its recoverability, and the cost effectiveness of its pursuit compared to other claims being processed at the time. Our report, according to the Navy, cited a handful of cases where substantial Government liens were involved but did not report the average size of the Government liens in the workers' compensation cases surveyed.

The Navy's Office of the Judge Advocate General disagreed with our assertion that the claimant's attorney has little incentive to protect the Government's interests. According to the Navy, the attorney has a vested interest in protecting the medical care lien because his or her decision to represent the Government's claim is voluntary and based on a need to obtain the Navy's cooperation in preparing his or her client's case. Further, the Navy said that a written agreement is entered into whereby the Government allows the attorney to use the Government's medical care costs as an item of special damages in the injured party's case, facilitates the procurement of medical records, provides medical witnesses, and agrees to let the attorney maintain control of negotiations, in return for the attorney's representing the Government's lien. According to the Navy, the Government's medical care costs are important to the private attorney "for computing pain and suffering damages." The Navy said that the agreement between the Navy and the attorney is enforceable and beneficial to both parties.

We agree that the methods and extent of pursuit of workers' compensation claims should depend on the size of the claim, its recoverability, and the cost effectiveness of its pursuit compared to pursuit of other claims. However, we do not agree that the Navy should rely on private attorneys as a method of pursuit. We cited cases in our report in which substantial Government liens were involved because those were the cases we would have expected the Navy to have most actively pursued. In each case, the Navy relied on private attorneys.

The Navy maintains that the private attorney has a vested interest in protecting the Government's interests because of the need to obtain the Navy's cooperation in preparing his or her client's case. However, the attorney generally received the needed assistance without having to sign a written agreement to represent the Government's interests. The Navy filed a lien, thereby entering into a written agreement with the attorney, in only 4 of the 22 cases in which there was a request for medical records. In the other 18 cases, the medical records were generally provided without the attorney having to agree to protect the Government's interests. Furthermore, we could identify no basis for the Navy to refuse to provide the medical records to the attorney if requested to do so by the injured party.

The Navy's contention that the Government's medical care costs are important to the private attorney "for computing pain and suffering damages" is not true for workers' compensation cases. Because work-related injuries are nontort liabilities, pain and suffering damages are not included in workers' compensation settlements. Furthermore, these costs, like the medical records, were generally furnished to attorneys without a requirement that they sign a written agreement to represent the Government.

The discussion of the Gregory formula on pages 8 and 9 further demonstrates that private attorneys do not adequately protect the Government's interests. The California Workers' Compensation Appeals Board reduced the monetary amount of 16 liens filed by VA or DOD, generally by applying the Gregory formula. Although the formula should not apply to Government liens, none of the private attorneys who were "protecting the Government's interests," objected to its use.

Although the Army said that it had recently placed greater emphasis on the recovery of workers' compensation claims, the emphasis was limited to the "general guidance" mentioned on page 15. The Army still relies on the private attorney to protect the Government's interests.

Monitor the Medi-Cal pilot project

VA

VA said that the Medi-Cal project will be closely monitored to see whether contracting with a private lien service would improve VA recoveries. VA will reserve comment on this subject until the pilot project is complete. According to VA, when regulations implementing the recently enacted section 401 of Public Law 96-330 are issued, the number of veterans found eligible for VA hospital care should decrease. VA said that the law was designed to allow VA to determine whether certain veterans can, based on outside income or adequate private insurance coverage, be treated for non-service-connected disabilities outside VA.

DOD

The Army and Air Force Judge Advocates General did not comment on our recommendation. The Navy's Judge Advocate General said that, in lieu of contracting with a lien service company, recovery efforts would be far better served by closer monitoring of patient admissions at service medical facilities. The Navy said that efforts should be redoubled to introduce legislation to return medical care recoveries to the appropriated funds of the medical facilities. According to the Navy, better training and greater command support for recovery personnel and the recovery

program depend on medical facility administrators' determining that such efforts are directly beneficial to the basic health care missions of their facilities.

We too would like to see Government agencies improve their identification and pursuit of workers' compensation cases as an alternative to use of a private lien service. However, the comments provided by DOD and the services on our report offer little promise that such improvements will be made. Furthermore, as stated on page 10, even if Federal facilities improve their recovery programs, many cases would not be identified.

Legislation to return medical care recoveries to the appropriated funds of the medical facilities could be one way to improve recovery efforts. However, considerable progress could be made in improving recoveries without such legislation if DOD effectively implemented our recommendations.

Object to the application of the Gregory formula

VA

VA said that it is considering directing its District Counsel offices to object to the application of the Gregory formula.

In a March 26, 1982, letter in response to an inquiry from our office, VA's San Francisco Office of District Counsel advised us that the formula does not apply to VA liens. According to that office, several actions will be taken to insure that VA liens are not reduced by the State Workers' Compensation Appeals Board. Specifically, VA will

--file workers' compensation medical liens with notice to all parties and their insurance carriers,

--file requests for special notice,

--appear at hearings concerning the approval of proposed compromises of claims and object to a reduction of VA's liens, and

--file petitions for reconsideration concerning compromises that have reduced VA's liens.

According to a VA attorney, a letter has been sent to each of the State Workers' Compensation Appeals Board's district offices informing them that VA objects to any reduction, using the Gregory formula, of its medical liens.

We believe the actions taken by the Office of District Counsel in response to our inquiry should significantly increase VA recoveries.

DOD

The Navy's Office of the Judge Advocate General said that the Navy has already implemented our recommendation. According to the Judge Advocate General, claims offices in California have been asked to seek an opinion from the Director of California's Department of Industrial Relations on whether the Gregory formula applies to the Government's medical care liens. He said that the Navy is prepared to pursue the matter through litigation if the State says the formula applies to Government liens.

The Army and Air Force Judge Advocates General did not indicate any specific actions they plan to take to implement our recommendation. The Army stated, however, that it would notify all recovery judge advocates working in California of the specific legal issues addressed in our report. The Air Force Office of the Judge Advocate General said that the Travis Air Force Base claims office "does not use" the Gregory formula in lien cases. According to the Air Force, the Gregory formula "is not used to compromise cases with insurance companies prior to the filing of a lien in support of a compensation case." (Emphasis added.)

The Air Force's response demonstrates a lack of understanding of the California workers' compensation laws. As stated on page 8, the Gregory formula is used by State Workers' Compensation Appeals Boards to reduce liens--not by Government agencies to compromise cases with insurance companies before the filing of liens. We contacted the head of the claims office at Travis Air Force Base to discuss the comments on the Gregory formula attributed to his office. He said he was not aware of the Gregory formula.

ENCLOSURE II

Office of the
Administrator
of Veterans Affairs

Washington, D.C. 20420

Veterans
Administration

APRIL 12 1982

Mr. Gregory J. Ahart
Director, Human Resources Division
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Ahart:

Thank you for the opportunity to review your March 11, 1982, draft report, "Stronger VA and DoD Actions Needed to Recover Medical Costs for Services Provided to Persons with Work-Related Injuries or Illnesses."

GAO recommends that the Secretary of Defense and I:

--Reemphasize the need for medical facilities to refer potential work-related cases to the recovery office, and issue instructions requiring that all requests for medical records from an attorney, Workers' Compensation Appeals Board, or insurance company be referred to the recovery office for possible recovery action.

The identification of work-related cases and referral to the VA District Counsel offices begin at our medical facilities. On March 8, 1982, interim instructions were issued to implement the provisions of Public Law 97-72 on medical care cost recovery actions. Chapter 15, M-1, Part I, is being revised to reemphasize the importance of pursuing all cost recovery actions promptly.

--Revise regulations to emphasize active participation of Government representatives in workers' compensation settlements.

Paragraph 15.15d, Chapter 15, M-1, Part I, addresses the participation of medical center clinical staff in workers' compensation settlement claims and I do not believe additional instructions are necessary. The August 1, 1981, District Counsel's Manual emphasizes District Counsel participation in pursuing hospital cost collection efforts when veterans are treated for industrially incurred diseases or injuries. As part of the Merit Pay Performance Appraisal plan, the District Counsels are judged by their cost collection efforts. The medical care cost recovery program, including workers' compensation recoveries, was strongly emphasized at a 1980 General Counsel National Collection Conference. The conference participants included General Counsel field personnel and persons from other elements of the Agency.

--Monitor the progress of the Medi-Cal pilot project in California to determine whether a similar contract could improve VA and DoD recoveries.

ENCLOSURE II

The Medi-Cal project will be closely monitored to see if contracting with a private lien service will improve VA recoveries so I am reserving my comment on using this type of service until the pilot project is complete. The recent enactment of section 401 of Public Law 96-330 was designed to allow the VA to determine if certain veterans can, based on outside income or adequate private insurance coverage, be treated for nonservice-connected disabilities outside the VA. When regulations implementing this Public Law are in effect, it is anticipated that the number of veterans found eligible for VA hospital care will decrease.

—Direct recovery offices in California to object to the application of the Gregory formula to VA and DoD liens.

Directing our District Counsel offices to object to the application of the Gregory formula is currently under consideration.

Sincerely,

ROBERT P. NIMMO
Administrator

ENCLOSURE III

DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20301

April 19, 1982

Mr. Gregory J. Ahart
Director
General Accounting Office
Human Resource Division
Washington, D.C. 20548

Dear Mr. Ahart:

This is in response to your March 11, 1982, letter to Secretary Weinberger in which you requested our review and comment on the GAO Draft Report dated March 11, 1982, "Stronger VA and DoD Actions Needed to Recover Medical Costs for Services Provided to Persons With Work-Related Injuries or Illnesses" Code 401908 (OSD Case #5919). Since data for the draft report was obtained at David Grant Air Force Medical Center, Travis Air Force Base, Naval Regional Medical Center, Oakland, and Letterman Army Medical Center, San Francisco, we referred the draft report to the Offices of the Judge Advocate General for the Army, Navy and Air Force for their comments and the information supplied by them forms the basis of our response.

The Army Office of the Judge Advocate General concluded that the report was informative and identified an area which required better coordination between the local recovery judge advocate and the military hospital personnel and CHAMPUS coordinators to insure job related injuries are forwarded for collection. It also noted, however, that because the GAO report did not specify the age of the claims it investigated, it may or may not reflect the current status of the medical care recovery program at the Presidio of San Francisco. In addition, the Army noted that the validity of the GAO report may have been affected by its practice of asserting many claims directly against the injured person's employer and his workers' compensation carrier as opposed to utilizing the State's adjudication procedures. The Army also noted that greater emphasis has recently been placed on the assertion and recovery of workers' compensation claims and that such emphasis will continue. As a final point the Army will notify all recovery judge advocates working in the California area of the specific legal issues addressed by GAO.

In its assessment of the GAO Report, the Air Force Office of the Judge Advocate General observed that the value of medical care for which the Air Force would be entitled to recover in

ENCLOSURE III

these cases is debatable and the GAO Report makes no assessment of that value. With regard to compromises under the California Labor Code, Section 4903.1, known as the "Gregory formula," the Travis Air Force Base claims office reports that it does not use it in lien cases. Once a lien is filed the government's interest is protected and the Air Force recovers without the appearance of counsel except in unusual circumstances. The "Gregory formula" is not used to compromise cases with insurance companies prior to the filing of a lien in support of a compensation case. Travis Air Force Base further reports that they have been collecting one hundred percent from insurance companies at the time of settlement.

Claims personnel at Travis Air Force Base report a good working relationship with David Grant Air Force Medical Center, and most claims from the Air Force hospital are identified except when the reason for treatment is based upon a disease, and in those cases knowledge of the type of claim arises when there is a request for records. Base claims personnel believe all injuries are reported and they investigate every case which comes to their attention. Despite these measures it is still likely that some potential workers' compensation cases may not come to the attention of claims personnel in California or other states. To keep this to a minimum, the Air Force has placed additional emphasis upon identifying potential cases and Air Force claims and hospital regulations contain specific guidance for reporting and pursuing workers' compensation claims. The Air Force generally compromises workers' compensation claims in California only when liability is questionable.

The Navy Office of the Judge Advocate General pointed out that the GAO Report concerned problems encountered with California's workers' compensation programs. Efforts by GAO to show a widespread claims collection problem was based solely upon statements by "VA and DoD Officials" to the effect that GAO's findings in the San Francisco area "were representative of other VA and DoD medical facilities nationwide." No further studies were done in order to confirm or deny the extent of any collection problems. The Navy also observed that a weakness of the GAO Report is its failure to mention that efforts to recover medical care costs for work-related injuries and illnesses of federal workers employed by the military services were excluded. The study solely concerns workers' compensation cases involving members, dependents, and retirees working at off-base jobs.

The Navy also indicated that in arriving at the 12 percent recovery figure, GAO used as a basis Office of Management and Budget rates and multiplied those rates by the number of

ENCLOSURE III

inpatient and outpatient visits. While recovery efforts in this area can be improved, Navy policy is not to assert a claim for inpatient costs which are considered unnecessary. Further, the report fails to mention which OMB rates it used and whether those rates applied to the cases surveyed. The result is that the GAO figure is not representative of the Navy's collection efforts.

The Navy also disagreed with the GAO report's assertion that the claimant's attorney has little incentive to protect the Government's interest. Since the private attorney's decision to represent the Government's claim is voluntary and based upon a need to obtain the Navy's cooperation in the preparation of his or her client's case, the attorney has a vested interest in protecting the medical care lien. Furthermore, a written agreement is entered between the attorney and the Government whereby the Government allows the attorney to use the Government's medical care costs as an item of special damages in the injured party's case (important for computing pain and suffering damages). In addition, the Government facilitates the procurement of medical records, may provide medical witnesses, and agrees to let the private attorney maintain control of negotiations. In return, the private attorney represents the Government's lien. The agreement is enforceable and beneficial to both parties.

In its assessment of the four recommendations in the GAO Report, the Navy believes that the first has already been instituted as procedure in the San Francisco area and asserted that claims officers will be alerted in other areas regarding improved methods of identifying workers' compensation claims. The second recommendation to revise regulations to emphasize active participation of Government representatives in workers' compensation settlements was considered to be unnecessary at the present time, since Navy affirmative claims training and procedures already emphasize the importance of pursuing every potential claim. The methods of pursuit and the extent of the pursuit, however, depend upon the relative size of the claim, its recoverability, and the cost effectiveness of its pursuit vis-a-vis other claims being processed at the time. While the GAO Report cites a handful of cases where substantial Government liens were involved, no effort was made to report the average size of the Government liens in the workers' compensation cases surveyed.

In lieu of the third recommendation, the Navy commented that recovery efforts would be far better served by closer monitoring of patient admissions at service medical facilities. It is the Navy's opinion that efforts, supported by the GAO, should be redoubled to introduce legislation to return medical care recoveries to the appropriated funds of the

ENCLOSURE III

medical facilities. Better training and greater command support for recovery personnel and the recovery program are dependent upon medical facility administrators determining that such efforts are directly beneficial to the basic health care missions of their facilities.

Finally, the fourth recommendation to direct recovery offices in California to object to the application of the "Gregory formula" to VA and DoD liens has already been followed. Navy claims offices in California have been requested to seek an opinion from the Director of the California Department of Industrial Relations on whether the "Gregory formula" applies to the Government's medical care lien. Should his decision be in the affirmative, the Navy is prepared to pursue the matter through litigation.

We appreciate the opportunity to present this review for your consideration.

Sincerely,

Robert L. Gilliat
Assistant General Counsel
(Manpower & Health Affairs)

22096