

employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the contractor.

(b) The following clause is for IHS contracts only:

Under this contract, the contractor's employee may be required as a condition of employment to provide health services to non-IHS beneficiaries in order to meet contractual obligations. These services may be provided in either contractor or non-contractor facilities. The employee's status for Federal Tort Claims Act purposes is not affected.

**§ 900.187 Does FTCA apply to a self-termination contract if FTCA is not referenced in the contract?**

Yes.

**§ 900.188 To what extent shall the contractor cooperate with the Federal government in connection with tort claims arising out of the contractor's performance?**

(a) The contractor shall designate an individual to serve as tort claims liaison with the Federal government.

(b) As part of the notification required by 28 U.S.C. 2679(c), the contractor shall notify the Secretary immediately in writing of any tort claim (including any proceeding before an administrative agency or court) filed against the contractor or any of its employees that relates to performance of a self-determination contract or sub-contract.

(c) The contractor, through its designated tort claims liaison, shall assist the appropriate Federal agency in preparing a comprehensive, accurate, and unbiased report of the incident so that the claim may be properly evaluated. This report should be completed within 60 days of notification of the filing of the tort claim. The report should be complete in every significant detail and include as appropriate:

(1) The date, time and exact place of the accident or incident;

(2) A concise and complete statement of the circumstances of the accident or incident;

(3) The names and addresses of tribal and/or Federal employees involved as participants or witnesses;

(4) The names and addresses of all other eyewitnesses;

(5) An accurate description of all government and other privately-owned property involved and the nature and amount of damage, if any;

(6) A statement as to whether any person involved was cited for violating a Federal, State or tribal law, ordinance, or regulation;

(7) The contractor's determination as to whether any of its employees (including Federal employees assigned to the contractor) involved in the incident giving rise to the tort claim were acting within the scope of their employment in carrying out the contract at the time the incident occurred;

(8) Copies of all relevant documentation, including available police reports, statements of witnesses, newspaper accounts, weather reports, plats and photographs of the site or damaged property, such as may be necessary or useful for purposes of claim determination by the Federal agency; and

(9) Insurance coverage information, copies of medical bills, and relevant employment records.

(d) The contractor shall cooperate with and provide assistance to the U.S. Department of Justice attorneys assigned to defend the tort claim, including, but not limited to, case preparation, discovery, and trial.

(e) If requested by the Secretary, the contractor shall make an assignment and subrogation of all the contractor's rights and claims (except those against the Federal government) arising out of a tort claim against the contractor.

(f) If requested by the Secretary, the contractor shall authorize representatives of the Secretary to settle or defend any claim and to represent the contractor in or take charge of any action. If the Federal government undertakes the settlement or defense of any claim or action the contractor shall provide all reasonable additional assistance in reaching a settlement or asserting a defense.

**§ 900.189 Does this coverage extend to subcontractors of self-determination contracts?**

No. Subcontractors or subgrantees providing services to a Public Law 93-638 contractor or grantee are generally not covered. The only exceptions are Indian contractors such as those under

## § 900.190

subcontract with the California Rural Indian Health Board to carry out IHS programs in geographically defined service areas in California and personal services contracts under § 900.193 (for § 900.183(b)(1)) or § 900.183(b) (for § 900.190).

### MEDICAL-RELATED CLAIMS

#### **§ 900.190 Is FTCA the exclusive remedy for a tort claim for personal injury or death resulting from the performance of a self-determination contract?**

Yes, except as explained in § 900.183(b). No claim may be filed against a self-determination contractor or employee for personal injury or death arising from the performance of medical, surgical, dental, or related functions by the contractor in carrying out self-determination contracts under the Act. Related functions include services such as those provided by nurses, laboratory and x-ray technicians, emergency medical technicians and other health care providers including psychologists and social workers. All such claims shall be filed against the United States and are subject to the limitations and restrictions of the FTCA.

#### **§ 900.191 Are employees of self-determination contractors providing health services under the self-determination contract protected by FTCA?**

Yes. For the purpose of Federal Tort Claims Act coverage, an Indian tribe or tribal organization and its employees performing medical-related functions under a self-determination contract are deemed a part of the Public Health Service if the employees are acting within the scope of their employment in carrying out the contract.

#### **§ 900.192 What employees are covered by FTCA for medical-related claims?**

- (a) Permanent employees;
- (b) Temporary employees;
- (c) Persons providing services without compensation in carrying out a contract;
- (d) Persons required because of their employment by a self-determination contractor to serve non-IHS bene-

## 25 CFR Ch. V (4-1-06 Edition)

ficiaries (even if the services are provided in facilities not owned by the contractor); and

- (e) Federal employees assigned to the contract.

#### **§ 900.193 Does FTCA coverage extend to individuals who provide health care services under a personal services contract providing services in a facility that is owned, operated, or constructed under the jurisdiction of the IHS?**

Yes. The coverage extends to individual personal services contractors providing health services in such a facility, including a facility owned by an Indian tribe or tribal organization but operated under a self-determination contract with IHS.

#### **§ 900.194 Does FTCA coverage extend to services provided under a staff privileges agreement with a non-IHS facility where the agreement requires a health care practitioner to provide reciprocal services to the general population?**

Yes. Those services are covered, as long as the contractor's health care practitioners do not receive additional compensation from a third party for the performance of these services and they are acting within the scope of their employment under a self-determination contract. Reciprocal services include:

- (a) Cross-covering other medical personnel who temporarily cannot attend their patients;
- (b) Assisting other personnel with surgeries or other medical procedures;
- (c) Assisting with unstable patients or at deliveries; or
- (d) Assisting in any patient care situation where additional assistance by health care personnel is needed.

#### **§ 900.195 Does FTCA coverage extend to the contractor's health care practitioners providing services to private patients on a fee-for-services basis when such personnel (not the self-determination contractor) receive the fee?**

No.