

## SUBCHAPTER E—ORGANIZED RESERVES

### PART 564—NATIONAL GUARD REGULATIONS

#### MEDICAL ATTENDANCE AND BURIAL

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AUTHORITY: Section 110, 70A Stat. 600; 32 U.S.C. 110.

#### MEDICAL ATTENDANCE AND BURIAL

SOURCE: Sections 564.37 through 564.41 appear at 44 FR 16385, Mar. 19, 1979, unless otherwise noted.

#### § 564.37 Medical care.

(a) General. The definitions of medical care; policies outlining the manner, conditions, procedures, and eligibility for care; and the sources from which medical care is obtained are enumerated in AR 40-3.

(b) Elective care. Elective care in civilian medical treatment facilities or by civilian medical and dental personnel is not authorized. The medical care authorized by this regulation is limited to that necessary for the treatment of the disease or injury incurred under the conditions outlined herein.

(c) Prosthetic devices, prosthetic dental appliances, hearing aids, spectacles, orthopedic footwear, and orthopedic appliances. These items will be furnished—

(1) By Army medical facilities. (i) When required in the course of treatment of a disease or injury contracted or incurred in line of duty.

(ii) When required to replace items that have been lost, damaged, or de-

stroyed while engaged in training under sections 502-505 of title 32, U.S.C., not the result of negligence or misconduct of the individual concerned.

(2) By civilian sources. (i) Under the circumstances enumerated in paragraph (c)(1)(i) of this section, after approval of the United States Property and Fiscal Officer's (USPFO) of the respective States.

(ii) Under the circumstances enumerated in paragraph (c)(1)(ii) of this section, in the case of prosthetic devices, prosthetic dental appliances, hearing aids, orthopedic footwear, and orthopedic appliances when the unit commander determines that:

(A) Member is far removed from a Federal medical treatment facility.

(B) Lack of such device would interfere with the individual's performance of duty as a member of the ARNG.

(C) Approval must be obtained from the USPFO's of the respective States prior to replacement.

(iii) Under the circumstances enumerated in paragraph (c)(1)(ii) of this section, in the case of spectacles upon a determination by the unit commander that:

(A) The member is far removed from military medical treatment facility.

(B) The member has no other serviceable spectacles.

(C) Lack of a suitable pair of spectacles would interfere with the member's performance of duty as a member of the ARNG.

(D) Charges for replacement of spectacles will not exceed the rates stated in AR 40-330. Charges for replacement or repair by civilian sources over and above the allowable rates will be paid from the individual's personal funds.

(E) In cases covered by paragraphs (c)(2) (ii) and (iii) of this section, the unit commander will furnish a statement to support the voucher as follows:

#### Statement

Name \_\_\_\_\_, Rank \_\_\_\_\_,  
SSN \_\_\_\_\_, while engaged in training under  
section \*(502) \*(503) \*(504) \*(505) of title 32,  
United States Code sustained the \*(loss)  
\*(damage) \*(destruction) of his/her spectacles

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\_\_\_\_\_, description of loss, damage or destruction (type of lens and frames) not the result of misconduct or negligence on his/her part. The \*(repair) \*(replacement) would interfere with his/her performance of duty as a member of the Army National Guard. Date, \_\_\_\_\_, signature of unit commander \_\_\_\_\_.

\*Indicate applicable portions.

(F) Approval must be obtained from the USPFO of the respective State prior to repair or replacement of spectacles.

(32 U.S.C. 318-320 and 502-505)

### § 564.38 For whom authorized.

(a) In line of duty. Medical care is authorized for members who incur a disease or injury in line of duty under the following circumstances:

(1) When a disease is contracted or injury is incurred while enroute to, from, or during any type of training or duty under sections 503, 504, 505, and for Guardmembers on orders for over 30 days performing duty under section 502f of title 32, U.S.C. Such training includes, but is not limited to annual training, maneuvers and field exercises, service schools, small arms meets, and FTTD under aforementioned sections.

(2) When an injury is incurred while engaged in any type of training under section 502 of title 32, U.S.C. Such training includes, but is not limited to, unit training assembly, multiple unit training assembly, and training in aerial flight, other than FTTD under 502f.

(3) While not on duty and while voluntarily participating in aerial flights in Government-owned aircraft under proper authority and incident to training. Guardmembers are authorized medical and dental care required as the result of an injury incurred in line of duty.

(4) Medical care is not authorized at Army expense for members who incur an injury while enroute to or from any type of training under section 502, except for Guardmembers ordered to perform duty for over 30 days under section 502f of title 32, U.S.C. Line of duty investigations and authorization for any medical treatment for conditions incurred while the members were performing Reserve Enlistment Program of 1963 (REP 63) training in a Federal

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status, or training under title 10, U.S.C. are the responsibility of the Army Area commander under whose jurisdiction the member was training, even though the individual may have returned to his/her National Guard status.

(b) Not in line of duty. Members who incur an injury or contract a disease during any type of training or duty under sections 502f, 503, 504, or 505 of title 32, U.S.C., when it is determined to be not in line of duty, may be furnished medical care at Army expense during the period of training.

(c) Armory drill status. Members who incur an injury while in an armory drill status under section 502 of title 32, U.S.C., when it is determined to be not in line of duty, may not be furnished medical care at Army expense.

(32 U.S.C. 318-320 and 502-505)

### § 564.39 Medical care benefits.

(a) A member of the ARNG who incurs a disease or injury under the conditions enumerated herein is entitled to medical care, in a hospital or at his/her home, appropriate for the treatment of his/her disease or injury until the resulting disability cannot be materially improved by further medical care.

(b) If it is determined that the disease or injury was directly related to authorized activities surrounding the care of the original disease or injury, medical care may be continued in the same manner as if it had occurred during the training period.

(c) When members who incur a disease or an injury during a period of training or duty under title 32, U.S.C. 503, 504, 505, or 502f are admitted to an Army medical treatment facility, and it appears that a finding of "not in line of duty" may be appropriate, a formal line of duty investigation should be promptly conducted, and a copy of the report furnished the treatment facility. If these findings result in a "not in line of duty" determination prior to the date the training is terminated, every effort should be made to assist the hospital concerned in disposing of the patient from the hospital by the date the training is terminated or as soon thereafter as he/she becomes transportable. Medical care furnished such member

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after the termination of the period of training is not authorized at Army expense unless the “not in line of duty” determination is ultimately reversed. The individual may be furnished medical care at Army expense from the date the training is terminated to the date the member receives notification of this action. Medical care received subsequent to the member’s receipt of such notification is not authorized at Army expense. In the event a line of duty investigation has not been made by the date the training is terminated, every effort will be made to arrive at a determination as soon thereafter as possible.

(32 U.S.C. 318-320 and 502-505)

### § 564.40 Procedures for obtaining medical care.

(a) When a member of the ARNG incurs a disease or an injury, while performing training duty under sections 502-505 of title 32, U.S.C., he/she will, without delay, report the fact to his/her unit commander. Each member will be informed that it is his/her responsibility to comply with these instructions, and that failure to promptly report the occurrence of a disease or injury may result in the loss of medical benefits.

(b) Authorization for care in civilian facility. (1) An individual who desires medical or dental care in civilian medical treatment facilities at Federal expense is not authorized such care without written or verbal authorization by the Chief, National Guard Bureau or his/her designee, except in an emergency.

(2) When medical care is obtained without prior authorization, the details will be submitted to NGB-ARS as soon as practicable. The notification of medical care will be made following the format in the appendix. The notification will be reviewed by NGB-ARS and replied to as deemed appropriate.

(c) Status while undergoing hospitalization. The ARNG status of an individual is not affected by virtue of his hospitalization. The provisions of AR 135-200 will apply. Determination of requirement for continued hospitalization will be made by the MTF commander. Paragraph (d) of this section will apply when a final “not in line of

duty” determination has been made. Under no condition will an individual be assigned to the medical holding unit of a hospital.

(d) Disposition of hospitalized cases. When it is determined that a hospitalized ARNG member has obtained the maximum benefits from hospitalization and there is no disability remaining from the condition for which hospitalized, he/she will be returned to his/her duty station or, if none, to his/her home of record at the time of entry into the hospital.

#### APPENDIX

##### NOTIFICATION OF INJURY

Date \_\_\_\_\_

SUBJECT: Notification of Medical Care and/or Hospitalized Beyond the End of Training Periods.

THRU: The Adjutant General State of \_\_\_\_\_

TO: NGB-ARS, Washington, DC 20310.

In accordance with paragraph 8, NGR 40-3, notification of medical care is furnished below:

Name: \_\_\_\_\_

SSN: \_\_\_\_\_

Grade: \_\_\_\_\_

Parent unit and station: \_\_\_\_\_

Type and inclusive dates of training: \_\_\_\_\_

Date and place of incident: \_\_\_\_\_

Diagnosis: \_\_\_\_\_

LOD status: \_\_\_\_\_

Name and distance of nearest Federal medical facility: \_\_\_\_\_

Name and address of medical facilities utilized: \_\_\_\_\_

Estimated cost and duration of treatment: \_\_\_\_\_

Summary of incident: \_\_\_\_\_

(32 U.S.C. 318-320 and 502-505)

### § 564.41 Burial.

(a) *Purpose.* The purpose of this section is to provide policies and designate responsibilities for the care and disposition of remains of members of the Army National Guard entitled to burial at Federal expense.

(b) *Authority.* Act of 10 August 1956 (70A Stat. 112) as amended, title 10 U.S.C., sections 1481 through 1488, applicable to military personnel and their dependents.

(c) *Policy.* The provisions of AR 638-40 are applicable to battalion and higher level units of the Army National Guard, except as modified herein.

(d) *Responsibilities.* (1) The Chief, National Guard Bureau is responsible for prescribing procedures for the care and disposition of remains of members of the ARNG who die while—

(i) Performing full-time training at other than an Active Army installation under sections 316, 502, 503, 504, and 505, title 32, U.S.C.

(ii) Performing authorized travel to or from training outlined in paragraph (d)(1)(i) of this section.

(iii) Being hospitalized or undergoing treatment at Government expense for an injury incurred or disease contracted while performing duty indicated in paragraphs (d)(1) (i) and (ii) of this section.

(iv) Performing inactive duty training (IDT) under section 502, title 32, U.S.C. (It is to be noted that present law does not provide for payment of burial expenses from Federal funds for ARNG personnel killed while traveling to or from IDT.)

(2) Active Army installations are responsible for the care and disposition of remains of members of the National Guard who die while—

(i) Performing active duty for training under title 10 and training or other full-time training duty at an Active Army installation under sections 502, 503, 504, and 505, title 32, U.S.C.

(ii) Performing authorized travel to or from training specified in paragraph (d)(2)(i) of this section.

(iii) Being hospitalized or receiving treatment at Government expense as a result of injury incurred or disease contracted while performing duty indicated in paragraphs (d)(2) (i) and (ii) of this section.

(3) State adjutants general are responsible for notification of death in accordance with chapter 10, AR 600-10.

(e) *Limitation of burial expense.* Payment of burial expenses is limited to an amount not exceeding that allowed by the Government for such services and in no circumstances may payment exceed the amount actually expended. The amount allowed when relatives incur the expenses will be in accordance with the following limitation:

(1) If death occurs where a properly approved Contract for Care of Remains is in force (Army, Navy, or Air Force contracts), the amount to be allowed

for each item will not exceed the amount allowable under such contract.

(2) If death occurs where no contract is in force, reimbursement for items or services, including preparation and casketing will be limited to the stipulated amount included in chapter 4, AR 638-40.

(3) Reimbursement for transportation will be limited to the amount for which the Government could have obtained required common carrier transportation plus the change made for hearse service from the common carrier terminal to the first place of delivery.

(4) Reimbursement for interment expenses is limited to the amounts provided in chapter 13, AR 638-40.

(f) *Accountability for clothing.* (1) If in a serviceable condition, the uniform in possession of the deceased will be used and accountability dropped in accordance with NGR 710-2.

(2) If a serviceable uniform is not in possession of the deceased, a request for issue of required items will be prepared. Accountability and responsibility for items issued will be terminated by the responsible officer upon execution of a statement on DA Form 3078 or 3345, substantially as follows:

The items of clothing enumerated above were issued to clothe the remains of \_\_\_\_\_ for funeral purposes. At the time of his/her death, the deceased was a member in good standing in this organization.

(g) *ARNG personnel serving in a non-pay status.* In accordance with title 32, U.S.C. section 503, a member may, with his/her consent, either with or without pay, be ordered to perform training or other duty in addition to that prescribed under title 32, U.S.C. section 502(a). Duty without pay will be considered for all purposes as if it were duty with pay.

[44 FR 18489, Mar. 28, 1979]

#### CLAIMS FOR DAMAGES INVOLVING THE NATIONAL GUARD AND AIR NATIONAL GUARD

SOURCE: Sections 564.51 through 564.58 appear at 19 FR 5168, Aug. 17, 1954, unless otherwise noted. Redesignated at 26 FR 12767, Dec. 30, 1961.

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## § 564.53

### § 564.51 Purpose.

Sections 564.51 to 564.58 are published for the information and guidance of all concerned to implement the statutory authority by defining the claims payable thereunder and the procedure for establishing, determining, and settling such claims. They provide the exclusive authorization and procedure for the determination and settlement of claims within the following statutory authority.

### § 564.52 Statutory authority.

(a) Limited authority for the payment of claims arising out of National Guard and Air National Guard activities has been granted annually for several years by provisions of the annual Appropriations Act for the Department of Defense. A recent provision is as follows:

The following sums are appropriated, \* \* \* For payment of \* \* \*; claims (not to exceed \$1,000 in any one case) for damages to or loss of private property incident to the operation of Army and Air National Guard camps of instruction, either during the stay of units of said organizations at such camps or while en route thereto or therefrom; \* \* \* (Act of August 1, 1953, Public Law 179, 83d Cong.).

(b) In accordance with general principles of law, the National Guard and the Air National Guard when not in Federal service are not agencies of the United States, and the United States is not liable for injury or damage arising from their activities. Thus, claims for such injury or damage are not cognizable under the Federal Tort Claims Act, as revised and codified (62 Stat. 982, 28 U.S.C. 3671-80). By the statutory provisions referred to in paragraph (a) of this section, the United States assumes an obligation to settle administratively limited classes of claims relating to activities of the National Guard and the Air National Guard.

### § 564.53 Definitions.

As used in §§ 564.51 to 564.58, the following terms shall have the meaning hereinafter set forth:

(a) *Claim*. A written demand for payment in money.

(b) *Private property*. Real or personal property, excluding property owned by any government entity, Federal, State, city, county, or town, and excluding

stocks, bonds, chose in action, debts, and insurance policies.

(c) *Camps of instruction*. Regularly scheduled training for units in organized camps, or bivouacs and maneuvers away from such camps constituting part of such training.

(d) *While en route thereto or therefrom*. The period of time during which a unit as distinguished from its individual members is travelling from its rendezvous to a camp of instruction or return, or from the camp of instruction or on a regularly scheduled maneuver and return thereto, and the routes followed by the unit. The term does not include the movement of individuals.

(e) *Proximate cause*. No precise definition of this term can be given. Whether acts or omissions of personnel constitute proximate cause must be determined in accordance with the local law. In general, an act or omission may be said to have been a proximate cause of the accident or incident if it was one of the impelling forces resulting in the accident or incident. For example, in a rear-end collision, the failure of the driver of the following car to stop in time is said to be the proximate cause of the accident. But, if the driver of the leading car stopped so suddenly and without warning that the second car, using the utmost diligence, could not have stopped, the conduct of the driver of the leading car would be said to have been the proximate cause of the accident. An act or omission without the existence of which the accident or incident would not have occurred but which cannot be said to have brought it about is a condition and would not constitute a basis for liability, or, if committed by the claimant, would not constitute a basis for denial of his claim. For example, violations of statutes or ordinances providing standards of safety may be negligence in themselves, but may not constitute the bases of liability or for denial of a claim.

(f) *Scope of employment*. Scope of employment is determined in accordance with the law of the place where the accident or incident occurred, except that statutes in derogation of the common law, such as statutes creating a presumption that an employee is in

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scope of employment if using the employer's car with permission, are not controlling. An act or omission is within the scope of employment if such activity is expressly or impliedly directed or authorized by competent authority or is at least in part intended to further the mission of the unit or organization, or the interests of the National Guard or the Air National Guard. In determining whether an act or omission was within the scope of employment, consideration must be given to all the attendant facts and circumstances, including the time, place, and purpose thereof; whether it was in furtherance of the omission of the unit of the National Guard or Air National Guard; whether it was usual for or reasonably to be expected of personnel of the classification and grade involved; and whether the instrumentality causing the damage or injury resulted was property of the National Guard or Air National Guard, or of a State or the Federal Government being used by the National Guard or Air National Guard.

#### § 564.54 Claims payable.

Claims for damage to or loss of private property proximately resulting from authorized activities incident to the operation of camps of instruction, including maneuvers, field exercises, training of units and personnel, movement of vehicles, operation of aircraft, maintenance and support of units and personnel, tortious acts or omissions of military personnel or civilian employees of the National Guard or Air National Guard in the scope of employment, and claims arising under a contract, executed incident to camps of instruction, even though legally enforceable under the express terms of the contract and no other, are payable under §§ 564.51 to 564.58.

#### § 564.55 Claims not payable.

(a) *Contributory negligence.* Negligence or wrongful act of the claimant or of his agent or employee, a proximate cause of the accident or incident, bars a claim. The law of the place where the accident or incident occurred will be followed in determining whether contributory negligence is present but the doctrine of comparative negligence will not be applied.

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(b) *Personal injury.* Claims for personal injury are not cognizable under the act of §§ 564.51 to 564.58.

(c) *Use and occupancy.* Claims for use and occupancy, payment of which is governed by the terms of a lease or contract, are not cognizable under §§ 564.51 to 564.58.

#### § 564.56 Action by claimant.

(a) *Who may present a claim.* A claim for damage to or loss of private property may be presented by the owner, or his agent or legal representative. The word "owner", as so used, includes bailees, lessees, mortgagors, conditional vendors, and subrogees, but does not include mortgagees, conditional vendors, and others having title for purposes of security only. If filed by an agent or legal representative, the claim should be filed in the name of the owner, signed by such agent or legal representative, showing the title or capacity of the person signing, and be accompanied by evidence of the appointment of such person as agent, executor, administrator, guardian, or other fiduciary. If filed by a corporation the claim should show the title or capacity of the officer signing it and be accompanied by evidence of his authority to act. In case of the death of the proper claimant, if it appears that no legal representative has been or will be appointed, the claim may be presented by any person who, by reason of the family relationship, has in fact incurred the expense for which the claim is made.

(b) *Form of claim.* A claim shall be submitted in the form of a statement signed by the claimant, setting forth his address, and stating briefly all the facts and circumstances relating to the damage for which compensation is claimed, including a description of the property, evidence of its value, the nature and extent of the damage, the date and place such damage was incurred, the agency by which it was caused, if known, and the amount. Standard Form 95 (Claim for Damage or Injury), appropriately modified by deleting references to "injury" and "personal injury," may be used for this purpose. The claim and all papers accompanying it which are signed by the claimant should bear like signatures.

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(c) *Time within which claim must be presented.* A claim cognizable under §§ 564.51 to 564.58 must be submitted within two years of the date of occurrence of the accident or incident.

(d) *Place of filing.* A claim cognizable under §§ 564.51 to 564.58 must be presented in writing to the adjutant general, or his duly authorized representative, of the State, Territory, Commonwealth, or District of Columbia, having jurisdiction over the personnel or unit involved in the accident or incident out of which the claim arose, or to the office of the Chief, National Guard Bureau, The Pentagon, Washington, DC 20310.

(e) *Evidence to be submitted by claimant—(1) General.* A claim for damage to or loss of private property must be specific and substantiated by evidence of the damage or loss. A mere statement that such property was damaged or lost and that a certain amount is a fair compensation therefor is not sufficient to support a claim.

(2) *Motor vehicles, buildings, fences, and other structures.* The claimant must submit, if repairs or replacement has been effected, itemized bills therefor, signed and certified as just and correct by the repairman or suppliers, together with evidence of payment thereof, if made; if repairs or replacement has not been effected, an estimate of the cost thereof signed by a person competent to effect such repairs or replacement.

(3) *Crops, trees, land, and other realty.* The claimant must submit an itemized signed estimate of the cost of repairs or restoration of the property, supported by evidence of the number of acres of land, crops, or trees involved, the normal yield per acre and the market value of the property per unit of measure common to the property damaged, or the estimated length of time the land will be unfit for grazing, the normal rental value per acre of similar land in the vicinity, and such other information as may be necessary.

(4) *Contracts.* A copy of the contract, or competent evidence of the provisions thereof, will be furnished by the claimant in support of a claim cognizable under § 564.54.

(5) *Additional evidence.* The claims officer, the interested State adjutant general, or the Chief National Guard

Bureau, may require the claimant to submit such additional evidences as he deems necessary to substantiate the claim, including, without limiting the generality of the foregoing, estimates of cost, of repairs from repairman other than those whose estimates the claimant has submitted with the claim and evidence of ownership of or interest in the property.

### § 564.57 Procedure.

Responsibility for the investigation of claims cognizable under §§ 564.51 to 564.68 and of accidents or incidents which may give rise to such claims rests in the adjutants general of the several States. Accordingly, claims received by the National Guard Bureau, or other agencies of the United States, will be referred to the adjutants general of the interested States. Regulations promulgated by the State adjutants general should require the prompt investigation of all accidents or incidents which might result in claims cognizable hereunder, whether or not claims have been filed.

### § 564.58 Determination of amount allowable.

(a) The maximum amount which may be allowed is the value of the property immediately prior to the accident or incident. Subject to the foregoing, the amount allowable is the cost, incurred or estimated to be incurred, of replacing the property, or of restoring it to the condition in which it was immediately prior to the accident or incident. However, if as the result of the repairs effected, the value of the property is appreciably enhanced, a sum equal to the increase in value will be deducted from the cost of restoring the property in determining the amount allowed. Conversely, if after the repairs have been effected, the value of the property is appreciably less than that prior to the accident or incident, the difference in value will be added to the cost of repairs in determining the amount allowed. However, no award in excess of the amount claimed may be made.

(b) In determining the amount allowable for repairs, the permanency of parts replaced will be considered and deductions made for depreciation as

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appropriated. Thus, an automobile tire is not expected to last through the life of a vehicle so that when a tire three-fourths worn is replaced with a new tire, the amount allowable is one-fourth of the cost of the new tire. The same principle applies to batteries and other items of equipment or accessories during relatively short wearout periods. However, no allowance for depreciation is made in replacing parts, such as fenders, bumpers, radiators,

which normally would last through the life of the vehicle.

(c) Deprivation of use of property (including motor vehicles) is allowable as an item of damages, but only in those cases where the claimant has sustained legally provable damages. Towing charges are also allowable items of damage. However, interest, cost of preparation of claim and of securing supporting evidence, inconvenience, and similar items are not property allowable items of damage.