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B-175086, May 16, 1972

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GENERAL GOVERNMENT MATTER - AUTOMOBILE LIABILITY INSURANCE - PROCUREMENT WITH APPROPRIATED FUNDS CONCERNING WHETHER APPROPRIATED MEDICAL CARE FUNDS MAY BE USED TO PROVIDE AUTOMOBILE LIABILITY INSURANCE COVERAGE FOR DISABLED VETERAN PATIENTS BEING GIVEN DRIVER TRAINING AS PART OF A VETERANS ADMINISTRATION MEDICAL REHABILITATION PROGRAM. ALTHOUGH THE GOVERNMENT IS NOT ORDINARILY A PURCHASER OF INSURANCE, THE COMP. GEN. IS NOT AWARE OF ANY PROVISION OF LAW PROHIBITING THE PRACTICE. SINCE IT IS WELL SETTLED THAT AN APPROPRIATION FOR A PARTICULAR PURPOSE IS AVAILABLE FOR EXPENSES INCIDENT TO THAT PURPOSE, GAO WOULD NOT BE REQUIRED TO OBJECT TO THE PROPOSED PROCUREMENT, SO LONG AS IT IS CONFINED TO COVERAGE OF VETERAN PATIENT-TRAINEES.

TO MR. DONALD E. JOHNSON:

YOUR LETTER OF JANUARY 25, 1972, REQUESTED OUR VIEWS AS TO WHETHER APPROPRIATED MEDICAL CARE FUNDS MAY BE EXPENDED AS A NECESSARY COMPONENT OF THE VETERANS ADMINISTRATION MEDICAL REHABILITATION PROGRAM TO PROVIDE AUTOMOBILE LIABILITY INSURANCE COVERAGE FOR DISABLED VETERAN PATIENTS BEING GIVEN VETERANS ADMINISTRATION CONDUCTED DRIVER TRAINING UNDER THE CIRCUMSTANCES CITED.

YOU STATE THAT YOUR HOSPITALS ARE OFFERING DRIVER'S TRAINING PROGRAMS TO CERTAIN ELIGIBLE DISABLED VETERANS, SUCH TRAINING HAVING BEEN PRESCRIBED AS PART OF THEIR MEDICAL REHABILITATION. SINCE THE INSTALLATION OF SPECIAL EQUIPMENT IN THE AUTOMOBILES IS REQUIRED BEFORE SUCH A PROGRAM MAY BE MADE OPERABLE, THE USE OF GOVERNMENT-OWNED VEHICLES IS MORE ECONOMICALLY FEASIBLE THAN CONTRACTUAL ARRANGEMENTS WITH A PRIVATE DRIVER'S TRAINING INSTRUCTION AGENCY. AMONG THE LEGAL REQUIREMENTS FOR DRIVING SUCH CARS IS LIABILITY INSURANCE.

OBVIOUSLY, ANY TORT LIABILITY WHICH MIGHT BE INCURRED BY THE INSTRUCTOR, WHO IS A GOVERNMENT EMPLOYEE, WOULD BE COVERED BY THE FEDERAL TORT CLAIMS ACT, 28 U.S.C. 2671-2680. HOWEVER, YOUR LETTER INDICATES THAT EVEN THOUGH THE EMPLOYEE - INSTRUCTOR CONTROLS THE CAR, THE PATIENT-TRAINEE IS THE ACTUAL DRIVER AND COULD VERY WELL BE CHARGED AND HELD RESPONSIBLE FOR PERSONAL INJURY AND PHYSICAL DAMAGE INCURRED THROUGH THE NEGLIGENT OPERATION OF THE VEHICLE. SINCE THE PATIENT TRAINEE IS NOT A GOVERNMENT EMPLOYEE, HE WOULD NOT BE PROTECTED BY THE FEDERAL TORT CLAIMS ACT AND WOULD BE SUBJECT TO PERSONAL LIABILITY.

YOU FURTHER STATE THAT SEVERELY DISABLED PATIENTS, SUCH AS SPINAL CORD INJURED VETERANS, ARE UNABLE TO SECURE OR CANNOT AFFORD ADEQUATE INSURANCE COVERAGE TO PARTICIPATE IN THE SPECIALIZED REHABILITATIVE PROGRAM. HENCE, YOU REQUEST OUR VIEWS AS TO WHETHER APPROPRIATED MEDICAL CARE FUNDS MAY BE EXPENDED AS A NECESSARY COMPONENT OF THE REHABILITATION PROGRAM TO PROVIDE AUTOMOBILE

LIABILITY INSURANCE COVERAGE FOR PATIENTS BEING GIVEN VA CONDUCTED DRIVER-TRAINING, WHERE SUCH COVERAGE IS ESSENTIAL TO THE SUCCESS OF THE PROGRAM.

AS YOU INDICATED IN YOUR LETTER, IT IS THE SETTLED POLICY OF THE UNITED STATES TO ASSUME ITS OWN RISKS OF LOSS IN BOTH TORT MATTERS AND DAMAGE TO ITS OWN PROPERTY AND, HENCE, THE GOVERNMENT DOES NOT ORDINARILY PURCHASE INSURANCE. THIS POLICY IS BASED UPON THE THEORY THAT THE MAGNITUDE OF THE GOVERNMENT'S RESOURCES MAKES IT MORE ADVANTAGEOUS FOR THE GOVERNMENT TO CARRY ITS OWN RISKS THAN TO HAVE THEM ASSUMED BY PRIVATE INSURERS AT RATES SUFFICIENT TO COVER ALL LOSSES, TO PAY THEIR OPERATING EXPENSES, AND TO LEAVE SUCH INSURERS A PROFIT. THUS, IT HAS BEEN HELD CONSISTENTLY THAT APPROPRIATED MONEYS ARE NOT AVAILABLE FOR THE PAYMENT OF INSURANCE PREMIUMS ON GOVERNMENT OWNED PROPERTY IN THE ABSENCE OF SPECIFIC STATUTORY AUTHORITY FOR THE PAYMENT OF SUCH PREMIUMS. 39 COMP. GEN. 145 (1959); 21 COMP. GEN. 928 (1942), AND CASES CITED THEREIN.

HOWEVER, THIS PRACTICE OF SELF-INSURANCE IS ONE OF POLICY AND NOT OF POSITIVE LAW, AND APPLIES ONLY TO INSURANCE OF THE GOVERNMENT'S RISK IN A PARTICULAR INSTANCE. THE RISK FOR WHICH PROTECTION IS DESIRED IN THIS CASE IS NOT THAT OF THE GOVERNMENT, FEDERAL PROPERTY, OR ONE OF ITS EMPLOYEES (WHICH RISK IS COVERED BY THE FEDERAL TORT CLAIMS ACT) BUT, RATHER, THAT OF THE VETERAN PATIENT-TRAINEES, WHO ARE NOT EMPLOYEES OF THE GOVERNMENT. HENCE, IT WOULD APPEAR THAT THE ABOVE STATED POLICY WOULD NOT BE FOR APPLICATION HERE.

THE APPROPRIATION FOR MEDICAL CARE FOR THE CURRENT FISCAL YEAR, CONTAINED IN THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT: SPACE SCIENCE, VETERANS, AND CERTAIN OTHER INDEPENDENT AGENCIES APPROPRIATION ACT, 1972, APPROVED AUGUST 10, 1971, PUB. L. 92-78, 85 STAT. 271, UNDER THE HEADING VETERANS ADMINISTRATION AND THE SUB-HEADING MEDICAL CARE, 85 STAT. 279, PROVIDES:

"FOR EXPENSES NECESSARY *** FOR FURNISHING, AS AUTHORIZED BY LAW, INPATIENT AND OUTPATIENT CARE AND TREATMENT TO BENEFICIARIES OF THE VETERANS ADMINISTRATION *** ."

IT IS A SETTLED RULE OF APPROPRIATION CONSTRUCTION THAT, WHERE AN APPROPRIATION IS MADE FOR A PARTICULAR OBJECT, PURPOSE, OR PROGRAM, IT IS AVAILABLE FOR EXPENSES WHICH ARE REASONABLY NECESSARY OR PROPER OR INCIDENT TO THE PROPER EXECUTION OF THE OBJECT OR THE PROPER ACCOMPLISHMENT OF THE PURPOSE OR PROGRAM FOR WHICH THE APPROPRIATION WAS MADE, EXCEPT AS TO EXPENDITURES IN CONTRAVENTION OF LAW, OR FOR SOME PURPOSE FOR WHICH OTHER APPROPRIATIONS ARE MORE SPECIFICALLY AVAILABLE. 50 COMP. GEN. 534 (1971); 44 COMP. GEN. 312 (1964); 42 COMP. GEN. 480 (1963); ID. 708 (1963); 31 COMP. GEN. 364 (1952); 29 COMP. GEN. 419 (1950).

WE ARE NOT AWARE OF ANY PROVISION OF LAW SPECIFICALLY PROHIBITING THE PURCHASE OF LIABILITY INSURANCE IN THE CIRCUMSTANCES HEREIN STATED. THIS CONNECTION, 38 U.S.C. 4101(A) PRESCRIBES THE FUNCTIONS OF YOUR DEPARTMENT OF MEDICINE AND SURGERY AS "THOSE NECESSARY FOR A COMPLETE MEDICAL AND HOSPITAL SERVICE *** FOR THE MEDICAL CARE AND TREATMENT OF VETERANS." NOR ARE WE AWARE OF ANY OTHER APPROPRIATION MAKING MORE SPECIFIC PROVISION FOR SUCH EXPENDITURES THAN THE MEDICAL CARE APPROPRIATION CITED. HENCE, OUR OFFICE WILL NOT BE REQUIRED TO OBJECT TO THE USE OF SUCH APPROPRIATION TO PROCURE LIABILITY INSURANCE FOR THE VETERAN PATIENT-TRAINEES PARTICIPATING IN THE MEDICAL REHABILITATION PROGRAM REFERRED TO IN YOUR LETTER OF JANUARY 25, 1972, IF IT IS ADMINISTRATIVELY DETERMINED THAT SUCH TRAINING IS A NECESSARY PART OF THE MEDICAL REHABILITATION OF THE PATIENT AND THAT SUCH INSURANCE COVERAGE OF THE PATIENT-TRAINEE IS ESSENTIAL TO THE SUCCESS THEREOF. CARE SHOULD BE TAKEN TO CONFINE THE INSURANCE

COVERAGE TO THE VETERAN PATIENT-TRAINEES ONLY, SINCE SUCH COVERAGE IS NOT NECESSARY FOR THE PROTECTION OF THE GOVERNMENT, FEDERAL PROPERTY OR OF ITS FEDERAL EMPLOYEE-INSTRUCTORS, AND THE PREMIUMS THEREON SHOULD BE ADJUSTED ACCORDINGLY.