

**Army Regulation 135–381**

**Army National Guard and Reserve**

# **Incapacitation of Reserve Component Soldiers**

**Headquarters  
Department of the Army  
Washington, DC  
3 January 2021**

**UNCLASSIFIED**

# ***SUMMARY of CHANGE***

AR 135–381

Incapacitation of Reserve Component Soldiers

This major revision, dated 3 January 2021--

- o Incorporates Army Directive 2017–17 (paras 1–6 through 1–8 and glossary, section II).
- o Removes separate authority to approve claims under 6 months and delegates authority to approve payment of benefits paid, under 37 USC 204(g) and (h), for up to 12 months, to incapacitated members, to the Chief, National Guard Bureau and the Chief, Army Reserve, respectively (paras 1–6 and 1–8).
- o Clarifies that the Chief, Army Reserve and Chief, National Guard Bureau may both further delegate their designated authorities (paras 1–6a and 1–8a).
- o Streamlines and centralizes the Reserve Component approval authority process (paras 1–7 and 1–8).
- o Provides further clarification on approval authority and process requirements for the Army Human Resource Center (paras 1–7c, 1–7l, 1–10l, 1–11c, and 4–1).
- o Establishes the Deputy Chief of Staff, G–1 as the final appellate authority for all claims under this policy (para 1–7i).
- o Provides clarification on tier I and tier II incapacitation pay (para 2–3).
- o Clarifies the duration and limits of incapacitation pay (para 2–5).
- o Updates duty status requirements and travel status policy (paras 2–6 and 2–10).
- o Clarifies specific criteria for incapacitation pay while performing active duty greater than 30 days (para 2–9).
- o Clarifies the limitations on eligibility requirements for incapacitation pay while in a travel status (para 2–10).
- o Implements Department of Defense Instruction 1241.01 requirements, identifying line of duty timeline requirements and the in line of duty determination as a prerequisite for incapacitation pay (para 2–11).
- o Updates Incapacitation Review Board duties, responsibilities, membership, and frequency of the board (paras 3–3 and 3–4).
- o Adds special considerations for incapacitation pay (chap 4).


Effective 3 February 2021

Army National Guard and Reserve  
Incapacitation of Reserve Component Soldiers

By Order of the Secretary of the Army:

JAMES C. MCCONVILLE  
General, United States Army  
Chief of Staff

Official:

  
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to the Secretary of the Army

**History.** This publication is a major revision. The portions affected by this major revision are listed in the summary of change.

**Summary.** This regulation provides policies regarding incapacitation pay for Soldiers of the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise noted. This regulation implements DODI 1241.01. Procedures regarding application for incapacitation pay are located in DA Pam 135–381.

**Applicability.** This regulation applies to the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve unless otherwise stated. During mobilization, the

proponent may modify chapters and policies contained in this regulation.

**Proponent and exception authority.**

The proponent of this regulation is the Deputy Chief of Staff, G–1. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25–30 for specific guidance.

**Army internal control process.** This regulation contains internal control provisions in accordance with AR 11–2 and identifies key internal controls that must be evaluated (see appendix B).

**Supplementation.** Supplementation of this regulation and establishment of command or local forms are prohibited without

prior approval from the Deputy Chief of Staff, G–1 (DAPE–PRC), 300 Army Pentagon, Washington, DC 20310–0300.

**Suggested improvements.** Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Deputy Chief of Staff, G–1 (DAPE–PRC), 300 Army Pentagon, Washington, DC 20310–0300.

**Committee management.** AR 15–39 requires the proponent to justify establishing or continuing committee(s), coordinate draft publications, and coordinate changes in committee status with the Office of the Administrative Assistant to the Secretary of the Army, Analysis, and Integration Cell (AAAI–CL), 105 Army Pentagon, Washington, DC 20310–0105. Further, if it is determined that an established “group” identified within this regulation later takes on the characteristics of a committee as found in AR 15–39, then the proponent will follow AR 15–39 requirements for establishing and continuing the group as a committee.

**Distribution.** This publication is available in electronic media only and is intended for the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

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## **Chapter 1 Introduction**

### **Section I**

#### **General**

##### **1–1. Purpose**

This regulation prescribes policies and implements statutory authorities regarding incapacitation (INCAP) pay and allowance and reviews requirements on these entitlements for Reserve Component (RC) Soldiers.

##### **1–2. References and forms**

See appendix A.

##### **1–3. Explanation of abbreviations and terms**

See the glossary.

##### **1–4. Responsibilities**

Responsibilities are listed in section II of this chapter.

##### **1–5. Records management (recordkeeping) requirements**

The records management requirement for all record numbers, associated forms, and reports required by this regulation are addressed in the Army Records Retention Schedule–Army (RRS–A). Detailed information for all related record numbers, forms, and reports are located in ARIMS/RRS–A at <https://www.arims.army.mil>. If any record numbers, forms, and reports are not current, addressed, and/or published correctly in ARIMS/RRS–A, see DA Pam 25–403 for guidance.

### **Section II**

#### **Responsibilities**

##### **1–6. Chief, National Guard Bureau**

The CNGB will—

- a.* Approve the payment of benefits paid under 37 USC 204(g) and 37 USC 204(h) for more than 6 months (not to exceed 12 months) to incapacitated members of the Army National Guard (ARNG)/Army National Guard of the United States (ARNGUS). The CNGB may further delegate this authority to a division chief within the organization or execute a memorandum of understanding with the Deputy Chief of Staff, G–1 to act as the authority.
- b.* Exercise staff supervision and management over INCAP pay for the ARNG.
- c.* Have the authority to review, approve, and terminate INCAP pay for claims up to 12 months.
- d.* Exercise authority to continue paying benefits under 37 USC 204(g) and (h) for more than 6 months, not to exceed 12 months, to incapacitated members of the ARNG.
- e.* Serve as the centralized approval authority and pay certification official for INCAP pay claims for up to 12 months to incapacitated members of the ARNG.
- f.* Notify States that they no longer have the initial 180 days' approval authority. Ensure that states forward all INCAP pay requests to NGB for a decision.
- g.* Serve as the claim reconsideration authority for all denied claims not to exceed 1 year. The CNGB will forward appeals to the DCS, G–1 (DAPE–PR) for review and final determination under this policy.
- h.* Ensure incapacitated Soldiers are identified for referral to the Disability Evaluation System within 1 year from being compensated for the covered condition. Noncompliance will cause a disruption in compensation without a written reason for the noncompliance.
- i.* Develop detailed budget submissions.
- j.* Coordinate fiscal operation of the program within appropriation limits.
- k.* Serve as appropriation director for incapacitation pay.
- l.* Maintain a reporting system to monitor and control costs.
- m.* Prepare reports and other statistical data enabling the DCS, G–1 to measure the effectiveness of the program.
- n.* Publicize changes to entitlements as they occur.

- o.* Evaluate the effectiveness of the program in the ARNG.
- p.* Develop policies, procedures, and management initiatives for the ARNG and recommend changes to DCS, G-1 (DAPE-PRC).
- q.* Resolve appeals per chapter 4 of this regulation.
- r.* Appoint claim-certifying officials for the ARNG, in writing, using DD Form 577 (Appointment/Termination Record - Authorized Signature), in accordance with DOD 7000.14-R, Volume 5.
- s.* Use the Electronic Medical Management Processing System (eMMPS) for administering their incapacitation pay program.
- t.* Establish internal processing procedures for addressing the statute of limitations (SOL) on incapacitation payments.
- u.* Ensure the Incapacitation Review Board (IRB) executes the policy and guidance relating to incapacitation claims, as defined by this regulation, and that the IRB will—
  - (1) Receive and review each INCAP pay case monthly.
  - (2) Determine tier type.
  - (3) Provide recommendations concerning a RC member's entitlement to and type of INCAP pay.
  - (4) Recommend continuation or termination of benefits to the approving authority consistent with entitlement under governing law and regulation. Refer to DA Pam 135-381.
  - (5) Report directly to the approving authority on the status of all INCAP personnel actions and make recommendations to enhance the program.
  - (6) Provide uniformity and consistency in the administration of INCAP pay program.
  - (7) Review and provide due process on all appeals. The board must review all appeal requests filed by members and provide applicable recommendation to the approving authority.
  - (8) Establish internal processing procedures for addressing the SOL on incapacitation payments.
- v.* Ensure State Adjutants General—
  - (1) Adhere to the policies and procedures per this regulation as it relates to Soldiers assigned to their state.
  - (2) Take prompt action to initiate and complete a line of duty investigation (LDI) in accordance with AR 600-8-4.
  - (3) Take prompt action to initiate and ensure continued payment of incapacitation pay for Soldiers who are entitled to such pay as a result of their injury, illness, or disease.
  - (4) Establish and conduct IRBs for recommendation to the CNGB.
  - (5) Process and review, for validity and accuracy, incapacitation pay requests prior to forwarding to the National Guard Bureau (ARNG-HRP) for determination.

### **1-7. Deputy Chief of Staff, G-1**

The DCS, G-1 will—

- a.* Have overall Army Staff responsibility for incapacitation policy of RC Soldiers.
- b.* Have the authority to initiate and terminate incapacitation pay, as necessary.
- c.* Have the authority to approve paying benefits under 37 USC 204(g) and (h) that exceed 12 months for the CAR, CNGB; and the Commanding General, U.S. Army Human Resources Command (CG, AHRC).
- d.* Develop policy, in coordination with the The Surgeon General, Defense Finance and Accounting Service, CNGB, CAR, AHRC, and U.S. Army Physical Disability Agency (USAPDA).
- e.* Monitor the cost and effectiveness of the USAR and ARNG programs.
- f.* Modify the program as required.
- g.* Maintain liaison with the other services and the Secretary of Defense.
- h.* Initiate appropriate legislative changes when needed.
- i.* Process appeal cases. The DCS, G-1 (DAPE-PRC) is the final appellate authority under this policy.
- j.* Resolve questionable cases from both USAR and ARNG. Requests for review must be accompanied with recommendation from the CAR, CNGB, or his or her designee.
- k.* Ensure the Director, Plans and Resources Directorate (DAPE-PR) coordinates with the Assistant Secretary of the Army (Manpower and Reserve Affairs), to develop and promulgate any additional administrative procedures necessary to enhance the INCAP program.
- l.* Ensure the CG, AHRC executes policy and guidance relating to incapacitation claims, as defined by this regulation and that CG, AHRC will—
  - (1) Approve continued payments of benefits under 37 USC 204(g) and (h) for more than 6 months (not to exceed 12 months) to incapacitated members of the Individual Ready Reserve (IRR) and the Individual Mobilization Augmentation (IMA). Cases requesting continued payment of benefits under 37 USC 204(g) and (h), beyond the 12 month limit pre-

scribed in 37 USC 204(i) and Department of Defense Instruction (DODI) 1241.01, must be boarded and sent, with recommendation, to the DCS, G-1 (DAPE-PRC) for decision. These requests will route through the USARC G-1, for review and advisory opinion, prior to final policy adjudication by DCS, G-1 (DAPE-PRC).

(2) Adhere to responsibilities outlined in paragraph 1-10.

### **1-8. Chief of Army Reserve**

The CAR will—

*a.* Approve the payment of benefits paid under Section 204(g), Title 37, United States Code (37 USC 204(g)) and 37 USC 204(h) for more than 6 months (not to exceed 12 months) to incapacitated members of the U.S. Army Reserve (USAR). The CAR may further delegate this authority to the United States Army Reserve Command (USARC) G-1.

*b.* Exercise staff supervision and management over incapacitation pay for the USAR.

*c.* Have the authority to initiate and terminate incapacitation pay for claims up to 12 months.

*d.* Notify commands that they no longer have the initial 180-day approval authority. Commands will forward all INCAP pay requests to the CAR for a decision.

*e.* Exercise authority to continue the payment of benefits paid under 37 USC 204(g) and (h) for more than 6 months, not to exceed 12 months, to incapacitated members of the USAR.

*f.* Provide advisory opinions to AHRC or DCS, G-1 for INCAP pay claim requests, for IRR and IMA members.

*g.* Develop detailed budget submissions.

*h.* Coordinate fiscal operation of the program within appropriation limits.

*i.* Serve as appropriation director for incapacitation pay.

*j.* Maintain a reporting system to monitor and control costs.

*k.* Prepare reports and other statistical data enabling the DCS, G-1 to measure the effectiveness of the program.

*l.* Publicize changes to entitlements as they occur.

*m.* Evaluate the effectiveness of the program in the USAR.

*n.* Develop policies, procedures, and management initiatives for the USAR and recommend changes to DCS, G-1.

*o.* Resolve appeals per chapter 4 of this regulation.

*p.* Appoint claim-certifying officials for the USAR in writing using DD Form 577, in accordance with DOD 7000.14-R, Volume 5.

*q.* Use the eMMPS to administer the incapacitation pay program.

*r.* Ensure the IRB executes the policy and guidance relating to incapacitation claims, as defined by this regulation, and that the IRB will—

(1) Receive and review each INCAP pay case monthly.

(2) Determine tier type.

(3) Provide recommendations concerning a RC member's entitlement to, and type of, INCAP pay.

(4) Recommend continuation or termination of benefits to the approving authority consistent with entitlement under governing law and regulation. Refer to DA Pam 135-381.

(5) Report directly to the approving authority on the status of all incapacitation personnel actions, and make recommendations to enhance the program.

(6) Provide uniformity and consistency in the administration of INCAP pay program.

(7) Review and provide due process on all appeals. The board must review all appeal requests filed by members, and provide applicable recommendation to the approving authority.

(8) Establish internal processing procedures for addressing the SOL on incapacitation payments.

### **1-9. The Surgeon General**

*a.* TSG will exercise staff supervision and management over health care entitlements for RC members.

*b.* Through the Commanding General, Army Medical Command (CG, MEDCOM) will—

(1) Ensure that prompt health care entitlements are provided to RC members, according to this regulation, for in line of duty (ILD) conditions.

(2) Recommend policy and procedure changes to the DCS, G-1.

### **1-10. Commanders of Reserve Component members within Army commands, Army service component commands, direct reporting units, and Joint Forces Headquarters**

Commanders of RC members within ACOMS, ASCCs, DRUs, and Joint Forces Headquarters will—

*a.* Ensure policies and procedures pertaining to RC members serving, participating in training, or stationed in their respective areas of responsibility are carried out according to this regulation.

- b.* Ensure that prompt action is taken to initiate and complete line of duty investigations involving RC members, per AR 600–8–4 and the standards established by this regulation, in accordance with DODI 1241.01 and DODI 1332.18.
- c.* Ensure that prompt action is taken to initiate and ensure medical treatment.
- d.* Ensure that administrative procedures for processing LDI and INCAP pay actions are streamlined to eliminate unnecessary levels of review.
- e.* Ensure appropriate action is taken to ensure continued payment of incapacitation pay for RC members who are entitled to such pay as a result of their ILD condition.
- f.* Review, for validity and accuracy, INCAP pay requests that exceed 6 months for RC members, in relevant part, prior to forwarding to the approval authority for final determination.
- g.* Monitor and ensure personnel, medical, and individual readiness standards are maintained.
- h.* Ensure prompt action is taken to direct and/or initiate scheduling of medical examination appointments with the nearest medical treatment facility (MTF) to establish medical retention standards and/or the ability to perform military duty. Refer to AR 40–400 and 40–501, respectively.
- i.* Ensure Soldiers maintain military profiles, if requesting INCAP pay.
- j.* Ensure RC members who meet their medical retention determination point (MRDP), are enrolled into the Integrated Disability Evaluation System (IDES), without delay.
- k.* Ensure all appropriate subordinate commanders and personnel have access and are trained on how to initiate, process, and complete line of duty (LOD) and incapacitation pay claim requests in eMMPS.
- l.* Immediately report to the RC unit commander or the Commander, AHRC any incident in which a RC member incurs or aggravates an injury, illness, or disease including an incident leading to disability or death of any member at his or her installation. This includes furnishing or ordering the issuing authority to provide the RC unit commander a copy of the approved LDI.

#### **1–11. Commanding General, U.S. Army Training and Doctrine Command**

The CG, TRADOC will—

- a.* Ensure that policies and procedures pertaining to RC members participating in initial active duty for training (IADT) are carried out according to this regulation.
- b.* Ensure that prompt action is taken to initiate and complete LDI involving Soldiers per AR 600–8–4, the standards established by this regulation, DODI 1241.01, and DODI 1332.18.
- c.* Immediately report to the RC unit commander or the Commander, AHRC any incident in which an RC member incurs or aggravates an injury, illness, or disease including an incident leading to disability or death of any member at his or her installation. This includes furnishing or ordering the issuing authority to provide the RC unit commander a copy of the approved LDI.

#### **1–12. Commanding General, U.S. Army Reserve Command**

The CG, USARC will, upon delegation of written authority from CAR—

- a.* Exercise staff supervision and management over incapacitation pay for the USAR.
- b.* Have the authority to initiate and terminate incapacitation pay for claims up to 12 months.
- c.* Notify commands that they no longer have the initial 180-day approval authority. Commands will forward all INCAP pay requests to the CG, USARC for a decision.
- d.* Exercise authority to continue the payment of benefits paid under 37 USC 204(g) and (h) for more than 6 months, not to exceed 12 months, to incapacitated members of the USAR.
- e.* Provide advisory opinions to AHRC or DCS, G–1 for INCAP pay claim requests, for IRR and IMA members.
- f.* Develop detailed budget submissions.
- g.* Coordinate fiscal operation of the program within appropriation limits.
- h.* Serve as appropriation director for incapacitation pay.
- i.* Maintain a reporting system to monitor and control costs.
- j.* Prepare reports and other statistical data enabling the DCS, G–1 to measure the effectiveness of the program.
- k.* Publicize changes to entitlements as they occur.
- l.* Evaluate the effectiveness of the program in the USAR.
- m.* Develop policies, procedures, and management initiatives for the USAR and recommend changes to DCS, G–1.
- n.* Resolve appeals per chapter 4 of this regulation.
- o.* Appoint claim-certifying officials for the USAR in writing using DD Form 577, in accordance with DOD 7000.14–R, Volume 5, Chapter 5.
- p.* Use the eMMPS to administer the incapacitation pay program.

*q.* Designate which USARC subordinate commands will conduct IRB and ensure the IRB executes the policy and guidance relating to incapacitation claims, as defined by this regulation, and that the IRB will—

- (1) Receive and review each INCAP pay case monthly.
- (2) Determine tier type.
- (3) Provide recommendations concerning a RC member's entitlement to, and type of, INCAP pay.
- (4) Recommend continuation or termination of benefits to the approving authority consistent with entitlement under governing law and regulation. Refer to DA Pam 135–381.
- (5) Report directly to the approving authority on the status of all incapacitation personnel actions, and make recommendations to enhance the program.
- (6) Provide uniformity and consistency in the administration of INCAP pay program.
- (7) Review and provide due process on all appeals. The board must review all appeal requests filed by members, and provide applicable recommendation to the approving authority.
- (8) Establish internal processing procedures for addressing the SOL on incapacitation payments.

### **1–13. Reserve Component unit commanders**

RC unit commanders will—

- a.* Provide annually (at a minimum) briefings on line of duty and incapacitation pay benefits to all assigned and attached RC members identified in this regulation.
- b.* Ensure medical treatment is received immediately if a RC member incurs or aggravates an injury, illness, or disease in a qualified duty status that may result in a LDI.
- c.* Ensure all critical or serious incident report are completed on any event involving an injury, illness, or disease resulting in a potential claim against the Government. Retain a copy of the report for the LDI and incapacitation pay request processes.
- d.* Ensure appropriate personnel have access and are trained on how to initiate, process, and complete line of duty and incapacitation pay claim requests in eMMPS.
- e.* Ensure an LDI is initiated and completed in accordance with AR 600–8–4.
- f.* Initiate incapacitation pay counseling statement(s) if the LDI may result in a request for incapacitation pay once complete. Refer to DA Pam 135–381 to see a sample request.
- g.* Initiate, review, complete (with recommendation), and forward incapacitation pay request to IRB authority once an ILD determination is made, in accordance with DA Pam 135–381.
- h.* Commanders who fail to meet these standards will include a written explanation with the LDI on why the standards were not met and what actions are being taken to prevent future delays in processing line of duty actions.
- i.* Properly counsel each Soldier injured or taken ill on benefits, rights, privileges, and responsibilities.
- j.* Provide authorized assistance to Family members or caregivers of incapacitated and/or disabled RC members.
- k.* Provide recommendation (in writing) per DA Pam 135–381, to the appropriate approving authority detailing the RC member's inability to perform military duties or loss of nonmilitary earned income for the requested period (up to every 30 days or every monthly pay period/cycle).
- l.* Document all attendance and absences from training, duty, medical appointments, or changes in employment status. Properly code their RC member's absences accurately. Receipt of incapacitation pay is not a duty status, it is a compensation entitlement.
- m.* Ensure RC members have an authorized medical treatment plans as authenticated in the commanders' recommendation memorandum (see DA Pam 135–381).
- n.* Ensure RC members have a current, valid profile documented on DA Form 3349 (Physical Profile) that covers the ILD condition in which they may file an INCAP pay claim against the government.
- o.* Ensure the IRBs adhere to the policy outlined in paragraphs 1–13*n* and 1–9*q* of this regulation, as applicable.

### **1–14. State Adjutants General**

The State Adjutants General will—

- a.* Ensure that policies and procedures pertaining to Soldiers assigned to their state are carried out per this regulation.
- b.* Ensure that prompt action is taken to initiate and complete LDIs.
- c.* Ensure that prompt action is taken to initiate and ensure continued payment of incapacitation pay for Soldiers who are entitled to such pay as a result of their injury, illness, or disease.
- d.* Establish and conduct Incapacitation Review Boards for recommendation to the CNGB.
- e.* Process and review, for validity and accuracy, incapacitation pay request prior to forwarding to the National Guard Bureau (ARNG–HRP) for determination.

## 1–15. Pay and finance office chiefs

The Director, Army Reserve Pay Center; leaders of U.S. property and fiscal offices; and leaders of finance offices will—

- a. Issue pay and allowances authorized by law and regulation to Soldiers.
- b. On receipt of authorization for payment of INCAP pay and allowances from the appropriate headquarters, process the Soldier's entitlement for such payment.
- c. Provide pay and allowances for the period authorized by the appropriate headquarters within 5 days.
- d. Continue timely payment of pay and allowances each month when authorized by the appropriate headquarters.
- e. Terminate payment of INCAP pay and allowances when no longer authorized by appropriate headquarters.
- f. Monitor incapacitation pay documents submitted for pay by the approval authority.
- g. Monitor the Army RC Incapacitation Pay program, to ensure that INCAP pay and allowances payments are limited to a maximum of 6 months, unless extended, in relevant part, by the Secretary of the Army or a designee, as required by law.

## Chapter 2 Incapacitation Pay Program

### Section I

#### Program Elements

##### 2–1. Objective

The objective of the INCAP Pay Program is to compensate RC members to the extent permitted by law:

- a. RC members who are unable to perform military duties and/or who demonstrate a loss in nonmilitary earned income as a result of an injury, illness, or disease incurred or aggravated while in the LOD.
- b. Provide the required medical, dental, or behavioral health care associated with the incapacitation.
- c. For the purposes of this regulation, medical, dental, and behavioral health care treatment entitlement options may otherwise be referred to as “health care” options.

##### 2–2. Entitlement

a. An RC member incurring or aggravating any injury, illness, or disease ILD is entitled to health care; pay and allowances; and travel and transportation benefits, in accordance with 37 USC 204 and 37 USC 206.

b. The amount of INCAP pay a member may receive will be determined, in accordance with DOD 7000.14–R, Volume 7A and the Joint Travel Regulation (JTR).

c. An RC member is entitled to pay and allowances (for a member of the regular component of corresponding grade and length of service) whenever a member is incapacitated as a result of an ILD condition, in accordance with 37 USC 204.

(1) The total pay and allowances received will be reduced by the amount of any earned nonmilitary income (civilian or self-employment).

(2) The total amount of pay and allowances payable may not exceed the maximum amount of authorized pay and allowances (of corresponding grade and length of service).

(3) Requests for INCAP pay may not exceed a period of more than 6 months unless extended by the Secretary of the Army, or his or her designee.

d. RC members are entitled to appropriate medical, dental, and behavioral health treatment options by the direct care program, in an MTF or Supplemental Health Care Program, with a civilian provider for the ILD condition, in accordance with DODI 1241.01.

(1) If the resulting ILD condition cannot be materially improved by further hospitalization or treatment, the case will be processed and finalized through the IDES for determining return to duty, separation, or retirement when eligible for disability processing.

(2) Procedures governing physical disability evaluation are provided in DODI 1332.18.

e. A member on a call or order to active duty specifying a period of 30 days or less who incurs or aggravates an injury, illness, or disease will not have orders terminated solely because of the injury, illness, or disease, unless requested by the member. Continued entitlement to benefits may be determined by the outcome of the LDI in accordance with DODI 1241.01.

f. Members authorized INCAP pay under 37 USC 204(g) will not be allowed to attend inactive duty training (IDT) periods or to acquire retirement points for performance of IDT or equivalent duty. However, a member may earn retirement

points in order to satisfy the requirements for a qualifying year of service by completing correspondence courses, as authorized by the Secretary of the Army.

g. Nothing in this regulation will be construed to prevent emergency medical treatment at an MTF for a RC member while in a duty status. Members requesting emergency treatment after termination of training duty, stating that the condition is related to an injury, illness, or disease incurred during or aggravated by an earlier period of duty, will be examined and provided necessary medical care. The circumstances surrounding the emergency condition will be resolved after the emergency has been stabilized.

h. RC members who are participating in the following programs are entitled to government-funded health care, on the same basis as other RC members:

- (1) Reserve Officers Training Corps–Simultaneous Membership Program (ROTC–SMP).
- (2) Early Commissioning Program.
- (3) Split Training Option Program on active status.
- (4) IDT status or in-travel status as members of an RC unit.

i. In accordance with the JTR, RC members who qualify for health care treatment benefits, in accordance with this regulation, are entitled to travel and transportation allowances for necessary travel incident to such care and return to their residence, upon discharge from treatment.

j. Travel orders will be issued by the appropriate command or headquarters for RC members who are required to travel in excess of 50 miles or 90 minutes driving time for authorized outpatient care as a result of the ILD condition.

(1) RC members are authorized medical and dental treatment while the LDI is ongoing, provided the military medical authority authorizes the treatment, in accordance with DODI 1241.01.

(2) The LDI determination will determine eligibility for continued medical or dental care, in accordance with DODI 1241.01.

### **2–3. Types of incapacitation pay**

a. *Tier I payment.* An RC member who is unable to perform military duties due to ILD condition as determined by a military physician—

- (1) Authorized INCAP pay, under 37 USC 204(g).
- (2) Authorized full military pay and allowances, less gross nonmilitary earned income, in accordance with DOD 7000.14–R, Volume 7A.
- (3) Will not participate in any active or inactive duty status throughout the duration of the INCAP period. However, the member may earn retirement points in order to satisfy the requirements for a qualifying year of service by completing approved correspondence courses.
- (4) RC members who are students may be authorized incapacitation compensation.

b. *Tier II payment.*

(1) An RC member who is able to perform military duties and demonstrates a loss of nonmilitary earned income as a result of ILD condition, will be compensated for lost nonmilitary earned income.

(2) Authorized INCAP pay under 37 USC 204(h).

(3) Maximum reimbursement of demonstrated nonmilitary lost income or full military pay and allowances; whichever is less (amounts will not exceed the lost nonmilitary income outlined in DOD 7000.14–R, Vol. 7A, Table 57–3).

(4) RC members able to perform military duties may participate in active or inactive duty and earn retirement points for a qualifying year of service.

(5) RC members must be employed to receive tier II INCAP pay. INCAP pay will be discontinued due to voluntary termination of employment. Reasons for involuntary termination of employment must be documented by employer before any consideration to continue INCAP pay.

(6) RC members who are self-employed must provide appropriate documentation (for example, Internal Revenue Service Form W–2 (Wage and Tax Statement)) to validate their certified or registered business.

(7) RC members who are students may be authorized incapacitation compensation if employed at the time of the ILD condition.

### **2–4. Compensation**

a. RC members are entitled to all or a portion of the same monthly pay and allowances as are members of the Regular Army with corresponding grade, length of service, marital status, and dependent status (see DOD 7000.14–R, Volume 7A, and JTR for entitlements relating to type of INCAP pay).

b. RC members will not be issued AD orders in place of INCAP pay as a means of providing benefits to which they might otherwise not be entitled.

- (1) Entitlement to INCAP pay does not place the member on AD, and therefore no leave accrual is authorized.

(2) Because no leave accrual is authorized, no lump sum payments may be made for unused leave, except leave accrued prior to incapacitation.

c. Payment of INCAP pay will not be made by any finance and accounting officer without a certificate of authorization from USARC, AHRC, CNGB, or DCS, G-1.

d. Eligibility for INCAP pay is determined case by case and depends on whether an RC member is unable to perform military duties or demonstrates a loss of nonmilitary earned income.

e. All USAR and ARNG INCAP payments and travel funds will be charged to the open allotment cited in the Defense Finance and Accounting Service–Indianapolis (DFAS–IN) Manual 37–100.

f. An RC member may be paid INCAP pay for more than 6 months, only with the approval of the Secretary of the Army or a designee.

g. Regardless of the amount of lost income claimed by an RC member, the maximum amount of military pay and allowances payable to an RC member is limited to the amount otherwise due an RC member serving on AD with the same grade and years of service at the time of incapacitation.

h. RC members may receive both INCAP pay and Department of Veterans Affairs (VA) benefits. VA benefits are not taxable and do not meet the definition of earned income. As a result, INCAP pay will not be offset by VA benefits received.

i. RC members who receive military compensation for duty performed must file a notice of waiver, VA Form 21–8951–2 (Notice of Waiver of VA Compensation or Pension to Receive Military Pay and Allowances) with their regional VA office. The RC member is responsible for coordinating with the servicing VA representative, or regional office, for overpayment disputes.

j. Active or inactive duty training pay cannot legally be paid concurrently with VA disability compensation or pension benefits (10 USC 12316 and 38 USC 5304(c)). Failing to notify the VA and choose the appropriate compensation may spur future debt collection or recoupment action.

k. RC members receiving INCAP payments, who are also receiving income from an income supplemental program must report this as earned income. Incapacitation pay is not affected by Social Security disability payments, which is not considered earned income when calculating INCAP pay. However, eligibility to receive Social Security disability payments may be affected by INCAP pay.

l. RC members receiving income from nonmilitary employment, including self-employment, must report all (gross) normal wages, salaries, professional fees, and tips. Other reportable income includes other compensation for personal services actually rendered, as well as income from income protection plans, vacation pays, and sick leave that the RC member elects to receive. This does not include rents, royalties, retirement pays, dividends or interest welfare payments, or other nontaxable government benefits.

m. RC members receiving VA benefits may elect to receive either military pay or VA pay under DOD 7000.14–R, Volume 7A.

n. RC members can receive both welfare payments and INCAP pay at the same time. However, receiving INCAP payments may affect the member’s welfare eligibility in regard to State or local regulations or requirements. Welfare eligibility status is an issue between the member and the State or local welfare officials.

## **2–5. Duration and limits of incapacitation pay**

a. As established by law, entitlement for pay and allowances for the purpose of INCAP pay may not exceed 6 months, unless authorized by the Secretary of the Army or a designee (para 2–2b).

b. Incapacitation pay will be paid only during the period an RC member is unable to perform military duty, or demonstrates a loss of nonmilitary earned income as a result of the ILD condition.

(1) Cases will be reviewed monthly, upon submission, by the IRB, for recommendation to the approving authority for continuing payments.

(2) All requests will be reviewed and monitored closely for referral to the IDES.

(3) Incapacitation pay may continue, as long as the ILD condition warranting compensation exists, as determined by the approval authority.

c. Incapacitation pay ends for any reason below, whichever happens first:

(1) Retirement.

(2) Separation.

(3) Separation for physical disability or death. (In the case of death, INCAP pay beyond the date of death is not authorized nor included in pay and allowances owed to the Soldier’s estate.)

(4) Determination by military physician that the member has recovered sufficiently to perform military duties.

(5) Member returns to military duty (return to military duty status applies to tier I only).

(6) Additional reason for termination of INCAP pay:

- (a) The final LDI determination finds that the condition was not incurred ILD. The approval authority will act immediately to stop any incapacitation entitlements from the date of the not in line of duty (NLD) determination.
  - (b) Failing to adhere to prescribed physical profile or medical treatment plan.
  - (c) A fit for duty determination, except in tier II cases (see para 2–3b).
  - (d) Member no longer demonstrates a loss of earned income (tier II, para 2–3b).
  - (e) Member is noncompliant with the IDES process.
  - (f) Member performs military duty (specific to tier I cases).
  - (g) Member made a false claim.
  - (h) The designated approving authority determines it is no longer fair and equitable to continue pay and allowances under 37 USC 204.
- d. Incapacitation pay requests do not have to be for consecutive periods; however, they must meet all entitlement requirements.
  - e. No INCAP pay is due when the nonmilitary earned income exceeds the maximum military pay and allowances.
  - f. Unemployed RC members are not authorized tier II compensation.

## Section II

### Eligibility Requirements

#### 2–6. Duty status

a. *Troop program unit or mobilization-day duty status.* An RC member must be in a valid duty status at the time the injury, illness, or disease was incurred or aggravated to be eligible for medical treatment, dental treatment, INCAP pay, travel entitlements, or transportation entitlements. The following duty types are applicable to RC members:

- (1) Inactive duty training. IDT status for this regulation includes, but is not limited to, activities such as:
- (2) Regularly scheduled unit training assemblies, or multiple unit training assemblies (MUTA).
- (3) Additional training assemblies.
- (4) Training assemblies conducted by Reserve training units and IMA detachments.
- (5) Additional assemblies for nuclear training.
- (6) Readiness management assemblies.
- (7) Staff meetings.
- (8) The Total Army School System battalions training assemblies (including faculty, staff, and students).
- (9) Field training.
- (10) Rescheduled training.
- (11) Split training assembly.
- (12) Equivalent training.
- (13) Additional flying training periods.
- (14) Additional inactive duty training periods or additional drill assemblies.
- (15) Additional airborne unit training assemblies.
- (16) IDT “for points only” (does not include approved correspondence courses).
- (17) Musters (special category of IDT).

b. *Training schedule.* The training schedule is an LDI requirement and is used to determine if the RC member’s activities associated with the injury, illness, or disease are in compliance with the authorized activity. Also, one of the following forms will be used to verify duty status in paragraph 2–7 to substantiate entitlement to medical treatment for the ILD condition:

- (1) DA Form 1379 (U.S. Army Reserve Components Unit Record of Reserve Training) or sign-in roster.
- (2) DA Form 1380 (Record of Individual Performance of Reserve Duty Training).

c. *Medical treatment.* RC members with ILD conditions, not serving on AD, but voluntarily participating in aerial flights in Government-owned aircraft (under proper authority) and incident to training, qualify for funded medical treatment.

d. *Duty without pay.* Duty without pay (for points only) will be considered as if it were duty with pay for the purposes of this regulation, as long as the proper documentation is available.

#### 2–7. Active duty status

For this regulation, active duty (AD) status includes such activities as:

- a. AD.
- b. Active duty in support of a contingency operation.

- c. Annual training (AT).
- d. Active duty for training (ADT).
- e. Initial active duty training (IADT).
- f. Contingency operation for active duty operational support.
- g. Active duty operational support – Reserve Component (ADOS–RC).
- h. Active duty for medical extension.
- i. Medical retention processing.
- j. RC members in an Active Guard and Reserve (AGR) or full-time National Guard duty (FTNGD) status who remain on active duty while incapacitated continue to receive their active duty pay allowances in lieu of INCAP pay. RC members released from active duty status, and retained in a valid reserve status, may be entitled to compensation if the criteria for INCAP pay are met in accordance with this regulation.

## **2–8. Active duty of 30 days or less**

For members on active duty for up to 30 days:

- a. Entitlement options for health care, compensation, and travel (or transportation) benefits are addressed in paragraph 2–2.
- b. An RC member may complete the duration of their orders if treated or recovering from an ILD condition. Orders are not terminated due to incapacitation. A member may be eligible for INCAP pay after the active duty ends.
- c. An RC member may be continued on active duty after their orders expire, to continue health care treatment for the ILD condition.
- d. An RC member will be provided required emergency health care treatment while serving in a qualified duty status. If it is later determined that the RC member was not entitled to emergency health care treatment (found not in the line of duty (NLD)), financial adjustments will be made so that the costs of the emergency medical care are paid by the member, member’s health insurance plan, any other third party payer, or as determined by the Secretary of the Army.

## **2–9. Active duty for more than 30 days**

For members on active duty for more than 30 days, the following applies:

- a. RC members ordered to AD (voluntarily or involuntarily) for a period of more than 30 days are authorized medical care for themselves and their authorized dependents on the same basis as their Regular Army counterparts and as prescribed by AR 40–3.
- b. Orders will not be revoked or amended for the sole purpose of processing INCAP pay under this regulation. Orders may be initiated for enrollment into specific RC programs to meet health care and compensation entitlement requirements.
- c. AD status is verified by providing a DD Form 214 (Certificate of Release or Discharge from Active Duty) or certified copy of such order(s) following the completion of a tour. A Soldier pending receipt of pay after completion of tour, with written verification from an authorized member of the chain of command is acceptable on an interim basis. Without this type of documentation, a member is not considered to be in an active duty status.
- d. AD in support of a contingency operation occurs when an RC Soldier is ordered or volunteer for active duty for a military operation that:
  - (1) Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force, or
  - (2) Results in the call or order to, or retention on, active duty of members of the uniformed services under 10 USC 688, 12301(a) and (d), 12302, 12304, or 12406, or any other provision of law during a war or a national emergency declared by the President or Congress.
- e. RC members on orders for 30 days or more, who would otherwise be retained on orders due to an ILD condition, but who elect to leave active duty, may be entitled to INCAP pay upon the end of the orders. Authorization of continued health care treatment for the ILD condition will be approved by the military medical authority.
- f. RC members may be retained on active duty for any unresolved ILD condition that may be unfitting under the IDES. He or she may elect to be released from active duty before resolution of the ILD condition or completion of the IDES; however, the ILD must be completed to document their entitlement options, in accordance with DODI 1241.01.
- g. Further entitlement options are addressed in paragraph 2–2.

## **2–10. Travel status**

*a.* Health care and compensation entitlements for RC members with ILD conditions are covered, to those members traveling directly to or from the place where the member is to perform, or has performed, the following duties, in accordance with 10 USC 1074a:

(1) Active duty for a period of 30 days or less.

(2) IDT.

(3) Also covers the periods while remaining overnight immediately before the commencement of IDT, or while remaining overnight, between successive periods of IDT, at or in the vicinity of the site of the IDT.

*b.* Also covers the periods while remaining overnight, immediately before serving on funeral honors duty, under 10 USC 12503 or 32 USC 115, at or in the vicinity of the place where the member was to serve. The place must be outside the reasonable commuting distance from their residence.

*c.* For service on funeral honors, under 10 USC 12503 or 32 USC 115, travel must be direct and completed within a reasonable amount of time. Travel status continues during reasonably short stops at public facilities en route for such purposes as consuming meals, refueling a vehicle, or other purposes directly related to travel. Travel delays for reasons such as adverse weather, commercial transportation problems, or similar problems beyond the Soldier's control may extend travel.

*d.* Travel status prior to IDT begins when a RC member leaves his or her residence (or established home of record) and ends with the opening formation or muster at the duty station where the member was first directed to report according to a published training schedule or IDT order. Travel status resumes when the commander or designated representative dismisses the member from IDT status (such as closing formation) and ends when he or she returns directly to his or her residence.

*e.* Travel status in connection with AD tours begins when an RC member leaves the place from which ordered to active duty. It ends when the member reports for duty, in compliance with the instructions contained in the AD orders. Travel following completion of such an AD tour begins when a member is dismissed for departure, by proper authority. It ends when a Soldier returns to the place from which ordered to AD (see AR 135–200 and DOD 7000.14–R, Volume 7A).

## **2–11. Line of duty determination**

An RC member with an LOD determination may be entitled to INCAP pay upon request, in accordance with 37 USC 204.

*a.* The LOD determination is a prerequisite for INCAP pay.

*b.* See AR 600–8–4 for policies and procedures for investigating circumstances of injury, illness, disease, or death of an RC member; it covers standards and considerations used in making line of duty determinations.

*c.* A member has 180 days from the date of injury, illness, or disease to report the incident or diagnosis while in an active duty status. Exceptions to the 180 day timeline are:

(1) A behavioral health diagnosis (which may occur at some point beyond a 12-month period).

(2) A line of duty is directed by the USAPDA for any RC member enrolled.

(3) A member transferred to an RC from the Regular Army will be given 180 days from the entry date into the respective RC, to initiate and adjudicate a reported injury, illness, or disease. The member will be provided substantiating medical documentation to support an investigation.

(4) Sexual-assault-related incidents.

## **2–12. Criteria for incapacitation pay**

Requests for INCAP pay must be initiated through the appropriate RC chain of command.

*a.* A member must have an approved ILD condition, in a qualifying duty status, in order to file for, or request INCAP pay, in accordance with DODI 1241.01.

*b.* A member unable to perform military duties, as determined by a military physician, is otherwise referred to as tier 1 INCAP pay.

*c.* A member able to perform military duties, who can show a loss of nonmilitary, earned income from their civilian employer is otherwise referred to as tier 2 INCAP pay. Self-employed members are included in this category.

*d.* A member must complete and submit the DA Form 7574 (Request and Certification for Incapacitation Pay) for each claim.

*e.* A member must have the following required medical documents to support their request for INCAP pay:

(1) A valid military physical profile (DA Form 3349) covering the requested claim period.

(2) A medical treatment plan from their attending physician or specialist.

*f.* A member must provide appropriate financial supporting documents to substantiate any gross earned, or lost, non-military earned income during the period of requested incapacitation.

*g.* Required documents to complete a request for INCAP pay are found in DA Pam 135–381.

- h.* Incapacitation pay claim requests will be initiated and processed in the eMMPS.
- i.* All incapacitation claim requests will be reviewed by an IRB.
- j.* A member enrolled and processing through the IDES does not automatically meet the criteria for INCAP pay. They must submit their request, and meet all eligibility requirements, for approval for each claim request or period.
- k.* A member may not be disqualified from receiving INCAP pay, provided otherwise qualified, solely because they are—
  - (1) Participating in the Army Weight Control Program.
  - (2) Not wearing the military uniform at time of injury, illness, or disease.
  - (3) Participating in organized athletics, the Army Physical Fitness Program, or cardiovascular screening at the time they are disabled.
  - (4) Members of the ROTC–SMP, Early Commissioning Program, or Split Training Option Program with ILD conditions while training with their RC units.

## **2–13. Limitations on eligibility requirements**

An RC member will not be authorized INCAP pay if any of the following criteria exist:

- a.* The injury, illness, or disease or the aggravation of an injury, illness, or disease is the result of gross negligence or misconduct results in a NLD finding.
- b.* The injury, illness, or disease occurred not in a valid duty status.
- c.* The injury, illness, or disease was incurred or aggravated while completing correspondence courses.
- d.* The loss of nonmilitary compensation is due to an unauthorized elective medical, surgical, or dental treatment.
- e.* The injury or illness is incurred or aggravated during airborne operations not authorized per paragraph 2–6.
- f.* A travel-status-related injury, illness, or disease when travel is not direct and/or completed within a reasonable period of time.
- g.* Time has passed the 6-month statutory limitation, in relevant part, unless approved by the Secretary of the Army or a designee. The 6-month statutory limitation is not an automatic period for INCAP payments. Members must meet all eligibility criteria for INCAP pay.
- h.* Military technicians are not authorized INCAP pay while in a civilian status. Entitlement to health care, compensation, travel, or transportation benefits are only authorized while in a qualifying military duty status.

## **Chapter 3 Incapacitation Review Board**

### **3–1. General**

The ARNG, USAR, and AHRC (for IRR and IMA Soldiers) will establish incapacitation review board(s), hereafter referred to as “the board” (see DA Pam 135–381 for procedures to conduct an incapacitation review board).

### **3–2. Purpose**

- a.* To protect members’ rights by ensuring that applicable entitlements and benefits are provided to those eligible to receive them, as prescribed by law, DOD policy, and Army regulations.
- b.* To protect the interests of the Government by controlling costs and eliminating fraud, waste, and abuse, by members receiving unauthorized health care and compensation entitlements.

### **3–3. Membership**

Each board will consist of a minimum of three voting members, a recorder, and other advisory personnel if available, as follows:

- a.* Voting members.
  - (1) Board president: A commissioned officer (major/O4); the board president may not match the same requirements in paragraphs 3–3a(2) and 3–3b(1).
  - (2) Medical provider: A credentialed, commissioned provider (Medical Corps, Dental Corps, physician assistant, or nurse practitioner).
  - (3) Other voting member(s): military or civilian, as determined by the board president.
- b.* Non-voting members.
  - (1) Legal advisor: A credentialed legal advisor (military or civilian).
  - (2) A recorder (military or civilian).

### **3-4. Frequency**

Boards are required to meet a minimum of once a month, as long as a case is open.

### **3-5. Reporting board results**

The board will provide monthly status reports to the approval authority. Reports will capture monthly, quarterly, and annual metrics detailing tier type, claim trends (under and over 6 month analysis), and budget expenditure at a minimum.

## **Chapter 4**

### **Special Considerations for Incapacitation Pay**

#### **4-1. Appeal process**

The following information addresses policy and procedures concerning appeals to INCAP pay requests:

- a.* An RC member may request reconsideration of a denied claim to the appropriate approval authority.
- b.* Members are authorized 30 days, from confirmed receipt of notification, to provide a formal (written) request for reconsideration, supported by documentation to substantiate their request.
- c.* The member must sign the formal request, unless the member is physically unable to or is mentally incompetent, as determined by proper authorities and documentation. In such cases, the request will include evidence of the condition preventing the member from signing.
- d.* The CAR, CNGB, USARC, and CG, AHRC or delegated designee(s), may reconsider denied claims up to 12 months.
- e.* The DCS, G-1 (DAPE-PRC) may reconsider denied claims if they served as the approval authority. This includes claims over 12 months for the CAR, CNGB, USARC, and AHRC.
  - (1) The appropriate approval authority may approve and process payment on favorably considered requests for reconsideration.
  - (2) For any requests within the allotted timeframe that cannot be favorably reconsidered by the appropriate approval authority, the denial decision will be upheld and the member will be authorized an additional 30 days, from confirmed receipt of notification, to provide a formal appeal to the DCS, G-1.
  - (3) Members whose request for reconsideration are not favorably considered by the DCS, G-1 can request reconsideration to the DCS, G-1. This reconsideration will be final decision on any appeal.
  - (4) Each appeal must be accompanied by an advisory opinion and/or recommendation by the approving authority, and submission of the appeal to DCS, G-1.
- f.* Appeals request (to include requests for reconsideration) are initiated and routed through the eMMPS module, except for RC members supported by AHRC.
  - g.* If an appeal cannot be routed through eMMPS, it will be sent to the following:
    - (1) For ARNG: Chief, ARNG DCS, G-1, Personnel Division (HRP-P), Arlington, VA 22204.
    - (2) For USAR: USARC DCS, G-1 (AFRC-PR), 4710 Knox Street, Building 8-1808, Fort Bragg, NC 28310.
    - (3) For AHRC: Commander (AHRC-ZA), 1600 Spearhead Division Road, Fort Knox, KY 40122.
    - (4) For DCS, G-1: DCS, G-1 (DAPE-PRC), 300 Army Pentagon, Room 2B453, Washington, DC 20310-0300.
  - h.* Assistance with appeals may be obtained from the RC member's supporting legal assistance office, the assisting IRB authority office, or the approving authority office.
  - i.* The final determination of the appeal under this policy, within the eMMPS module, will reflect one of the following three determinations for the claim period(s) within the INCAP case:
    - (1) Denied.
    - (2) Approved – full pay and allowances (for authorized tier I payment).
    - (3) Approved – lost civilian wages (for authorized tier II payment).
  - j.* If the denial determination is upheld, the RC member will be notified, in writing, of the decision. The denial memorandum format is outlined in DA Pam 135-381.
  - k.* Members whose appeals and/or requests for reconsideration are not favorably considered by the DCS, G-1 may apply to the ABCMR for relief in accordance with 10 USC 1552. To do so, they must complete a Department of Defense (DD) Form 149 (Application for Correction of Military Record Under the Provisions of 10 USC 1552), with supporting documentation, and send to the Army Review Board Agency, as instructed on the form.

#### **4-2. Statute of limitations**

In accordance with DODI 1340.21 and 31 USC 3702(b), the SOL on filing a claim for unpaid military pay and allowances is 6 years from the claimed date of entitlement to incapacitation pay. Each RC will establish internal processing procedures for addressing the SOL on incapacitation payments.

#### **4-3. Out-of-service claims**

*a.* Incapacitation cases initiated for RC members, prior to separation or retirement, may be adjudicated and paid by the appropriate approving authority identified in paragraphs 1-6 through 1-9.

*b.* RC members who did not initiate a claim for incapacitation pay prior to separation or retirement from service, may do so following separation or retirement in accordance with DODI 1340.21. If a claim is denied, they have the option of seeking relief from the ABCMR, which has statutory authority to correct any Army record, if necessary, to remove an error or injustice. To do so, they must complete DD Form 149, under 10 USC 1552, with supporting documentation, and send to the Army Review Board Agency, as instructed on the form, or the instructions at [www.arba.army.pentagon.mil/](http://www.arba.army.pentagon.mil/). The ABCMR will not consider an application until the applicant has exhausted all administrative remedies to correct the alleged error or injustice.

#### **4-4. Exceptions to policy**

As indicated in paragraph 2-11*c*, exceptions are made to the authorized timeline to request and/or initiate an LOD determination related to behavioral health and or sexual assault related conditions or incidents. Despite this extension for the LOD determination, the ILD determination is still required to process an incapacitation pay request. Special considerations for requesting INCAP pay can be made by the board regarding historical claims. See DA Pam 135-381.

#### **4-5. Leave accrual**

Entitlement to incapacitation pay does not place a member on AD, and therefore no leave accrual is authorized.

## **Appendix A**

### **References**

#### **Section I**

##### **Required Publications**

###### **AR 600–8–4**

Line of Duty Policy, Procedures, and Investigations (Cited in para 1–6v(2).)

###### **DOD 7000.14–R, Vol. 7A**

Department of Defense Financial Management Regulation (Cited in para 2–3b(3).) (Available at <http://comptroller.defense.gov/fmr/fmrvolumes.aspx/>.)

###### **DODI 1241.01**

Reserve Component (RC) Line of Duty Determination for Medical and Dental Treatments and Incapacitation Pay Entitlements (Cited in the title page.)

#### **Section II**

##### **Related Publications**

A related publication is a source of additional information. The user does not have to read a related publication to understand this publication. Unless otherwise indicated, Army publications are available on the Army Publishing Directorate website, at <https://armypubs.army.mil/>. DOD publications are available at <https://www.esd.whs.mil/>.

###### **AR 10–87**

Army Commands, Army Service Component Commands, and Direct Reporting Units

###### **AR 15–39**

Department of the Army Intergovernmental and Intragovernmental Committee Management Program

###### **AR 15–185**

Army Board for Correction of Military Records

###### **AR 25–30**

Army Publishing Program

###### **AR 40–3**

Medical, Dental, and Veterinary Care

###### **AR 40–400**

Patient Administration

###### **AR 40–501**

Standards of Medical Fitness

###### **AR 135–91**

Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Provisions

###### **AR 135–175**

Separation of Officers

###### **AR 135–178**

Enlisted Administrative Separations

###### **AR 135–200**

Active Duty for Missions, Projects, and Training for Reserve Component Soldiers

###### **AR 140–185**

Training and Retirement Point Credits and Unit Level Strength Accounting Records

###### **AR 350–1**

Army Training and Leader Development

###### **AR 635–40**

Disability Evaluation for Retention, Retirement, or Separation

**DA Pam 25–403**

Guide to Recordkeeping in the Army

**DA Pam 135–381**

Incapacitation of Reserve Component Soldiers Processing Procedures

**DFAS–IN 37–100**

The Army Management Structure

**DODI 1215.06**

Uniform Reserve, Training and Retirement Categories for the Reserve Components

**DODI 1332.18**

Disability Evaluation System (DES)

**JTR**

Joint Travel Regulations

**10 USC 671**

Members not to be assigned outside United States before completing training

**10 USC 688**

Retired members: authority to order to active duty; duties

**10 USC 1074(a)**

Medical and dental care for members and certain former members

**10 USC 1552**

Correction of military records: claims incident thereto

**10 USC 10301**

Reserve Forces Policy Board

**10 USC 12301(a) and (d)**

Reserve Components generally

**10 USC 12302**

Ready Reserve

**10 USC 12304**

Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency

**10 USC 12306**

Standby Reserve

**10 USC 12316**

Payment of certain Reserves while on duty

**10 USC 12503**

Ready Reserve: funeral honors duty

**31 USC 3702**

Authority to settle claims

**32 USC 115**

Funeral honors duty performed as a Federal function

**32 USC 316**

Detail of members of Army National Guard for rifle instruction of civilians

**32 USC 502(f)**

Required drills and field exercises

**32 USC 503**

Participation in field exercises

**32 USC 504**

National Guard schools and small arms competitions

**32 USC 505**

Army and Air Force schools and field exercises

**32 USC 708**

Property and fiscal officers

**37 USC 204**

Entitlement

**37 USC 206**

Reserves; members of National Guard: inactive-duty training

**38 USC 5304(c)**

Prohibition against duplication of benefits

**50 USC 3809**

Selective Service System

**Section III****Prescribed Forms**

This section contains no entries.

**Section IV****Referenced Forms**

Unless otherwise indicated, DA forms are available on the Army Publishing Directorate (APD) website (<https://armypubs.army.mil>). DD forms are available from the Secretary of Defense website (<https://www.esd.whs.mil/directives/forms>). IRS forms are available on the Internal Revenue Service website ([www.irs.gov](http://www.irs.gov)). VA Forms are available on the Veterans Affairs website ([www.va.gov](http://www.va.gov)).

**DA Form 11–2**

Internal Control Evaluation Certification

**DA Form 1379**

U.S. Army Reserve Components Unit Record of Reserve Training

**DA Form 1380**

Record of Individual Performance of Reserve Duty Training

**DA Form 2028**

Recommended Changes to Publications and Blank Forms

**DA Form 3349**

Physical Profile

**DA Form 7574**

Request and Certification for Incapacitation Pay

**DD Form 149**

Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552

**DD Form 214**

Certificate of Release or Discharge from Active Duty

**DD Form 577**

Appointment/Termination Record - Authorized Signature

**IRS Form W–2**

Wage and Tax Statement

**IRS Form 1040**

U.S. Individual Income Tax Return

**IRS Form 1040EZ**

U.S. Income Tax Return for Single and Joint Filers with No Dependents

**VA Form 21-8951-2**

Notice of Waiver of VA Compensation or Pension to Receive Military Pay and Allowances

## **Appendix B**

### **Internal Control Evaluation**

#### **B–1. Function**

The function covered by this evaluation is applying for, and approving of, incapacitation pay.

#### **B–2. Purpose**

The purpose of this evaluation is to assist the CAR, CNGB, AHRC, and relevant commanders in evaluating key internal controls. It is intended as a guide and does not cover all controls.

#### **B–3. Instructions**

These key internal controls must be formally evaluated at least once every 5 years, or whenever the internal control administrator changes. Certification that his evaluation has been conducted must be accomplished on DA Form 11–2 (Internal Control Evaluation Certification). Evaluation test questions are outlined in paragraph B–4, below, and are intended as a starting point for each applicable level of internal control evaluation. Answers must be based on the actual testing of key internal controls (for example, document analysis, direct observation, sampling, simulation, other). Answers that indicate deficiencies must be explained and corrective action indicated in supporting documentation.

#### **B–4. Test questions**

- a.* Was the commander properly involved in the incapacitation pay process?
- b.* Were LODs initiated and completed within the established timeframes?
- c.* Was incapacitation pay requested within the established timeframes?
- d.* Were incapacitation claims approved at the proper level?
- e.* Was the automated system used to process claims?
- f.* Was an ILD determination a requirement for incapacitation pay?
- g.* Was the correct tier category applied to the claim request for payment?
- h.* Did all necessary adjustment(s) for earned income calculated to acquire pay as applicable?

#### **B–5. Supersession**

This evaluation replaces the evaluation for executing policy for incapacitated Reserve Component Soldiers previously published in AR 135–381, dated 27 December 2006.

#### **B–6. Comments**

Help make this a better tool for evaluating internal controls. Submit comments to the Deputy Chief of Staff, G–1 (DAPE–PRC), 300 Army Pentagon, Washington, DC 20310–0300.

## **Glossary**

### **Section I**

#### **Abbreviations**

**ABCMR**

Army Board for Correction of Military Records

**ACOM**

Army commands

**AD**

active duty

**ADOS-RC**

active duty operation support – Reserve Component

**ADT**

active duty for training

**AGR**

Active Guard and Reserve

**AHRC**

Army Human Resources Command

**APD**

Army Publishing Directorate

**ARNG**

Army National Guard

**ARNGUS**

Army National Guard of the United States

**ASCC**

Army service component command

**AT**

annual training

**CAR**

Chief of Army Reserve

**CG**

commanding general

**CNGB**

Chief, National Guard Bureau

**DA**

Department of the Army

**DCS, G-1**

Deputy Chief of Staff, G-1

**DFAS**

Defense Finance and Accounting Service

**DFAS-IN**

Defense Finance and Accounting Service–Indianapolis

**DOD**

Department of Defense

**DODI**

Department of Defense instruction

**DRU**  
direct reporting unit

**FAO**  
Finance and Accounting Office

**FTNGD**  
full-time National Guard duty

**HQDA**  
Headquarters, Department of the Army

**IADT**  
initial active duty for training

**IDES**  
Integrated Disability Evaluation System

**IDT**  
inactive duty training

**ILD**  
in line of duty

**IMA**  
Individual Mobilization Augmentation

**INCAP**  
incapacitation pay

**IRB**  
Incapacitation Review Board

**IRR**  
Individual Ready Reserve

**LDI**  
line of duty investigation

**LOD**  
line of duty

**MEDCOM**  
U.S. Army Medical Command

**MRDP**  
medical retention determination point

**MTF**  
medical treatment facility

**MUTA**  
multiple unit training assembly

**NGB**  
National Guard Bureau

**NGR**  
National Guard regulation

**NLD**  
not in line of duty

**Pam**  
pamphlet

**RC**  
Reserve Components

**ROTC–SMP**

Reserve Officers' Training Corps/Simultaneous Membership Program

**RRS–A**

Army Records Retention Schedule–Army

**SOL**

statute of limitation

**TDA**

tables of distribution and allowances

**TOE**

table of organization and equipment

**TRADOC**

U.S. Army Training and Doctrine Command

**USAPDA**

U.S. Army Physical Disability Agency

**USAR**

United States Army Reserve

**USARC**

United States Army Reserve Command

**USC**

U.S. Code

**VA**

Department of Veterans Affairs

**Section II****Terms****Active Army**

The Active Army consists of (1) Active Army Soldiers on active duty; (2) Army National Guard of the United States and U.S. Army Reserve Soldiers on active duty (except as excluded below); (3) ARNG Soldiers in the service of the United States pursuant to a call to active duty; and (4) all persons appointed, enlisted, or inducted into the Army without component. Excluded are Soldiers serving on ADT; AGR status; ADOS–RC for 179 days or fewer; and active duty pursuant to the call of the President (10 USC 12304).

**Active duty**

Full-time duty in the active military service of the United States. As used in this regulation, this term applies to ARNG and Army Reserve Soldiers who are serving in full-time duty and includes full-time training duty, annual training duty, full-time National Guard duty, and attendance, while in the active service, at a school designated as a service school by law or by the Secretary of the Army. This includes Active Guard and Reserve (see DODD 1215.6).

**Active Guard and Reserve**

Active Guard and Reserve means a member of a Reserve Component (AR and ARNGUS) who is on active duty pursuant to 10 USC 12301(d) or, if a member of the Army National Guard or Air National Guard, is on full-time National Guard duty pursuant to 32 USC 502(f) and who is performing Active Guard and Reserve duty.

**Active service**

Service on active duty or full time National Guard duty.

**Active status**

The status of an ARNGUS or Army Reserve commissioned officer, other than a commissioned warrant officer, who is not in the inactive ARNG, in the Standby Reserve (Inactive List), or in the Retired Reserve.

**Aggravated**

The worsening of a pre-existing medical, dental, or behavioral health condition over and above the natural progression of the medical, dental, or behavioral health condition as a direct result of military duty.

**Army**

The Army consists of the Regular Army, the Army National Guard of the United States, the Army National Guard while in the service of the United States and the Army Reserve; and all persons appointed or enlisted in, or conscripted into, the Army without component.

**Army command**

The highest level of command, designated by the Secretary of the Army, primarily responsible for generating forces and planning and executing 10 USC functions.

**Army National Guard**

That part of the organized militia of the several States and territories, Puerto Rico, and the District of Columbia, active and inactive, that—

1. Is a land force.
2. Is trained, and has its officers appointed, under the 16th clause of sec. 8, art. I, U.S. Constitution.
3. Is organized, armed, and equipped wholly or partly at Federal expense.
4. Is federally recognized.

**Army National Guard of the United States**

The Reserve Component of the Army, all of whose members are members of the ARNG. The ARNGUS consists of—

1. Federally recognized units and organizations of the ARNG.
2. Members of the ARNG who are also Reserves of the Army.

**Army service component command**

An operational command, responsible for recommendations to the Joint Forces commander, on the allocation and employment of Army forces within a combatant command.

**Basic training**

Initial entry training that provides nonprior service enlisted personnel instruction in basic skills common to all enlisted Soldiers and precedes advanced individual training.

**Direct reporting units**

An Army organization comprised of one or more units within institutional or operational support functions, designated by the Secretary of the Army, normally to provide broad general support to the Army in a single, unique discipline not otherwise available elsewhere in the Army. DRUs report directly to an HQDA principal official and/or ACOM and operate under authorities established by the Secretary of the Army.

**Duty status**

A member is considered to be in a duty status during any period of active duty, funeral honors duty, or inactive duty training; while traveling directly to or from the place where funeral honors duty, or inactive duty is performed; while remaining overnight immediately before the commencement of inactive duty training or between successive periods of inactive duty training, at or in the vicinity of the site of the inactive duty training, if the site is outside reasonable commuting distance of the member's residence; and while remaining overnight at or in the vicinity of the place the funeral honors duty is to be performed immediately before serving such duty, if the place is outside of a reasonable commuting distance from the member's residence.

**Earned income**

Wages, salaries, tips, professional fees, other compensation received for personal services and employee compensation that are included in gross income, plus any net earnings from self-employment for the taxable year. Earned income includes taxable compensation received by RC members for the performance of Reserve duties. Employee pay is earned income if it is taxable. Nontaxable employee pay, such as certain dependent care benefits and adoption benefits, is not earned income. Earned income is shown in box 1 of an individual's Internal Revenue Service (IRS) Form W-2 (Wage and Tax Statement) and is reported on line 7 of IRS Form 1040 (U.S. Individual Income Tax Return) or line 1 of IRS Form 1040EZ (U.S. Income Tax Return for Single and Joint Filers with No Dependents).

**Expiration of service obligation**

The scheduled date on which an individual's statutory or contractual (whichever is later) military service obligation will end.

**Extended active duty**

Active duty performed by a member of the ARNGUS or Army Reserve when strength accountability passes from the ARNG or Army Reserve to the Active Army.

**Full-time National Guard duty**

Training or other duty, other than inactive duty, performed by a member of the ARNGUS or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia, under section 32 USC 316, 502(f), 503, 504, or 505, for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

**General officer command**

An Army Reserves command authorized a general officer commander by a table of organization and equipment (TOE), modified TOE, or by tables of distribution and allowances (TDA).

**Human Resources Command**

HRC (formerly AR-PERSCOM and HRC-St. Louis) executes distribution, strategic talent management, personnel programs, and services Army wide in order to optimize Total Force personnel readiness and strength for an agile and adaptive Army. HRC retains command ownership of the Army Reserve, Individual Ready, Standby, and Retired Reserve, and administers the AGR and IMA programs.

**Incapacitation**

Physical disability resulting from an injury, illness, or disease that prevents the performance of military duties as determined by the Secretary of the Army, or when still physically able to perform military duty, causes a demonstrated loss of earned income from nonmilitary employment or self-employment engaged at the time he or she incurred or aggravated the injury, illness, or disease. All approved convalescence, recovery, or recuperation periods determined to be within the line of duty are considered incapacitation periods.

**Incapacitation pay**

Pay and allowances made to certain RC Service members who are physically disabled as the result of a covered condition or who are physically able to perform military duties but have demonstrated loss of earned income from nonmilitary employment or self-employment as a result of a covered condition in accordance with Sections 204(g) or 204(h) of 37 USC.

**Incurred**

To occur as a result of or during military duty.

**Individual Ready Reserve/Inactive National Guard**

Consist of those Ready Reservists not in the Selected Reserve. Consisting of the following categories: A manpower pool comprised principally of individuals having had training, having served previously in the Active Component or in the Selected Reserve, and having some period of their military service obligation remaining. Programs such as the Armed Forces Health Program, Delayed Entry Program, and Inactive Duty Training.

**Initial entry training**

A term used to identify mandatory training each Soldier of the U.S. Army must complete upon initial entry in the service to qualify in a military specialty or branch and which is required by law for deployability on land outside the continental limits of the United States per 10 USC 671. The term encompasses the completion of basic training and specialty or branch qualification while serving on active duty or active duty for training. For ARNGUS and AR Soldiers it includes completion of initial active duty for training, the Officer Basic Course, and the Warrant Officer Basic Course.

**Integrated Disability Evaluation System**

A single set of disability medical examinations that identifies conditions that may render a Soldier unfit; a single set of disability ratings provided by VA for use by both departments. The system applies these ratings to the conditions it determines to be unfitting and compensable. The Soldier receives preliminary ratings for his or her VA compensation before separation or retirement for disability. See AR 635-40.

**Line of duty**

A finding after all available information has been reviewed that determines an injury, illness, or disease was incurred or aggravated as a result of military duty not due to gross negligence or misconduct of the member. This includes a Reserve Component member on inactive duty training, funeral honors duty, traveling directly to or from such duty or training, or while remaining overnight, immediately before the commencement of or between successive periods of such duty.

**Line of duty determination**

An administrative determination, based on the preponderance of the evidence, that an injury, illness, or disease was incurred or aggravated while in an authorized duty status and was or was not due to gross negligence or misconduct of the member.

**Military duties**

The duties of any RC member's office, grade, rank, or rating as assigned by the commander within the limitations of an approved medical profile DA Form 3349 and not the specialty or skill qualification any member held before incurring or aggravating an injury, illness, or disease in the line of duty.

**Military technicians**

Federal civilian employees required to be drilling members of the RC in which they are employed as civilians.

**Multiple unit training assembly**

This term normally has a number with it (for example, MUTA-4). It refers to the number of consecutive unit training assemblies, of which each is 4 hours in length. MUTA-2 would be 8 or more consecutive hours of training.

**Readiness division**

A major subordinate command of the USARC.

**Ready Reserve**

Comprises military members of the ARNGUS and AR, organized in units or as individuals and liable for order to active duty in time of war or national emergency. The Ready Reserve consists of three subcategories: the Selected Reserve, the IRR, and the Inactive National Guard.

**Reasonable commuting distance**

The longest distance a Soldier can be expected to travel involuntarily between his or her residence and a site where IDT will be conducted.

1. For officers, warrant officers, and enlisted Soldiers, it is a distance within a 50-mile radius of the IDT site. It will not exceed 1.5 hours (90 minutes) of travel time one way by car under average traffic, weather, and road conditions.
2. An alternative reasonable commuting distance for enlisted Soldiers can be applied when all of the conditions are met. If the distance is within a 100-mile radius of the IDT site, and it will not exceed 3 hours of travel time one way by car under average traffic, weather, and road conditions. The alternative reasonable commuting distance may be applied only when the RC Member is assigned to a unit that normally conducts MUTA on 2 consecutive days (MUTA-4) and Government-provided meals and quarters are furnished at the training site.

**Release from active duty**

Termination of active duty status and transfer or reversion to a Reserve Component not on active duty, including transfer to the IRR.

**Reserve Components of the Army**

The ARNGUS and the AR.

**Reserve of the Army**

A member of the ARNGUS or the AR.

**Selected Reserve of the Army**

Consists of those units and individuals in the Ready Reserve designated as so essential to initial wartime missions that they have priority over all other Reserves. The Selected Reserve includes officers, warrant officers, and enlisted Soldiers who are members of the ARNGUS:

1. Assigned to troop program units of the AR.
2. Serving on active duty (see 10 USC 12301(d)) or full-time National Guard duty (see 32 USC 502(f)) in an AGR status.
3. IMAs.

**Separation**

An all-inclusive term applied to personnel actions resulting from release from active duty, discharge, retirement, dropped from the rolls, release from military control of personnel without a military status, death, or discharge from the ARNGUS with concurrent transfer to the Individual Ready, Standby, or Retired Reserve. Reassignments between the various categories of the AR (Selected, Ready, Standby, or Retired) are not considered as separations.

**Separation authority**

An official authorized by the Secretary of the Army, or a designated official, to take final action with respect to a specified type of separation.

**Standby Reserve**

Consists of personnel maintaining their military affiliation without being in the Ready Reserve, having been designated key civilian employees, or who have a temporary hardship or disability. These Soldiers are not required to perform training

and are not part of units. It is a pool of trained Soldiers who may be mobilized as needed to fill manpower needs in specific skills. The Standby Reserve consists of two training categories: the active status list and the inactive status list.

#### **Tier I**

Refers to claims by RC members who are unable to perform their military duties as a result of an injury, illness, or disease caused by military service. A determination on the ability to perform military duties during a specified timeframe due to ILD conditions must be made by a military medical physician. Eligible Soldiers are entitled to full military pay and allowances, less any nonmilitary earned income received during the month of the claim. Members authorized tier I incapacitation pay are not authorized to perform in any paid IDT status for which they accrue retirement points. Retirement points may be obtained through approved correspondence courses only.

#### **Tier II**

Refers to claims by RC members who are determined able to perform their military duties, by a military medical physician, but who are unable to perform their civilian jobs and can demonstrate a loss of nonmilitary earned income. Eligible members will be reimbursed for lost nonmilitary earned income up to full military pay and allowances and are eligible to accrue retirement points.

#### **Total Army School System**

Fully accredited and integrated schools that provide standard, high-quality training and education for all components of the Army, both Regular Army and RC.

#### **Troop program unit**

A TOE or TDA unit of the AR organization, which serves as a unit on mobilization or one that is assigned a mobilization mission. The "unit" in this case is the largest separate unit prescribed by the TOE or TDA.

#### **U.S. Army Reserve**

The AR includes all Reserves of the Army who are not members of the ARNGUS and who are in a Ready, Standby, or Retired Reserve category. It is a Federal force, consisting of individual reinforcements and combat, combat support, combat service support and training type units organized and maintained to provide military training in peacetime, and a reservoir of trained units and individual reservists to be ordered to active duty in the event of a national emergency.

#### **U.S. Army Reserve Command**

A major subordinate command headquarters to the U.S. Army Forces Command, located in Fort Bragg, NC. The USARC headquarters commands footprint extends to all 56 states and territories and more than 30 countries. USARC executes shared administrative control with United States Army Pacific for 311<sup>th</sup> and 335<sup>th</sup> Signal Commands, along with the 9<sup>th</sup> Mission Support Command. USARC executes shared administrative control with United States Army Europe for the 7<sup>th</sup> Mission Support Command.

### **Section III**

#### **Special Abbreviations and Terms**

This section contains no entries.

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**PIN 067755-000**