



**UNDER SECRETARY OF DEFENSE**

4000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-4000

PERSONNEL AND  
READINESS

The Honorable Mike D. Rogers  
Chairman  
Committee on Armed Services  
U.S. House of Representatives  
Washington, DC 20515

**MAR 21 2024**

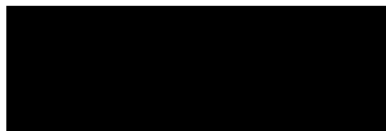
Dear Mr. Chairman:

The Department's response to 10 U.S.C. § 2733a(h), which requires an annual report to the Committees on Armed Services of the Senate and the House of Representatives regarding medical malpractice claims by members of the uniformed services, is enclosed. The report provides information on the number of claims processed, the resolution of claims, and enhancements made to ensure the processing of claims remains effective. This report provides information about claims from October 1, 2022 through September 30, 2023.

The Department works to ensure the medical malpractice claims process remains a non-adversarial, claimant-friendly administrative process which fairly evaluates medical malpractice claims in accordance with the provisions of section 2733a and 32 CFR Part 45.

Thank you for your continued strong support for the health and well-being of our Service members, veterans, and their families. I am sending a similar letter to the Senate Armed Services Committee.

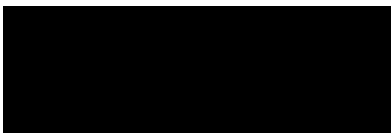
Sincerely,



Ashish S. Vazirani  
Acting

Enclosure:  
As stated

cc:  
The Honorable Adam Smith  
Ranking Member





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4000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-4000

**PERSONNEL AND  
READINESS**

The Honorable Jack Reed  
Chairman  
Committee on Armed Services  
United States Senate  
Washington, DC 20510

**MAR 21 2024**

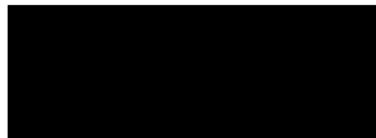
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Thank you for your continued strong support for the health and well-being of our Service members, veterans, and their families. I am sending a similar letter to the House Armed Services Committee.

Sincerely,



Ashish S. Vazirani  
Acting

Enclosure:  
As stated

cc:  
The Honorable Roger F. Wicker  
Ranking Member



# **Report to the Committees on Armed Services of the Senate and House of Representatives**



## **Medical Malpractice Claims by Members of the Uniformed Services**

**March 2024**

The estimated cost of this report for the Department of Defense is approximately \$4350. This includes \$1 in expenses and \$\$4350 in DoD labor.

## **EXECUTIVE SUMMARY**

This report responds to the requirement found in 10 U.S.C. § 2733a(h), which requires the Department of Defense (DoD) to submit an annual report to the Committees on Armed Services of the Senate and the House of Representatives regarding the processing and resolution of military medical malpractice claims by members of the Uniformed Services. The data was collected and provided by the Military Departments and is presented below in two parts. Part I provides claims data indicating the number of claims processed under section 2733a from October 1, 2022 to September 30, 2023, and indicating the resolution of those claims under the process in place as of September 20, 2023. Part II provides the Department's response to the request for information that may enhance the effectiveness of the claims process under section 2733a.

## **BACKGROUND**

Section 731 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92) amended the Military Claims Act (10 U.S.C., Chapter 163) by adding section 2733a. This section, with some limitations, allows members of the Uniformed Services (or their representatives) to file claims for compensation for personal injury or death caused by the medical malpractice of a DoD health care provider in a covered DoD military medical treatment facility. The law provided for the possibility of additional compensation beyond the existing comprehensive compensation system for military members and their families in cases of death or disability incurred in military service.

Claims are adjudicated through an administrative process under rules and procedures promulgated in 32 CFR Part 45. The process is intended to be non-adversarial and claimant friendly. The Military Department providing the medical treatment in question receives and adjudicates claims with experienced medical malpractice attorneys. This includes a review of all submissions presented by claimant, including external expert medical opinions. Additionally, DoD is required to access pertinent DoD records and information systems regarding the member to consider fully all facts that have a bearing on the claim.

If a Military Department finds liability, that Military Department will engage with the claimant or the claimant's representative to ensure it has full information about the claimant's harm to accurately determine damages for a settlement offer. Before denying a claim, the Military Department will provide the opportunity for claimants to submit missing information, including an expert report. DoD will provide a meaningful basis for an offer of settlement or a meaningful basis for a denial of a claim which includes the specific basis for denial. The addition of providing a meaningful basis was a change made by the Department to 32 CFR Part 45, effective on September 26, 2022.

Claimants dissatisfied with a Military Department determination, in most cases may file an appeal with the Military Medical Malpractice Appeals Board administered by the Defense Health Agency (DHA). Board members include experienced attorneys in medical malpractice adjudication from DHA and the Military Departments. Claims are administrative only, meaning that the Department's final determination is conclusive and not subject to judicial review. If the

Military Medical Malpractice Appeals Board revises the Initial Determination of a Military Department, the Appeals Board will provide a meaningful explanation of the basis for any revisions.

Section 2733a(h) of title 10, U.S. Code, requires the Department to submit an annual report to the Committees on Armed Services of the Senate and the House of Representatives regarding the processing and resolution of military medical malpractice claims by members of the Uniformed Services. Specifically, this report: (1) indicates the number of claims processed under section 2733a; (2) indicates the resolution of each such claim; and (3) describes any other information that may enhance the effectiveness of the claims process under this section. This report is required until 2025.

This report covers the period of October 1, 2022 to September 30, 2023. Part I of this report provides claims data indicating the number of claims processed under section 2733a and indicating the resolution of those claims. Part II provides the Department's response to the request for information that may enhance the effectiveness of the claims process under section 2733a.

**PART I: CLAIMS DATA**

1. Claims Processed. Claims processed in accordance with 10 U.S.C. § 2733a (i.e., a completed claim by virtue of settlement being offered or a Final Determination being issued) between October 1, 2022 to September 30, 2023. Claims transferred from one Military Department to another are counted by the Military Department that adjudicated the claim. Claims transferred to the Department of Veterans Affairs (VA) or claims withdrawn by a claimant are not included in this response.

Army	Navy	Air Force	Total
59	51	31	141

2. Claims Resolution under 10 U.S.C. § 2733a (October 1, 2022 to September 30, 2023).

- a. Total claims settled by the Military Departments (i.e., the Military Department found that all the elements of a 32 CFR § 45.2 “payable claim” are present and offered a settlement – even if the settlement was pending or was not accepted).

Army	Navy	Air Force	Total
5	3	2	10

- b. Claims received outside the timeframe permitted by statute and regulation (10 U.S.C. § 2733a(b)(4); 32 CFR § 45.2(c)).<sup>1</sup>

Army	Navy	Air Force	Total
6	11	2	19

- c. Claims where the care at issue was not provided in a covered military medical treatment facility (10 U.S.C. § 2733a(b)(3); 10 U.S.C. § 2733a(i)(1); 32 CFR § 45.5(b)).

Army	Navy	Air Force	Total
3	0	1	4

- d. Claims where the care was not provided by a DoD health care provider (10 U.S.C. § 2733a(b)(2); 32 CFR § 45.5(c)).

Army	Navy	Air Force	Total
1	0	0	1

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<sup>1</sup> For 2(b) – 2(i), we note that many claims are denied on more than one basis. For those claims, the Military Department selected the primary basis. For example, if a claim was not filed within the statutory period, the fact that the claim also could have been denied on other grounds would not be reported below.

e. Claim did not allege medical malpractice (32 CFR §§ 45.6 and 45.12(b)).

Army	Navy	Air Force	Total
0	0	1	1

f. Claim brought by a third party (i.e., derivative claims); (10 U.S.C. § 2733a(b)(1); 32 CFR § 45.3(b)).

Army	Navy	Air Force	Total
18	4	7	29

g. Claims denied on the merits (i.e., the standard of care was met or there was no proximate causation); (10 U.S.C. § 2733a(b)(6); 32 CFR §§ 45.6 and 45.7(a)).

Army	Navy	Air Force	Total
3	12	7	22

h. Failure by the claimant to cure a deficient filing, including failing to provide an expert report (32 CFR § 45.12(c)).

Army	Navy	Air Force	Total
23	21	9	53

i. Other bases for denial.

Basis	Army	Navy	Air Force	Total
Discretionary Function (excluded under 32 CFR § 45.2(f))	0	0	2	2

## PART II: INFORMATION THAT MAY ENHANCE THE EFFECTIVENESS OF THE CLAIMS PROCESS

DoD has proposed changes to 32 CFR Part 45. These proposed changes were published for public comment on October 20, 2023. The period of public comment concluded on December 19, 2023, and DoD is reviewing the public input.

The most significant of the proposed changes relates to the way offsets from potential damages are calculated. Currently, 32 CFR § 45.11 requires total potential damages to be reduced by offsetting most of the compensation otherwise provided or expected to be provided by DoD or VA for the same harm that is the subject of the medical malpractice claim. A change is proposed that would apply offsets to economic damages only.

Also on October 20, 2023, the Department published a Notice in the Federal Register increasing the cap on non-economic damages to \$750,000. This change took effect immediately and applied to any pending claims.

## **CONCLUSION**

The Department continues to execute the non-adversarial and claimant-friendly process called for by section 2733a. This included making changes and proposed changes designed to enhance claims procedures through the rulemaking process. The next report by the Department will cover the period of October 1, 2023 to September 30, 2024.