



OFFICE OF THE UNDER SECRETARY OF WAR
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

FEB 27 2026

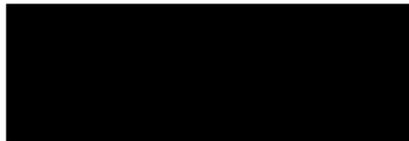
Dear Mr. Chairman:

The Department's response to 10 U.S.C. § 2733a, "Medical Malpractice Claims by Members for the Uniformed Services," is enclosed. This report provides information on the number of claims processed, the resolution of claims, and enhancements made to ensure the processing of claims remains effective. It provides information about claims from October 1, 2023 through September 30, 2024.

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

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

Sincerely,



Sean O'Keefe
Deputy Under Secretary of War for Personnel
and Readiness

Enclosure:
As stated

cc:
The Honorable Adam Smith
Ranking Member





OFFICE OF THE UNDER SECRETARY OF WAR
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

PERSONNEL AND
READINESS

The Honorable Roger F. Wicker
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

FEB 27 2026

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Sincerely,


Sean O'Keefe
Deputy Under Secretary of War for Personnel
and Readiness

Enclosure:
As stated

cc:
The Honorable Jack Reed
Ranking Member



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



Medical Malpractice Claims

February 2026

The estimated cost of this report for the Department of War (DoW) is approximately \$2,100. This includes \$0 in expenses and \$2,100 in DoW labor.

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EXECUTIVE SUMMARY

This report responds to the requirement found in 10 U.S.C. §2733a, which requires the Secretary of Defense 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 required data was collected and provided by the Military Departments and is presented below. Part I provides claims data indicating the number of claims processed under 10 U.S.C. § 2733a from October 1, 2023 to September 30, 2024, and indicating the resolution of those claims under the process in place as of September 30, 2024. Part II provides the Department's response to the request for information that may enhance the effectiveness of the claims process under 10 U.S.C. § 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 Department of War (DoW) health care provider in a covered DoW 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 nonadversarial 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 the claimant, including external expert medical opinions. Additionally, DoW is required to access pertinent DoW 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. Before denying a claim, the Military Department will provide the opportunity for claimants to submit missing information, including an expert report. If a claim is denied, DoW will provide the claimant with detailed reasoning justifying the denial of a claim, including: (1) copies of any written reports prepared by any expert upon which the denial is based; and (2) all records and documents relied upon in preparing such written reports, other than medical quality assurance records (as this term is defined in 10 U.S.C. § 1102).

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. 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 detailed reasoning justifying a denial or will adopt of the Military Department's rationale in the Initial Determination.

Section 2733a(j) 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, under the version of 10 U.S.C. § 2733 in effect on September 30, 2024: (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 covers the period of October 1, 2023 to September 30, 2024. 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, 2023 to September 30, 2024. 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 or claims withdrawn by a claimant are not included in this response.

Army	Navy	Air Force	Total
42	19	19	80

2. Claims Resolution under 10 U.S.C. § 2733 (October 1, 2023 to September 30, 2024).

- 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
8	0	4	12

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

Army	Navy	Air Force	Total
6	2	3	11

¹ 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. We note one of the Air Force claims was appealed, but the appeal was dismissed as untimely.

- 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(j)(1); 32 CFR § 45.5(b)).

Army	Navy	Air Force	Total
1	1	0	2

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

Army	Navy	Air Force	Total
0	0	0	0

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

Army	Navy	Air Force	Total
0	0	0	0

- 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
2	1	0	3

- 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
15	8	2	25

- 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
10	7	10	27

- i. Claims otherwise payable under Federal law (10 U.S.C. § 2733a(b)(5); 32 CFR § 45.2(b)).

Army	Navy	Air Force	Total
0	0	0	0

- j. Claims regarding due care or discretionary functions, quarantines, combatant activities, or intentional torts (32 CFR § 45.2(f)).

Army	Navy	Air Force	Total
0	0	0	0

- k. Claims where the member’s personal injury of death not incident to Service (32 CFR § 45.3(c)).

Army	Navy	Air Force	Total
0	0	0	0

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

On October 20, 2023, the Department published a Federal Register Notice increasing the cap on non-economic damages from \$600,000 to \$750,000. This increase reflected changes in State law, including changes in those States that periodically increase their damages cap to reflect inflation, and to account for average jury verdicts in those states that have caps on non-economic damages that do not apply in cases of more serious injury. On May 10, 2024, the Department published in the Federal Register an update to the medical malpractice regulation that changed how it offsets payments to Service members. The change eliminated offsets from non-economic damages paid for pain and suffering. This updated calculation method applied to all claims that were then pending as well as any claims going forward.

The Department also complies with section 713 of the National Defense Authorization Act for Fiscal Year 2024 (Public Law 118–31). In addition to providing the claimant with detailed reasoning justifying the denial of a claim, the Department provides the claimant with: (1) copies of any written reports prepared by any expert upon which the denial is based; and (2) all records and documents relied upon in preparing such written reports, other than medical quality assurance records (as this term is defined in 10 U.S.C. § 1102).

CONCLUSION

The Department continues to execute the non-adversarial and claimant-friendly process called for by 10 U.S.C. § 2733a. This included making changes designed to enhance claims procedures through the rulemaking process and changes required by statute. The Department will continue to monitor the performance of the claims adjudications procedures for military medical malpractice claims and appeals to ensure the effectiveness and fairness of the claims adjudication process.