

United States Code Annotated
Title 10. Armed Forces (Refs & Annos)
Subtitle A. General Military Law (Refs & Annos)
Part IV. Service, Supply, and Procurement (Refs & Annos)
Chapter 163. Military Claims (Refs & Annos)

10 U.S.C.A. § 2733a

§ 2733a. Medical malpractice claims by members of the uniformed services

Effective: December 20, 2019
Currentness

(a) In general.--Consistent with this section and under such regulations as the Secretary of Defense shall prescribe under subsection (f), the Secretary may allow, settle, and pay a claim against the United States for personal injury or death incident to the service of a member of the uniformed services that was caused by the medical malpractice of a Department of Defense health care provider.

(b) Requirement for claims.--A claim may be allowed, settled, and paid under subsection (a) only if--

(1) the claim is filed by the member of the uniformed services who is the subject of the medical malpractice claimed, or by an authorized representative on behalf of such member who is deceased or otherwise unable to file the claim due to incapacitation;

(2) the claim is for personal injury or death caused by the negligent or wrongful act or omission of a Department of Defense health care provider in the performance of medical, dental, or related health care functions while such provider was acting within the scope of employment;

(3) the act or omission constituting medical malpractice occurred in a covered military medical treatment facility;

(4) the claim is presented to the Department in writing within two years after the claim accrues;

(5) the claim is not allowed to be settled and paid under any other provision of law; and

(6) the claim is substantiated as prescribed in regulations prescribed by the Secretary of Defense under subsection (f).

(c) Liability.--**(1)** The Department of Defense is liable for only the portion of compensable injury, loss, or damages attributable to the medical malpractice of a Department of Defense health care provider.

(2) The Department of Defense shall not be liable for the attorney fees of a claimant under this section.

(d) Payment of claims.--(1) If the Secretary of Defense determines, pursuant to regulations prescribed by the Secretary under subsection (f), that a claim under this section in excess of \$100,000 is meritorious, and the claim is otherwise payable under this section, the Secretary may pay the claimant \$100,000 and report any meritorious amount in excess of \$100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.

(2) Except as provided in paragraph (1), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(e) Reporting medical malpractice.--Not later than 30 days after a determination of medical malpractice or the payment of all or part of a claim under this section, the Secretary of Defense shall submit to the Director of the Defense Health Agency a report documenting such determination or payment to be used by the Director for all necessary and appropriate purposes, including medical quality assurance.

(f) Regulations.--(1) The Secretary of Defense shall prescribe regulations to implement this section.

(2) Regulations prescribed by the Secretary under paragraph (1) shall include the following:

(A) Policies and procedures to ensure the timely, efficient, and effective processing and administration of claims under this section, including--

(i) the filing, receipt, investigation, and evaluation of a claim;

(ii) the negotiation, settlement, and payment of a claim;

(iii) such other matters relating to the processing and administration of a claim, including an administrative appeals process, as the Secretary considers appropriate.

(B) Uniform standards consistent with generally accepted standards used in a majority of States in adjudicating claims under chapter 171 of title 28 (commonly known as the “Federal Tort Claims Act”) to be applied to the evaluation, settlement, and payment of claims under this section without regard to the place of occurrence of the medical malpractice giving rise to the claim or the military department or service of the member of the uniformed services, and without regard to foreign law in the case of claims arising in foreign countries, including uniform standards to be applied to determinations with respect to--

(i) whether an act or omission by a Department of Defense health care provider in the context of performing medical, dental, or related health care functions was negligent or wrongful, considering the specific facts and circumstances;

(ii) whether the personal injury or death of the member was caused by a negligent or wrongful act or omission of a Department of Defense health care provider in the context of performing medical, dental, or related health care functions, considering the specific facts and circumstances;

(iii) requirements relating to proof of duty, breach of duty, and causation resulting in compensable injury or loss, subject to such exclusions as may be established by the Secretary of Defense; and

(iv) calculation of damages.

(C) Such other matters as the Secretary considers appropriate.

(3) In order to implement expeditiously the provisions of this section, the Secretary may prescribe the regulations under this subsection--

(A) by prescribing an interim final rule; and

(B) not later than one year after prescribing such interim final rule and considering public comments with respect to such interim final rule, by prescribing a final rule.

(g) Limitation on attorney fees.--(1) No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of 20 percent of any claim paid pursuant to this section.

(2) Any attorney who charges, demands, receives, or collects for services rendered in connection with a claim under this section any amount in excess of the amount allowed under paragraph (1), if recovery be had, shall be fined not more than \$2,000, imprisoned not more than one year, or both.

(h) Annual report.--Not less frequently than annually until 2025, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report--

(1) indicating the number of claims processed under this section;

(2) indicating the resolution of each such claim; and

(3) describing any other information that may enhance the effectiveness of the claims process under this section.

(i) Definitions.--In this section:

(1) Covered military medical treatment facility.--The term “covered military medical treatment facility” means a facility described in subsection (b), (c), or (d) of section 1073d of this title.

(2) Department of Defense health care provider.--The term “Department of Defense health care provider” means a member of the uniformed services, civilian employee of the Department of Defense, or personal services contractor of the Department (under section 1091 of this title) authorized by the Department to provide health care services and acting within the scope of employment of such individual.

(3) Member of the uniformed services.--The term “member of the uniformed services” includes a member of a reserve component of the armed forces if the claim by the member under this section is in connection with personal injury or death that occurred while the member was in Federal status.

CREDIT(S)

(Added Pub.L. 116-92, Div. A, Title VII, § 731(a)(1), Dec. 20, 2019, 133 Stat. 1457.)

10 U.S.C.A. § 2733a, 10 USCA § 2733a
Current through P.L. 116-158.