



**CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE**

October 20, 2009

**H.R. 1478
Carmelo Rodriguez Military Medical Accountability Act of 2009**

*As ordered reported by the House Committee on the Judiciary
on October 7, 2009*

SUMMARY

H.R. 1478 would amend the Federal Tort Claims Act (FTCA) to allow members of the Armed Forces to bring suit against the federal government for damages related to malpractice by government medical personnel. CBO estimates that enacting H.R. 1478 would increase direct spending from the Judgment Fund by \$2.7 billion over the 2010-2019 period. Enacting H.R. 1478 would not affect revenues and would have an insignificant effect on spending subject to appropriation.

Pursuant to section 311 of the Concurrent Resolution on the Budget for Fiscal Year 2009 (S. Con. Res. 70), CBO estimates H.R. 1478 would increase projected deficits by more than \$5 billion in at least one of the four consecutive 10-year periods starting in 2020.

H.R. 1478 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1478 is shown in the following table. The costs of this legislation fall primarily within budget function 800 (general government).

	By Fiscal Year, in Millions of Dollars										2010-	2010-
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2014	2019
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority	90	290	430	430	360	260	200	190	200	220	1,600	2,670
Estimated Outlays	90	290	430	430	360	260	200	190	200	220	1,600	2,670

BASIS OF ESTIMATE

H.R. 1478 would amend the FTCA to allow members of the Armed Forces to bring suit against the federal government for damages related to malpractice by government medical personnel. Servicemembers are currently blocked from pursuing such claims as a result of a 1950 Supreme Court decision (*Feres v. United States*). This amendment to the FTCA would apply retroactively to claims arising on or after January 1, 1997. CBO estimates that enacting H.R. 1478 would increase direct spending from the Judgment Fund (a permanent indefinite appropriation) by \$2.7 billion over the 2010-2019 period. This estimate assumes that H.R. 1478 will be enacted early in fiscal year 2010.

While *Feres v. United States* effectively blocks servicemembers from filing malpractice claims against the Department of Defense (DoD) for care received during the course of active duty, others who use military health facilities and physicians (primarily dependents, military retirees, and survivors) are not prohibited from doing so. Using claims data from those other populations, and adjusting for the fact that active-duty members utilize DoD health facilities for a larger portion of their overall health care, CBO estimates that H.R. 1478 would increase the number of medical malpractice claims against DoD by about 750 per year. Based on those same data, we estimate that about one-third, or 250 claims, would result in monetary settlements or awards.

Because H.R. 1478 would allow servicemembers to file malpractice claims for care received while on active duty on or after January 1, 1997, CBO expects there would be a surge of claims in the first several years after enactment. However, CBO assumes the probability that former members would file and pursue malpractice claims decreases proportionately with the amount of time between the medical care they received and the enactment date of this bill. Some claims would probably be settled by the government soon after they are filed, while CBO estimates others would take up to five years after the claims are filed before payments from the Judgment Fund would occur. This lag accounts for the time needed for litigation, and is based on an analysis of DoD data on malpractice claims for dependents and retirees. In total, CBO estimates that awards for 4,100 medical malpractice claims against DoD would be paid over the 2010-2019 period if H.R. 1478 is enacted. Of those, about half would be for incidents that occurred prior to fiscal year 2010.

Using data compiled by DoD on payments related to malpractice claims by military retirees and dependents, CBO estimates the average monetary award would be about \$450,000 for payments that occur in 2010. While our analysis of the data indicate that most of the monetary settlements and awards would be substantially less than this, a small number of cases would result in settlements and awards in the millions of dollars each. Going forward, CBO estimates that average award amounts would increase by about 7 percent each year, based on an analysis of the growth of average medical malpractice payments since 1986.

The FTCA does allow federal agencies to settle cases with monetary values less than \$2,500. In those instances, the amounts would be paid from discretionary funds, although in the case of H.R. 1478, CBO estimates those amounts would total less than \$500,000 annually.

IMPACT ON LONG-TERM DEFICITS

Pursuant to section 311 of the Concurrent Resolution on the Budget for Fiscal Year 2009 (S. Con. Res. 70), CBO estimates H.R. 1478 would increase projected deficits by more than \$5 billion in at least one of the four consecutive 10-year periods starting in 2020.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 1478 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

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