



**CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE**

August 6, 2012

S. 2389

A bill to deem the submission of certain claims to an Indian Health Service contracting officer as timely

As ordered reported by the Senate Committee on Indian Affairs on June 28, 2012

SUMMARY

S. 2389 would amend federal law regarding certain health care claims submitted to the Indian Health Service (IHS). Specifically, the bill would deem certain claims submitted to an IHS contracting officer on or before October 31, 2005, involving a claim that accrued between October 1, 1995, and September 30, 1999, to have been submitted within the period specified by the statute of limitations.

CBO estimates that enacting S. 2389 would increase direct spending from the Judgment Fund of the U.S. Treasury by \$12 million over the 2013-2022 period. Because the legislation would affect direct spending, pay-as-you-go procedures apply. Enacting S. 2389 would not affect revenues.

CBO also estimates that implementing S. 2389 would have an insignificant effect on spending subject to appropriation.

S. 2389 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 2389 is shown in the following table. The costs of this legislation fall within budget function 800 (general government).

	By Fiscal Year, in Millions of Dollars											
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2013-2017	2013-2022
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority	0	0	0	0	2	2	2	2	2	2	2	12
Estimated Outlays	0	0	0	0	2	2	2	2	2	2	2	12

BASIS OF ESTIMATE

The Indian Health Service (IHS) operates a network of health care clinics and hospitals in tribal areas. Because there are situations in which IHS patients require additional health care services that are not available at local IHS service sites, the agency contracts with private health care practitioners and facilities to supplement the care available to those patients. Certain private contract health care providers have contended that the reimbursement they received from IHS in the mid-to-late 1990s was insufficient to cover the full cost of providing care to IHS patients under the Indian Self-Determination and Education Assistance Act, and they resubmitted some of those claims from the 1990s in 2005. However, IHS determined that the providers had submitted those claims after the time allowed for claims submission had expired, removing them from consideration.

S. 2389 would allow the claims specified above to be resubmitted for payment by the government because these claims now would be considered “submitted timely.” According to legal representatives involved in the matter, the total value of the claims affected by this bill is about \$25 million.

The outcome of the claims against the government that would result from enacting S. 2389 is uncertain, both with respect to the amount of any damages that might be awarded to the health care providers and the timing of any resolution. Assuming enactment around the end of fiscal year 2012, CBO believes there is some probability that litigation brought based on these claims would result in a settlement payable within the 2013-2022 period from the Treasury’s Judgment Fund (a permanent, indefinite appropriation for claims and judgments against the United States). In a recent Supreme Court decision (in the case *Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181 (2012)), the Court removed one of the government’s defenses against such claims.

Taking into account the uncertainty of the outcome, CBO assumes that about half of the resubmitted claims would be paid under S. 2389. Therefore, CBO estimates that enacting this bill would increase direct spending by \$12 million over the 2013-2022 period. Those payments would be made from the Judgment Fund. Given the extended length of time

required to settle similar litigation, CBO expects that outlays would probably not begin until 2017 or later.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO Estimate of Pay-As-You-Go Effects for S. 2389, as ordered reported by the Senate Committee on Indian Affairs on June 28, 2012

	By Fiscal Year, in Millions of Dollars													
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012-2017	2012-2022	
NET INCREASE IN THE DEFICIT														
Statutory Pay-As-You-Go Impact	0	0	0	0	0	2	2	2	2	2	2	2	2	12

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

S. 2389 contains no intergovernmental or private-sector mandates as defined in UMRA.

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