

109TH CONGRESS
1ST SESSION

H. R. 3359

To limit frivolous medical malpractice lawsuits, to reform the medical malpractice insurance business in order to reduce the cost of medical malpractice insurance, to enhance patient access to medical care, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2005

Mr. CONYERS (for himself and Mr. DINGELL) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To limit frivolous medical malpractice lawsuits, to reform the medical malpractice insurance business in order to reduce the cost of medical malpractice insurance, to enhance patient access to medical care, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Medical Malpractice and Insurance Reform Act of
6 2005”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—LIMITING FRIVOLOUS MEDICAL MALPRACTICE
 LAWSUITS

Sec. 101. Statute of limitations.

Sec. 102. Health care specialist affidavit.

Sec. 103. Sanctions for frivolous actions and pleadings.

Sec. 104. Mandatory mediation.

Sec. 105. Limitation on punitive damages.

Sec. 106. Reduction in premiums paid by physicians for medical malpractice in-
 surance coverage.

Sec. 107. Definitions.

Sec. 108. Applicability.

TITLE II—MEDICAL MALPRACTICE INSURANCE REFORM

Sec. 201. Prohibition on anticompetitive activities by medical malpractice insur-
 ers.

Sec. 202. Medical malpractice insurance price comparison.

Sec. 203. Procedural requirements for medical malpractice insurers' proposed
 rate increases.

TITLE III—ENHANCING PATIENT ACCESS TO CARE THROUGH
 DIRECT ASSISTANCE

Sec. 301. Grants and contracts regarding health provider shortages.

Sec. 302. Health professional assignments to trauma centers through National
 Health Service Corps.

TITLE IV—INDEPENDENT ADVISORY COMMISSION ON MEDICAL
 MALPRACTICE INSURANCE

Sec. 401. Establishment.

Sec. 402. Duties.

Sec. 403. Report.

Sec. 404. Membership.

Sec. 405. Director and staff; experts and consultants.

Sec. 406. Powers.

Sec. 407. Authorization of appropriations.

TITLE V—MEDICAL MALPRACTICE INSURANCE INFORMATION
 ADMINISTRATION

Sec. 501. Establishment.

1 **TITLE I—LIMITING FRIVOLOUS**
2 **MEDICAL MALPRACTICE LAW-**
3 **SUITS**

4 **SEC. 101. STATUTE OF LIMITATIONS.**

5 (a) IN GENERAL.—A medical malpractice action shall
6 be barred unless the complaint is filed within 3 years after
7 the right of action accrues.

8 (b) ACCRUAL.—A right of action referred to in sub-
9 section (a) accrues upon the last to occur of the following
10 dates:

11 (1) The date of the injury.

12 (2) The date on which the claimant discovers,
13 or through the use of reasonable diligence should
14 have discovered, the injury.

15 (3) The date on which the claimant becomes 18
16 years of age.

17 (c) APPLICABILITY.—This section shall apply to any
18 injury occurring after the date of the enactment of this
19 Act.

20 **SEC. 102. HEALTH CARE SPECIALIST AFFIDAVIT.**

21 (a) REQUIRING SUBMISSION WITH COMPLAINT.—No
22 medical malpractice action may be brought by any indi-
23 vidual unless, at the time the individual brings the action
24 (except as provided in subsection (b)(1)), it is accom-
25 panied by the affidavit of a qualified specialist that in-

1 cludes the specialist’s statement of belief that, based on
2 a review of the available medical record and other relevant
3 material, there is a reasonable and meritorious cause for
4 the filing of the action against the defendant.

5 (b) EXTENSION IN CERTAIN INSTANCES.—

6 (1) IN GENERAL.—Subject to paragraph (2),
7 subsection (a) shall not apply with respect to an in-
8 dividual who brings a medical malpractice action
9 without submitting an affidavit described in such
10 subsection if, as of the time the individual brings the
11 action, the individual has been unable to obtain ade-
12 quate medical records or other information necessary
13 to prepare the affidavit.

14 (2) DEADLINE FOR SUBMISSION WHERE EX-
15 TENSION APPLIES.—In the case of an individual who
16 brings an action for which paragraph (1) applies,
17 the action shall be dismissed unless the individual
18 (or the individual’s attorney) submits the affidavit
19 described in subsection (a) not later than 90 days
20 after obtaining the information described in such
21 paragraph.

22 (c) QUALIFIED SPECIALIST DEFINED.—In sub-
23 section (a), a “qualified specialist” means, with respect
24 to a medical malpractice action, a health care professional

1 who is reasonably believed by the individual bringing the
2 action (or the individual's attorney)—

3 (1) to be knowledgeable in the relevant issues
4 involved in the action;

5 (2) to practice (or to have practiced) or to teach
6 (or to have taught) in the same area of health care
7 or medicine that is at issue in the action; and

8 (3) in the case of an action against a physician,
9 to be board certified in a specialty relating to that
10 area of medicine.

11 (d) CONFIDENTIALITY OF SPECIALIST.—Upon a
12 showing of good cause by a defendant, the court may as-
13 certain the identity of a specialist referred to in subsection
14 (a) while preserving confidentiality.

15 **SEC. 103. SANCTIONS FOR FRIVOLOUS ACTIONS AND**
16 **PLEADINGS.**

17 (a) SIGNATURE REQUIRED.—Every pleading, written
18 motion, and other paper in any medical malpractice action
19 shall be signed by at least 1 attorney of record in the at-
20 torney's individual name, or, if the party is not rep-
21 resented by an attorney, shall be signed by the party. Each
22 paper shall state the signer's address and telephone num-
23 ber, if any. An unsigned paper shall be stricken unless
24 omission of the signature is corrected promptly after being
25 called to the attention of the attorney or party.

1 (b) CERTIFICATE OF MERIT.—A medical malpractice
2 action shall be dismissed unless the attorney or unrepre-
3 sented party presenting the complaint certifies that, to the
4 best of the person’s knowledge, information, and belief,
5 formed after an inquiry reasonable under the cir-
6 cumstances,—

7 (1) it is not being presented for any improper
8 purpose, such as to harass or to cause unnecessary
9 delay or needless increase in the cost of litigation;

10 (2) the claims and other legal contentions
11 therein are warranted by existing law or by a non-
12 frivolous argument for the extension, modification,
13 or reversal of existing law or the establishment of
14 new law; and

15 (3) the allegations and other factual contentions
16 have evidentiary support or, if specifically so identi-
17 fied, are likely to have evidentiary support after a
18 reasonable opportunity for further investigation and
19 discovery.

20 (c) MANDATORY SANCTIONS.—

21 (1) FIRST VIOLATION.—If, after notice and a
22 reasonable opportunity to respond, a court, upon
23 motion or upon its own initiative, determines that
24 subsection (b) has been violated, the court shall find
25 each attorney or party in violation in contempt of

1 court and shall require the payment of costs and at-
2 torneys fees. The court may also impose additional
3 appropriate sanctions, such as striking the plead-
4 ings, dismissing the suit, and sanctions plus interest,
5 upon the person in violation, or upon both such per-
6 son and such person's attorney or client (as the case
7 may be).

8 (2) SECOND VIOLATION.—If, after notice and a
9 reasonable opportunity to respond, a court, upon
10 motion or upon its own initiative, determines that
11 subsection (b) has been violated and that the attor-
12 ney or party with respect to which the determination
13 was made has committed one previous violation of
14 subsection (b) before this or any other court, the
15 court shall find each such attorney or party in con-
16 tempt of court and shall require the payment of
17 costs and attorneys fees, and require such person in
18 violation (or both such person and such person's at-
19 torney or client (as the case may be)) to pay a mon-
20 etary fine. The court may also impose additional ap-
21 propriate sanctions, such as striking the pleadings,
22 dismissing the suit and sanctions plus interest, upon
23 such person in violation, or upon both such person
24 and such person's attorney or client (as the case
25 may be).

1 (3) THIRD VIOLATION.—If, after notice and a
2 reasonable opportunity to respond, a court, upon
3 motion or upon its own initiative, determines that
4 subsection (b) has been violated and that the attor-
5 ney or party with respect to which the determination
6 was made has committed more than one previous
7 violation of subsection (b) before this or any other
8 court, the court shall find each such attorney or
9 party in contempt of court, refer each such attorney
10 to one or more appropriate State bar associations
11 for disciplinary proceedings, require the payment of
12 costs and attorneys fees, and require such person in
13 violation (or both such person and such person’s at-
14 torney or client (as the case may be)) to pay a mon-
15 etary fine. The court may also impose additional ap-
16 propriate sanctions, such as striking the pleadings,
17 dismissing the suit, and sanctions plus interest,
18 upon such person in violation, or upon both such
19 person and such person’s attorney or client (as the
20 case may be).

21 **SEC. 104. MANDATORY MEDIATION.**

22 (a) IN GENERAL.—In any medical malpractice ac-
23 tion, before such action comes to trial, mediation shall be
24 required. Such mediation shall be conducted by one or
25 more mediators who are selected by agreement of the par-

1 ties or, if the parties do not agree, who are qualified under
2 applicable State law and selected by the court.

3 (b) STATE OPTION TO ALLOW ARBITRATION.—In ad-
4 dition to mediation under subsection (a), in any medical
5 malpractice action, arbitration shall be available to the
6 parties if the State so provides and, if so, shall be available
7 to the parties to the extent the parties so agree.

8 (c) REQUIREMENTS.—Mediation under subsection (a)
9 shall be made available by a State subject to the following
10 requirements:

11 (1) Participation in such mediation shall be in
12 lieu of any alternative dispute resolution method re-
13 quired by any other law or by any contractual ar-
14 rangement made by or on behalf of the parties be-
15 fore the commencement of the action.

16 (2) Each State shall disclose to residents of the
17 State the availability and procedures for resolution
18 of consumer grievances regarding the provision of
19 (or failure to provide) health care services, including
20 such mediation.

21 (3) Each State shall provide that such medi-
22 ation may begin before or after, at the option of the
23 claimant, the commencement of a medical mal-
24 practice action.

1 (4) The Attorney General, in consultation with
2 the Secretary of Health and Human Services, shall,
3 by regulation, develop requirements with respect to
4 such mediation to ensure that it is carried out in a
5 manner that—

6 (A) is affordable for the parties involved;

7 (B) encourages timely resolution of claims;

8 (C) encourages the consistent and fair res-
9 olution of claims; and

10 (D) provides for reasonably convenient ac-
11 cess to dispute resolution.

12 (d) FURTHER REDRESS AND ADMISSIBILITY.—Any
13 party dissatisfied with a determination reached with re-
14 spect to a medical malpractice claim as a result of an al-
15 ternative dispute resolution method applied under this sec-
16 tion shall not be bound by such determination. The results
17 of any alternative dispute resolution method applied under
18 this section, and all statements, offers, and communica-
19 tions made during the application of such method, shall
20 be inadmissible for purposes of adjudicating the claim.

21 **SEC. 105. LIMITATION ON PUNITIVE DAMAGES.**

22 (a) IN GENERAL.—Punitive damages may not be
23 awarded in a medical malpractice action, except upon
24 proof of—

25 (1) gross negligence;

1 (2) reckless indifference to life; or

2 (3) an intentional act, such as voluntary intoxi-
3 cation or impairment by a physician, sexual abuse or
4 misconduct, assault and battery, or falsification of
5 records.

6 (b) ALLOCATION.—In such a case, the award of puni-
7 tive damages shall be allocated 50 percent to the claimant
8 and 50 percent to a trustee appointed by the court, to
9 be used by such trustee in the manner specified in sub-
10 section (d). The court shall appoint the Secretary of
11 Health and Human Services as such trustee.

12 (c) EXCEPTION.—This section shall not apply with
13 respect to an action if the applicable State law provides
14 (or has been construed to provide) for damages in such
15 an action that are only punitive or exemplary in nature.

16 (d) TRUST FUND.—

17 (1) IN GENERAL.—This subsection applies to
18 amounts allocated to the Secretary of Health and
19 Human Services as trustee under subsection (b).

20 (2) AVAILABILITY.—Such amounts shall be
21 available for use by the Secretary of Health and
22 Human Services under paragraph (3) and shall re-
23 main so available until expended.

24 (3) USE.—

1 (A) Subject to subparagraph (B), the Sec-
2 retary of Health and Human Services, acting
3 through the Director of the Agency for
4 Healthcare Research and Quality, shall use the
5 amounts to which this subsection applies for ac-
6 tivities to reduce medical errors and improve
7 patient safety.

8 (B) The Secretary of Health and Human
9 Services may not use any part of such amounts
10 to establish or maintain any system that re-
11 quires mandatory reporting of medical errors.

12 (C) The Secretary of Health and Human
13 Services shall promulgate regulations to estab-
14 lish programs and procedures for carrying out
15 this paragraph.

16 (4) INVESTMENT.—

17 (A) The Secretary of Health and Human
18 Services shall invest the amounts to which this
19 subsection applies in such amounts as such Sec-
20 retary determines are not required to meet cur-
21 rent withdrawals. Such investments may be
22 made only in interest-bearing obligations of the
23 United States. For such purpose, such obliga-
24 tions may be acquired on original issue at the

1 issue price, or by purchase of outstanding obli-
2 gations at the market price.

3 (B) Any obligation acquired by the Sec-
4 retary in such Secretary's capacity as trustee of
5 such amounts may be sold by the Secretary at
6 the market price.

7 **SEC. 106. REDUCTION IN PREMIUMS PAID BY PHYSICIANS**
8 **FOR MEDICAL MALPRACTICE INSURANCE**
9 **COVERAGE.**

10 (a) IN GENERAL.—Not later than 180 days after the
11 date of the enactment of this Act, each medical mal-
12 practice liability insurance company shall—

13 (1) develop a reasonable estimate of the annual
14 amount of financial savings that will be achieved by
15 the company as a result of this title;

16 (2) develop and implement a plan to annually
17 dedicate at least 50 percent of such annual savings
18 to reduce the amount of premiums that the company
19 charges physicians for medical malpractice liability
20 coverage; and

21 (3) submit to the Secretary of Health and
22 Human Services (hereinafter referred to in this sec-
23 tion as the “Secretary”) a written certification that
24 the company has complied with paragraphs (1) and
25 (2).

1 (b) REPORTS.—Not later than one year after the date
2 of the enactment of this Act and annually thereafter, each
3 medical malpractice liability insurance company shall sub-
4 mit to the Secretary a report that identifies the percentage
5 by which the company has reduced medical malpractice
6 coverage premiums relative to the date of the enactment
7 of this Act.

8 (c) ENFORCEMENT.—A medical malpractice liability
9 insurance company that violates a provision of this section
10 is liable to the United States for a civil penalty in an
11 amount assessed by the Secretary, not to exceed \$11,000
12 for each such violation. The provisions of paragraphs (3)
13 through (5) of section 303(g) of the Federal Food, Drug,
14 and Cosmetic Act apply to such a civil penalty to the same
15 extent and in the same manner as such paragraphs apply
16 to a civil penalty under such section.

17 (d) DEFINITION.—For purposes of this section, the
18 term “medical malpractice liability insurance company”
19 means an entity in the business of providing an insurance
20 policy under which the entity makes payment in settlement
21 (or partial settlement) of, or in satisfaction of a judgment
22 in, a medical malpractice action or claim.

23 **SEC. 107. DEFINITIONS.**

24 In this title, the following definitions apply:

1 (1) ALTERNATIVE DISPUTE RESOLUTION METH-
2 OD.—The term “alternative dispute resolution meth-
3 od” means a method that provides for the resolution
4 of medical malpractice claims in a manner other
5 than through medical malpractice actions.

6 (2) CLAIMANT.—The term “claimant” means
7 any person who alleges a medical malpractice claim,
8 and any person on whose behalf such a claim is al-
9 leged, including the decedent in the case of an action
10 brought through or on behalf of an estate.

11 (3) HEALTH CARE PROFESSIONAL.—The term
12 “health care professional” means any individual who
13 provides health care services in a State and who is
14 required by the laws or regulations of the State to
15 be licensed or certified by the State to provide such
16 services in the State.

17 (4) HEALTH CARE PROVIDER.—The term
18 “health care provider” means any organization or
19 institution that is engaged in the delivery of health
20 care services in a State and that is required by the
21 laws or regulations of the State to be licensed or cer-
22 tified by the State to engage in the delivery of such
23 services in the State.

24 (5) INJURY.—The term “injury” means any ill-
25 ness, disease, or other harm that is the subject of

1 a medical malpractice action or a medical mal-
2 practice claim.

3 (6) MANDATORY.—The term “mandatory”
4 means required to be used by the parties to attempt
5 to resolve a medical malpractice claim notwith-
6 standing any other provision of an agreement, State
7 law, or Federal law.

8 (7) MEDIATION.—The term “mediation” means
9 a settlement process coordinated by a neutral third
10 party and without the ultimate rendering of a formal
11 opinion as to factual or legal findings.

12 (8) MEDICAL MALPRACTICE ACTION.—The term
13 “medical malpractice action” means an action in any
14 State or Federal court against a physician, or other
15 health professional, who is licensed in accordance
16 with the requirements of the State involved that—

17 (A) arises under the law of the State in-
18 volved;

19 (B) alleges the failure of such physician or
20 other health professional to adhere to the rel-
21 evant professional standard of care for the serv-
22 ice and specialty involved;

23 (C) alleges death or injury proximately
24 caused by such failure; and

1 (D) seeks monetary damages, whether
2 compensatory or punitive, as relief for such
3 death or injury.

4 (9) **MEDICAL MALPRACTICE CLAIM.**—The term
5 “medical malpractice claim” means a claim forming
6 the basis of a medical malpractice action.

7 (10) **STATE.**—The term “State” means each of
8 the several States, the District of Columbia, the
9 Commonwealth of Puerto Rico, American Samoa,
10 Guam, the Commonwealth of the Northern Mariana
11 Islands, the Virgin Islands, and any other territory
12 or possession of the United States.

13 **SEC. 108. APPLICABILITY.**

14 (a) **IN GENERAL.**—Except as provided in section 104,
15 this title shall apply with respect to any medical mal-
16 practice action brought on or after the date of the enact-
17 ment of this Act.

18 (b) **FEDERAL COURT JURISDICTION NOT ESTAB-**
19 **LISHED ON FEDERAL QUESTION GROUNDS.**—Nothing in
20 this title shall be construed to establish any jurisdiction
21 in the district courts of the United States over medical
22 malpractice actions on the basis of section 1331 or 1337
23 of title 28, United States Code.

1 **TITLE II—MEDICAL MAL-**
2 **PRACTICE INSURANCE RE-**
3 **FORM**

4 **SEC. 201. PROHIBITION ON ANTICOMPETITIVE ACTIVITIES**
5 **BY MEDICAL MALPRACTICE INSURERS.**

6 Notwithstanding any other provision of law, nothing
7 in the Act of March 9, 1945 (15 U.S.C. 1011 et seq., com-
8 monly known as the “McCarran-Ferguson Act”) shall be
9 construed to permit commercial insurers to engage in any
10 form of price fixing, bid rigging, or market allocations in
11 connection with the conduct of the business of providing
12 medical malpractice insurance. This section does not apply
13 to the information-gathering and rate-setting activities of
14 any State commissions of insurance, or any other State
15 regulatory body with authority to set insurance rates.

16 **SEC. 202. MEDICAL MALPRACTICE INSURANCE PRICE COM-**
17 **PARISON.**

18 (a) INTERNET SITE.—Not later than 90 days after
19 the date of the enactment of this Act, and after consulta-
20 tion with the medical malpractice insurance industry, the
21 Secretary of Health and Human Services shall establish
22 an interactive internet site which shall enable any health
23 care provider licensed in the United States to obtain a
24 quote from each medical malpractice insurer licensed to
25 write the type of coverage sought by the provider.

1 (b) ONLINE FORMS.—

2 (1) IN GENERAL.—The internet site shall en-
3 able health care providers to complete an online
4 form that shall capture a comprehensive set of infor-
5 mation sufficient to generate a quote for each in-
6 surer. The Secretary shall develop transmission soft-
7 ware components which allow such information to be
8 formatted for delivery to each medical malpractice
9 insurer based on the requirements of the computer
10 system of the insurer.

11 (2) PROTECTION OF CONFIDENTIALITY OF IN-
12 FORMATION DISCLOSED.—All information provided
13 by a health care provider for purposes of generating
14 a quote through the internet site shall be used only
15 for that purpose.

16 (c) INTEGRATION OF RATING CRITERIA.—The Sec-
17 retary shall integrate the rating criteria of each insurer
18 into its online form after consultation with each insurer.
19 The Secretary shall integrate such criteria using one of
20 the following methods:

21 (1) Developing a customized interface with the
22 insurer's own rating engine.

23 (2) Accessing a third-party rating engine of the
24 insurer's choice.

1 (3) Loading the carrier's rating information
2 into a rating engine operated by the Secretary.

3 (4) Any other method agreed on between the
4 Secretary and the insurer.

5 (d) PRESENTATION OF QUOTES.—After a health care
6 provider has answered all the questions appearing on the
7 online form, such provider will be presented with quotes
8 from each medical malpractice insurer licensed to write
9 the coverage requested by the provider.

10 (e) ACCURACY OF QUOTES.—Quotes provided at the
11 internet site shall at all times be accurate. Whenever any
12 insurer changes its rates, such rate changes shall be imple-
13 mented at the internet site by the Secretary, in consulta-
14 tion with the insurer, as soon as practicable, but in no
15 event later than 10 days after such changes take effect.
16 During any period during which an insurer has changed
17 its rates but the Secretary has not yet implemented such
18 changed rates on the internet site, quotes for that insurer
19 shall not be obtainable at the internet site.

20 (f) USER-FRIENDLY FEATURES.—The Secretary
21 shall design the internet site to incorporate user-friendly
22 formats and self-help guidance materials, and shall de-
23 velop a user-friendly internet user-interface.

24 (g) CONTACT INFORMATION.—The internet site shall
25 also provide contact information, including address and

1 telephone number, for each medical malpractice insurer
2 for which a provider obtains a quote at the site.

3 (h) REPORT.—Not later than December 31, 2005,
4 the Secretary shall submit a report to the Congress on
5 the development, implementation and effects of the inter-
6 net site. Such report shall be based on—

7 (1) the Secretary’s consultation with health
8 care providers, medical malpractice insurers, State
9 insurance commissioners, and other interested par-
10 ties; and

11 (2) the Secretary’s analysis of other informa-
12 tion available to the Secretary.

13 The report shall describe the Secretary’s views concerning
14 the extent to which this section has contributed to increas-
15 ing the availability of medical malpractice insurance, and
16 the effect this section has had on the cost of medical mal-
17 practice insurance.

18 **SEC. 203. PROCEDURAL REQUIREMENTS FOR MEDICAL**
19 **MALPRACTICE INSURERS’ PROPOSED RATE**
20 **INCREASES.**

21 (a) IN GENERAL.—Each State shall have in effect a
22 policy under which—

23 (1) any health care professional (as defined in
24 title I of this Act) licensed by the State has standing
25 in any State administrative proceeding to challenge

1 a proposed rate increase in medical malpractice in-
2 surance; and

3 (2) a provider of medical malpractice insurance
4 in the State may not implement a rate increase in
5 such insurance unless the provider, at minimum,
6 first submits to the appropriate State agency a de-
7 scription of the rate increase and a substantial jus-
8 tification for the rate increase.

9 (b) RULEMAKING.—The Attorney General shall pro-
10 mulgate rules to carry out this section.

11 (c) EFFECTIVE DATE.—The requirements of this sec-
12 tion shall take effect 1 year after the date of the enact-
13 ment of this Act.

14 **TITLE III—ENHANCING PATIENT**
15 **ACCESS TO CARE THROUGH**
16 **DIRECT ASSISTANCE**

17 **SEC. 301. GRANTS AND CONTRACTS REGARDING HEALTH**
18 **PROVIDER SHORTAGES.**

19 Subpart I of part D of title III of the Public Health
20 Service Act (42 U.S.C. 254b et seq.) is amended by adding
21 at the end the following section.

1 **“SEC. 330L. HEALTH PROVIDER SHORTAGES RESULTING**
2 **FROM COSTS OF MEDICAL MALPRACTICE IN-**
3 **SURANCE.**

4 “(a) IN GENERAL.—The Secretary, acting through
5 the Administrator of the Health Resources and Services
6 Administration, may make awards of grants or contracts
7 in accordance with this section for geographic areas that,
8 as determined by the Secretary, have a shortage of one
9 or more types of health providers as a result of the pro-
10 viders making the decision to cease or curtail providing
11 health services in the geographic areas because of the costs
12 of maintaining malpractice insurance.

13 “(b) RECIPIENTS OF AWARDS; EXPENDITURE.—In
14 accordance with such criteria as the Secretary may estab-
15 lish:

16 “(1) Awards under subsection (a) may be made
17 to health providers who agree to provide health serv-
18 ices (or to continue providing health services, as the
19 case may be) in geographic areas described in such
20 subsection for the period during which payments
21 under the awards are made to the health providers.

22 “(2) Health providers who receive such awards
23 may expend the awards to assist the providers with
24 the costs of maintaining medical malpractice insur-
25 ance for providing health services in the geographic
26 area for which the award is made.

1 “(c) DEFINITION.—For purposes of this section, the
2 term ‘health providers’ means physicians and other health
3 professionals, and organizations that provide health serv-
4 ices (including hospitals, clinics, and group practices), that
5 meet applicable legal requirements to provide the health
6 services involved.”.

7 **SEC. 302. HEALTH PROFESSIONAL ASSIGNMENTS TO TRAUMA**
8 **CENTERS THROUGH NATIONAL HEALTH**
9 **SERVICE CORPS.**

10 Section 338H of the Public Health Service Act (42
11 U.S.C. 254q) is amended by adding at the end the fol-
12 lowing subsection:

13 “(d) TRAUMA CENTERS; SEPARATE AUTHORIZATION
14 REGARDING SHORTAGES RESULTING FROM COSTS OF
15 MEDICAL MALPRACTICE INSURANCE.—

16 “(1) IN GENERAL.—For the purpose of assign-
17 ing Corps surgeons, obstetricians/gynecologists, and
18 other health professionals to trauma centers in
19 health professional shortage areas described in para-
20 graph (2), there are authorized to be appropriated
21 such sums as may be necessary for each of the fiscal
22 years 2005 through 2008. Such authorization is in
23 addition to any other authorization of appropriations
24 that is available for such purpose.

1 “(2) DESCRIPTION OF AREAS.—A health pro-
2 fessional shortage area referred to in paragraph (1)
3 is such an area in which, as determined by the Sec-
4 retary, a medical facility in the area has lost its des-
5 ignation as a trauma center or as a particular level
6 of trauma center, or is at significant risk of losing
7 such a designation, as a result of one or more sur-
8 geons, obstetricians/gynecologists, or other health
9 professionals making the decision to cease or curtail
10 practicing at the facility because of the costs of
11 maintaining malpractice insurance. For purposes of
12 paragraph (1), (A) the term ‘trauma center’ includes
13 such a medical facility; and (B) the Secretary may
14 adjust the criteria for designation as a health profes-
15 sional shortage area to the extent necessary to make
16 funds appropriated under paragraph (1) available
17 with respect to any medical facility to ensure that
18 the facility does not lose any such designation as a
19 result of such decisions by health professionals.”.

20 **TITLE IV—INDEPENDENT ADVI-**
21 **SORY COMMISSION ON MED-**
22 **ICAL MALPRACTICE INSUR-**
23 **ANCE**

24 **SEC. 401. ESTABLISHMENT.**

25 (a) FINDINGS.—The Congress finds as follows:

1 (1) The sudden rise in medical malpractice pre-
2 miums in regions of the United States can threaten
3 patient access to doctors and other health providers.

4 (2) Improving patient access to doctors and
5 other health providers is a national priority.

6 (b) ESTABLISHMENT.—There is established a na-
7 tional commission to be known as the “Independent Advi-
8 sory Commission on Medical Malpractice Insurance” (in
9 this title referred to as the “Commission”).

10 **SEC. 402. DUTIES.**

11 (a) IN GENERAL.—The Commission shall evaluate
12 the causes and scope of the recent and dramatic increases
13 in medical malpractice insurance premiums and formulate
14 additional proposals to reduce such medical malpractice
15 premiums and make recommendations to avoid any dra-
16 matic increases in medical malpractice premiums in the
17 future, in light of proposals for tort reform regarding med-
18 ical malpractice.

19 (b) CONSIDERATIONS.—In formulating proposals
20 under this section, the Commission shall, at a minimum,
21 consider the following:

22 (1) Alternatives to the current medical mal-
23 practice tort system that would ensure adequate
24 compensation for patients, preserve access to pro-
25 viders, and improve health care safety and quality.

1 (2) Modifications of, and alternatives to, the ex-
2 isting State and Federal regulations and oversight
3 that affect, or could affect, medical malpractice lines
4 of insurance.

5 (3) State and Federal reforms that would dis-
6 tribute the risk of medical malpractice more equi-
7 tably among health care providers.

8 (4) State and Federal reforms that would more
9 evenly distribute the risk of medical malpractice
10 across various categories of providers.

11 (5) The effect of a Federal medical malpractice
12 reinsurance program administered by the Depart-
13 ment of Health and Human Services.

14 (6) The effect of a Federal medical malpractice
15 insurance program, administered by the Department
16 of Health and Human Services, to provide medical
17 malpractice insurance based on customary coverage
18 terms and liability amounts in States where such in-
19 surance is unavailable or is unavailable at reasonable
20 and customary terms.

21 (7) Programs that would reduce medical errors
22 and increase patient safety, including new innova-
23 tions in technology and management.

1 **SEC. 403. REPORT.**

2 (a) IN GENERAL.—The Commission shall transmit to
3 Congress—

4 (1) an initial report not later than 180 days
5 after the date of the initial meeting of the Commis-
6 sion; and

7 (2) a report not less than each year thereafter
8 until the Commission terminates.

9 (b) CONTENTS.—Each report transmitted under this
10 section shall contain a detailed statement of the findings
11 and conclusions of the Commission, including proposals
12 for addressing the current dramatic increases in medical
13 malpractice insurance rates and recommendations for
14 avoiding any such dramatic increases in the future.

15 (c) VOTING AND REPORTING REQUIREMENTS.—With
16 respect to each proposal or recommendation contained in
17 the report submitted under subsection (a), each member
18 of the Commission shall vote on the proposal or rec-
19 ommendation, and the Commission shall include, by mem-
20 ber, the results of that vote in the report.

21 **SEC. 404. MEMBERSHIP.**

22 (a) NUMBER AND APPOINTMENT.—The Commission
23 shall be composed of 15 members appointed by the Sec-
24 retary of Health and Human Services.

25 (b) MEMBERSHIP.—

1 (1) IN GENERAL.—The membership of the
2 Commission shall include individuals with national
3 recognition for their expertise in health finance and
4 economics, actuarial science, medical malpractice in-
5 surance, insurance regulation, health care law,
6 health care policy, health care access, allopathic and
7 osteopathic physicians, other providers of health care
8 services, patient advocacy, and other related fields,
9 who provide a mix of different professionals, broad
10 geographic representations, and a balance between
11 urban and rural representatives.

12 (2) INCLUSION.—The membership of the Com-
13 mission shall include the following:

14 (A) Two individuals with expertise in
15 health finance and economics, including one
16 with expertise in consumer protections in the
17 area of health finance and economics.

18 (B) Two individuals with expertise in med-
19 ical malpractice insurance, representing both
20 commercial insurance carriers and physician-
21 sponsored insurance carriers.

22 (C) An individual with expertise in State
23 insurance regulation and State insurance mar-
24 kets.

25 (D) An individual representing physicians.

1 (E) An individual with expertise in issues
2 affecting hospitals, nursing homes, nurses, and
3 other providers.

4 (F) Two individuals representing patient
5 interests.

6 (G) Two individuals with expertise in
7 health care law or health care policy.

8 (H) An individual with expertise in rep-
9 resenting patients in malpractice lawsuits.

10 (3) MAJORITY.—The total number of individ-
11 uals who are directly involved with the provision or
12 management of malpractice insurance, representing
13 physicians or other providers, or representing physi-
14 cians or other providers in malpractice lawsuits,
15 shall not constitute a majority of the membership of
16 the Commission.

17 (4) ETHICAL DISCLOSURE.—The Secretary of
18 Health and Human Services shall establish a system
19 for public disclosure by members of the Commission
20 of financial or other potential conflicts of interest re-
21 lating to such members.

22 (c) TERMS.—

23 (1) IN GENERAL.—The terms of the members
24 of the Commission shall be for 3 years except that
25 the Secretary of Health and Human Services shall

1 designate staggered terms for the members first ap-
2 pointed.

3 (2) VACANCIES.—Any member appointed to fill
4 a vacancy occurring before the expiration of the
5 term for which the member's predecessor was ap-
6 pointed shall be appointed only for the remainder of
7 that term. A member may serve after the expiration
8 of that member's term until a successor has taken
9 office. A vacancy in the Commission shall be filled
10 in the manner in which the original appointment was
11 made.

12 (3) COMPENSATION.—Members of the Commis-
13 sion shall be compensated in accordance with section
14 1805(e)(4) of the Social Security Act.

15 (4) CHAIRMAN; VICE CHAIRMAN.—The Sec-
16 retary of Health and Human Services shall des-
17 ignate at the time of appointment a member of the
18 Commission as Chairman and a member as Vice
19 Chairman. In the case of vacancy of the Chairman-
20 ship or Vice Chairmanship, the Secretary may des-
21 ignate another member for the remainder of that
22 member's term.

23 (5) MEETINGS.—

24 (A) IN GENERAL.—The Commission shall
25 meet at the call of the Chairman.

1 (B) INITIAL MEETING.—The Commission
2 shall hold an initial meeting not later than the
3 date that is 1 year after the date of the enact-
4 ment of this title, or the date that is 3 months
5 after the appointment of all the members of the
6 Commission, whichever occurs earlier.

7 **SEC. 405. DIRECTOR AND STAFF; EXPERTS AND CONSULT-**
8 **ANTS.**

9 Subject to such review as the Secretary of Health and
10 Human Services deems necessary to assure the efficient
11 administration of the Commission, the Commission may—

12 (1) employ and fix the compensation of an Ex-
13 ecutive Director (subject to the approval of the Sec-
14 retary) and such other personnel as may be nec-
15 essary to carry out its duties (without regard to the
16 provisions of title 5, United States Code, governing
17 appointments in the competitive service);

18 (2) seek such assistance and support as may be
19 required in the performance of its duties from ap-
20 propriate Federal departments and agencies;

21 (3) enter into contracts or make other arrange-
22 ments, as may be necessary for the conduct of the
23 work of the Commission (without regard to section
24 3709 of the Revised Statutes (41 U.S.C. 5));

1 (4) make advance, progress, and other pay-
2 ments which relate to the work of the Commission;

3 (5) provide transportation and subsistence for
4 persons serving without compensation; and

5 (6) prescribe such rules and regulations as it
6 deems necessary with respect to the internal organi-
7 zation and operation of the Commission.

8 **SEC. 406. POWERS.**

9 (a) **OBTAINING OFFICIAL DATA.**—The Commission
10 may secure directly from any department or agency of the
11 United States information necessary to enable it to carry
12 out this section. Upon request of the Chairman, the head
13 of that department or agency shall furnish that informa-
14 tion to the Commission on an agreed upon schedule.

15 (b) **DATA COLLECTION.**—In order to carry out its
16 functions, the Commission shall—

17 (1) utilize existing information, both published
18 and unpublished, where possible, collected and as-
19 sessed either by its own staff or under other ar-
20 rangements made in accordance with this section, in-
21 cluding data collected by the Administrator of the
22 Medical Malpractice Insurance Information Adminis-
23 tration under section 501;

1 (2) carry out, or award grants or contracts for,
2 original research and experimentation, where exist-
3 ing information is inadequate; and

4 (3) adopt procedures allowing any interested
5 party to submit information for the Commission's
6 use in making reports and recommendations.

7 (c) ACCESS OF GENERAL ACCOUNTING OFFICE TO
8 INFORMATION.—The Comptroller General of the United
9 States shall have unrestricted access to all deliberations,
10 records, and nonproprietary data of the Commission, im-
11 mediately upon request.

12 (d) PERIODIC AUDIT.—The Commission shall be sub-
13 ject to periodic audit by the Comptroller General of the
14 United States.

15 **SEC. 407. AUTHORIZATION OF APPROPRIATIONS.**

16 (a) IN GENERAL.—There are authorized to be appro-
17 priated such sums as may be necessary to carry out this
18 title for each of fiscal years 2005 through 2009.

19 (b) REQUESTS FOR APPROPRIATIONS.—The Commis-
20 sion shall submit requests for appropriations in the same
21 manner as the Secretary of Health and Human Services
22 submits requests for appropriations, but amounts appro-
23 priated for the Commission shall be separate from
24 amounts appropriated for the Secretary.

1 **TITLE V—MEDICAL MAL-**
2 **PRACTICE INSURANCE IN-**
3 **FORMATION ADMINISTRA-**
4 **TION**

5 **SEC. 501. ESTABLISHMENT.**

6 (a) IN GENERAL.—Within the Department of Health
7 and Human Services there is established the Medical Mal-
8 practice Insurance Information Administration to be head-
9 ed by an Administrator (in this title referred to as the
10 “Administration”), appointed by the Secretary of Health
11 and Human Services.

12 (b) DUTIES.—Not later than 180 days after the date
13 of the enactment of this Act the Administrator shall, by
14 regulation, identify the types of data that are necessary
15 to properly evaluate the medical malpractice insurance
16 market. Such types of data shall include at least the fol-
17 lowing:

18 (1) The frequency of medical malpractice claims
19 paid.

20 (2) The severity of medical malpractice claims
21 paid.

22 (3) The portion of losses for medical mal-
23 practice claims as part of settlements.

1 (4) The portion of losses for medical mal-
2 practice claims both awarded and paid as the result
3 of trial verdicts.

4 (5) The division of losses for medical mal-
5 practice claims between economic and noneconomic
6 damages.

7 (c) REQUIREMENT FOR REPORTING.—In order to col-
8 lect the types of data identified under subsection (b), the
9 Administrator shall require any person issuing medical
10 malpractice insurance policies, or paying claims pursuant
11 to such a policy, to submit the data of the types described
12 in subsection (b) in a manner and a frequency that would
13 allow for analysis to identify local, State, regional and na-
14 tional trends in the medical malpractice insurance mar-
15 kets.

16 (d) COMPLIANCE.—

17 (1) INJUNCTIVE RELIEF.—The Administrator
18 may seek such injunctive and remedial relief as may
19 be necessary to compel the submittal of data under
20 subsection (c).

21 (2) CIVIL MONEY PENALTY.—In addition to the
22 authority provided under paragraph (1), the Admin-
23 istrator is authorized to impose for each for the fail-
24 ure of a person to submit data under subsection (c)
25 a civil money penalty of not to exceed \$10,000. The

1 provisions of section 1128A of the Social Security
2 Act (other than subsections (a) and (b)) shall apply
3 to a civil money penalty under the previous sentence
4 in the same manner as such provisions apply to a
5 civil money penalty under subsection (a) of such sec-
6 tion except that for purposes of this paragraph, any
7 reference to the Secretary is deemed a reference to
8 the Administrator.

9 (e) AVAILABILITY OF INFORMATION.—

10 (1) TO INDEPENDENT COMMISSION.—Informa-
11 tion submitted to the Administrator under this sec-
12 tion shall be available to the Independent Advisory
13 Commission on Medical Malpractice Insurance, es-
14 tablished under section 401(b).

15 (2) TO PUBLIC.—Information submitted to the
16 Administrator under this section shall be made avail-
17 able to the public in a form that does not disclose
18 the identity of the person who submitted the infor-
19 mation.

20 **SEC. 502. AUTHORIZATION OF APPROPRIATIONS.**

21 There are authorized to be appropriated to carry out
22 this section such sums as may be necessary.

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