

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3865

To provide for the establishment of medical malpractice insurance corporations which may operate and function without hindrance or impedance in any or all of the States, to limit frivolous medical malpractice lawsuits, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2005

Mr. ANDREWS introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, 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

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## A BILL

To provide for the establishment of medical malpractice insurance corporations which may operate and function without hindrance or impedance in any or all of the States, to limit frivolous medical malpractice lawsuits, 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.**

4 This Act may be cited as the “Medical Malpractice  
5 Insurance Corporation Act”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **ARBITRATION.**—The term “arbitration”  
4 means a settlement process that—

5 (A) is coordinated by a neutral third party  
6 or a panel of neutral third parties, such as a  
7 medical malpractice arbitration panel estab-  
8 lished under section 4(e); and

9 (B) includes the ultimate rendering of a  
10 formal opinion as to factual or legal findings.

11 (2) **CLAIMANT.**—The term “claimant” means  
12 any person who alleges a medical malpractice claim,  
13 and any person on whose behalf such a claim is al-  
14 leged, including the decedent in the case of an action  
15 brought through or on behalf of an estate.

16 (3) **HEALTH CARE PROFESSIONAL.**—The term  
17 “health care professional” means any individual who  
18 provides health care services in a State and who is  
19 required by the laws or regulations of the State to  
20 be licensed or certified by the State to provide such  
21 services in the State.

22 (4) **HEALTH CARE PROVIDER.**—The term  
23 “health care provider” means a hospital or other or-  
24 ganization or institution that is engaged in the deliv-  
25 ery of health care services in a State and that is re-  
26 quired by the laws or regulations of the State to be

1 licensed or certified by the State to engage in the  
2 delivery of such services in the State.

3 (5) HOSPITAL.—The term “hospital” means  
4 any of the following:

5 (A) Any facility defined as a hospital  
6 under State law and issued an operating certifi-  
7 cate as a hospital or nursing home.

8 (B) Any ambulance service which is reg-  
9 istered or certified under State law and which  
10 is designed and equipped to provide definitive  
11 acute medical care pursuant to rules and regu-  
12 lations of the State health agency, which must  
13 include the provision of advanced life support  
14 services.

15 (C) Any community mental health center  
16 operated by a State or unit of local government,  
17 holding an operating certificate issued by the  
18 State mental hygiene agency.

19 (D) Any certified public or voluntary non-  
20 profit home care service agency which possesses  
21 a valid certificate of approval issued under  
22 State public health law.

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

1 a medical malpractice liability action or a medical  
2 malpractice claim.

3 (7) MEDICAL MALPRACTICE CLAIM.—The term  
4 “medical malpractice claim” means a claim against  
5 a health care professional or health care provider in  
6 which a claimant alleges that injury was caused by  
7 the provision of (or the failure to provide) health  
8 care services, except that such term does not in-  
9 clude—

10 (A) any claim based on an allegation of an  
11 intentional tort; or

12 (B) any claim based on an allegation that  
13 a product is defective or unreasonably dan-  
14 gerous.

15 (8) MEDICAL MALPRACTICE INSURANCE.—The  
16 term “medical malpractice insurance” means insur-  
17 ance against legal liability of the insured, and  
18 against loss, damage, or expense incident to a claim  
19 of such liability arising out of the death or injury of  
20 any person due to medical, dental, podiatric, cer-  
21 tified nurse-midwifery, or hospital malpractice by  
22 any health care professional or health care provider.

23 (9) MEDICAL MALPRACTICE LIABILITY AC-  
24 TION.—The term “medical malpractice liability ac-  
25 tion” means an arbitration proceeding (or a subse-

1       quent civil action brought in a State or Federal  
2       court) against a health care professional or a health  
3       care provider in which the claimant alleges a medical  
4       malpractice claim.

5           (10) SECRETARY.—The term “Secretary”  
6       means the Secretary of Health and Human Services.

7           (11) STATE.—The term “State” means the 50  
8       States, the District of Columbia, and any Common-  
9       wealth, territory, or possession of the United States.

10 **SEC. 3. MEDICAL MALPRACTICE INSURANCE CORPORA-**  
11 **TIONS.**

12       (a) ESTABLISHMENT AND PURPOSE.—There are au-  
13       thorized to be established bodies corporate which shall pro-  
14       vide medical malpractice insurance to health care profes-  
15       sionals and health care providers based on customary cov-  
16       erage terms and liability amounts.

17       (b) CERTIFICATION.—The Secretary for Health and  
18       Human Services shall certify as a medical malpractice in-  
19       surance corporation each corporation that satisfies the re-  
20       quirements of subsection (d).

21       (c) OPERATION.—Notwithstanding any State law to  
22       the contrary, a medical malpractice insurance corporation  
23       certified under subsection (b) may operate and function  
24       without hindrance or impedance in any or all of the several  
25       States.

1 (d) CERTIFICATION REQUIREMENTS.—A corporation  
2 may be certified as a medical malpractice insurance cor-  
3 poration if—

4 (1) it is subject to the fiduciary standards pro-  
5 mulgated by the Secretary for Health and Human  
6 Services, as required by subsection (e);

7 (2) its corporate structure is organized in such  
8 a way as to require any excess earnings to be used  
9 to reduce premiums paid by their insureds, con-  
10 sistent with the fiduciary standards promulgated  
11 under subsection (e); and

12 (3) its corporate structure is organized under  
13 the requirements of section 501(c)(3) of the Internal  
14 Revenue Code of 1986.

15 (e) PROMULGATION OF AND ADHERENCE TO FIDU-  
16 CIARY STANDARDS.—The Secretary shall promulgate ap-  
17 propriate fiduciary standards to which all such medical  
18 malpractice insurance corporations shall adhere.

19 **SEC. 4. MEDICAL MALPRACTICE DISPUTE RESOLUTION.**

20 (a) QUALIFIED EXPERT OPINION.—

21 (1) ACCOMPANYING AFFIDAVIT.—No medical  
22 malpractice liability action may be brought against  
23 a health care professional or a health care provider  
24 by any claimant unless, at the time the claimant  
25 brings the action (except as provided in subsection

1 (c)), it is accompanied by the affidavit of a qualified  
2 specialist or medical expert containing the informa-  
3 tion required by paragraph (2).

4 (2) CONTENTS OF AFFIDAVIT.—To satisfy the  
5 requirements of paragraph (1), the affidavit shall in-  
6 clude the specialist’s or expert’s statement of belief  
7 that, based on a review of the available medical  
8 record and other relevant material, there is a reason-  
9 able and meritorious cause for the filing of the ac-  
10 tion.

11 (b) QUALIFIED SPECIALIST OR MEDICAL EXPERT.—  
12 With respect to a medical malpractice liability action, a  
13 qualified specialist or medical expert is a person who has  
14 been so recognized by the Secretary or has received proper  
15 accreditation from the medical licensing board of any  
16 State, such that such qualified specialist or medical expert  
17 is recognized—

18 (1) to be knowledgeable in the relevant issues  
19 involved in the action;

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

23 (3) in the case of an action against a physician,  
24 to be board certified in a speciality relating to that  
25 area of medicine.

1 (c) EXTENSION IN CERTAIN INSTANCES.—

2 (1) UNAVAILABILITY OF ADEQUATE MEDICAL  
3 RECORDS.—Subject to paragraph (2), subsection (a)  
4 shall not apply with respect to a claimant who  
5 brings a medical malpractice liability action without  
6 submitting an affidavit described in such subsection  
7 if, as of the time the claimant brings the action, the  
8 claimant certifies that adequate medical records or  
9 other information necessary to prepare the affidavit  
10 are unavailable.

11 (2) TIME LIMIT.—In the case of an claimant  
12 who brings an action for which paragraph (1) ap-  
13 plies, the action shall be dismissed unless the claim-  
14 ant submits the affidavit described in subsection (a)  
15 not later than 120 days after commencement of the  
16 action.

17 (d) MEDICAL MALPRACTICE ARBITRATION PAN-  
18 ELS.—

19 (1) ESTABLISHMENT.—The Secretary of Health  
20 and Human Services shall provide for the establish-  
21 ment of medical malpractice arbitration panels which  
22 shall hear and render a decision on all medical mal-  
23 practice claims.



1           (2) COMPOSITION OF ARBITRATION PANELS.—  
2 Arbitration shall be conducted by one or more arbi-  
3 trators who—

4           (A) are qualified specialists or medical ex-  
5 perts; and

6           (B) are selected by agreement of the par-  
7 ties, or, if the parties do not agree, who are  
8 qualified under applicable State law and se-  
9 lected by the court.

10          (3) MANDATORY PARTICIPATION AND DIS-  
11 SATISFACTION.—

12           (A) MANDATORY PARTICIPATION.—Partici-  
13 pation in arbitration to resolve a medical mal-  
14 practice claim is mandatory, and shall be in lieu  
15 of any other alternative dispute resolution  
16 method required by any other law or by any  
17 contractual arrangement made by or on behalf  
18 of the parties to the arbitration before the com-  
19 mencement of the action.

20           (B) DISSATISFACTION.—Any party dissat-  
21 isfied with a determination reached by a med-  
22 ical malpractice arbitration panel with respect  
23 to a medical malpractice claim as a result of  
24 such arbitration shall not be bound by such de-  
25 termination, and may bring a civil action in any

1 Federal district court of competent jurisdiction  
2 within the 30-day period beginning on the date  
3 such determination was reached. The deter-  
4 mination of such arbitration, and all state-  
5 ments, offers, and communications made during  
6 such arbitration, shall be inadmissible for pur-  
7 poses of adjudicating such action.

8 (4) FRIVOLOUSNESS.—

9 (A) FEDERAL DISTRICT COURT.—Except  
10 as provided in subparagraph (B), if a medical  
11 malpractice arbitration panel determines a med-  
12 ical malpractice claim to be frivolous, the panel  
13 shall dismiss such claim. If such claim is dis-  
14 missed, the claimant may bring a civil action in  
15 any Federal district court of competent jurisdic-  
16 tion. If the defendant prevails in such action,  
17 the court may, in its discretion and as the in-  
18 terests of justice require, assess against the  
19 claimant a reasonable attorney’s fee and other  
20 litigation costs and expenses (including expert  
21 fees) reasonably incurred.

22 (B) EXCEPTION.—If a medical malpractice  
23 arbitration panel is unable to determine if a  
24 medical malpractice claim is frivolous, the panel  
25 may dismiss such claim. If such claim is dis-

1 missed, the claimant may bring a civil action in  
2 any Federal district court of competent jurisdic-  
3 tion. If the claimant prevails in such action,  
4 each party shall individually be responsible for  
5 reasonable attorney's fee and other litigation  
6 costs and expenses (including expert fees) rea-  
7 sonably incurred.

8 (5) DISCLOSURE.—Each State shall disclose to  
9 residents of the State the procedures relating to ar-  
10 bitration and formal adjudication for resolution of  
11 medical malpractice claims.

12 (6) ADDITIONAL REQUIREMENTS.—The Attor-  
13 ney General, in consultation with the Secretary for  
14 Health and Human Services, shall proscribe regula-  
15 tions to ensure that medical malpractice arbitration  
16 is carried out in a manner that—

17 (A) is affordable for the parties involved;

18 (B) encourages timely resolution of med-  
19 ical malpractice claims;

20 (C) encourages the consistent and fair res-  
21 olution of such claims; and

22 (D) provides for reasonably convenient ac-  
23 cess to dispute resolution.

1           (e) **EFFECTIVE DATE.**—This section shall apply with  
2 respect to any medical malpractice claim that arises more  
3 than 180 days after the date of the enactment of this Act.

4 **SEC. 5. PREEMPTION.**

5           The provisions of this Act shall preempt any State  
6 law to the extent such law is inconsistent with the provi-  
7 sions of this Act.

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