

103^D CONGRESS
1ST SESSION

H. R. 1625

To improve access to fair compensation for those injured while receiving medical care and to increase availability of health care services by reducing the costs of both medical malpractice liability premiums and defensive medicine.

IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 1993

Mrs. JOHNSON of Connecticut (for herself, Mr. ARCHER, and Mr. GINGRICH) introduced the following bill; which was referred jointly to the Committees on the Judiciary, Ways and Means, and Energy and Commerce

A BILL

To improve access to fair compensation for those injured while receiving medical care and to increase availability of health care services by reducing the costs of both medical malpractice liability premiums and defensive medicine.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Medical Malpractice
4 Liability Reform Act of 1993”.

1 PART 1—GENERAL PROVISIONS
2 **SEC. 101. FEDERAL REFORM OF MEDICAL MALPRACTICE**
3 **LIABILITY ACTIONS.**

4 (a) CONGRESSIONAL FINDINGS.—

5 (1) EFFECT ON INTERSTATE COMMERCE.—
6 Congress finds that the health care and insurance
7 industries are industries affecting interstate com-
8 merce and the medical malpractice litigation systems
9 existing throughout the United States affect inter-
10 state commerce by contributing to the high cost of
11 health care and premiums for malpractice insurance
12 purchased by health care providers.

13 (2) EFFECT ON FEDERAL SPENDING.—Con-
14 gress finds that the medical malpractice litigation
15 systems existing throughout the United States have
16 a significant effect on the amount, distribution, and
17 use of Federal funds because of—

18 (A) the large number of individuals who
19 receive health care benefits under programs op-
20 erated or financed by the Federal Government;

21 (B) the large number of individuals who
22 benefit because of the exclusion from Federal
23 taxes of the amounts spent by their employers
24 to provide them with health insurance benefits;

1 (C) the large number of health care provid-
2 ers and health care professionals who provide
3 items or services for which the Federal Govern-
4 ment makes payments; and

5 (D) the large number of such providers
6 and professionals who have received direct or
7 indirect financial assistance from the Federal
8 Government because of their status as such
9 professionals or providers.

10 (b) APPLICABILITY.—This subtitle shall apply with
11 respect to any medical malpractice liability claim and to
12 any medical malpractice liability action brought in any
13 State or Federal court, except that this subtitle shall not
14 apply to—

15 (1) a claim or action for damages arising from
16 a vaccine-related injury or death to the extent that
17 title XXI of the Public Health Service Act applies to
18 the action; or

19 (2) a claim or action in which the plaintiff's
20 sole allegation is an allegation of an injury arising
21 from the use of a medical product.

22 (c) PREEMPTION OF STATE LAW.—Subject to section
23 121, this subtitle supersedes State law only to the extent
24 that State law differs from any provision of law estab-
25 lished by or under this subtitle. Any issue that is not gov-

1 erned by any provision of law established by or under this
2 subtitle shall be governed by otherwise applicable State or
3 Federal law.

4 (d) FEDERAL COURT JURISDICTION NOT ESTAB-
5 LISHED ON FEDERAL QUESTION GROUNDS.—Nothing in
6 this subtitle shall be construed to establish any jurisdiction
7 in the district courts of the United States over medical
8 malpractice liability actions on the basis of sections 1331
9 or 1337 of title 28, United States Code.

10 **SEC. 102. DEFINITIONS.**

11 As used in this subtitle:

12 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-
13 TEM; ADR.—The term “alternative dispute resolu-
14 tion system” or “ADR” means a system established
15 by a State that provides for the resolution of medical
16 malpractice liability claims in a manner other than
17 through medical malpractice liability actions.

18 (2) CLAIMANT.—The term “claimant” means
19 any person who alleges a medical malpractice liabil-
20 ity claim, or, in the case of an individual who is de-
21 ceased, incompetent, or a minor, the person on
22 whose behalf such a claim is alleged.

23 (3) ECONOMIC DAMAGES.—The term “economic
24 damages” means damages paid to compensate an in-
25 dividual for losses for hospital and other medical ex-

1 penses, lost wages, lost employment, and other pecu-
2 niary losses.

3 (4) HEALTH CARE PROFESSIONAL.—The term
4 “health care professional” means any individual who
5 provides health care services in a State and who is
6 required by State law or regulation to be licensed or
7 certified by the State to provide such services in the
8 State.

9 (5) HEALTH CARE PROVIDER.—The term
10 “health care provider” means any organization or
11 institution that is engaged in the delivery of health
12 care services in a State and that is required by State
13 law or regulation to be licensed or certified by the
14 State to engage in the delivery of such services in
15 the State.

16 (6) INJURY.—The term “injury” means any ill-
17 ness, disease, or other harm that is the subject of
18 a medical malpractice liability action or claim.

19 (7) MEDICAL MALPRACTICE LIABILITY AC-
20 TION.—The term “medical malpractice liability ac-
21 tion” means a civil action (other than an action in
22 which the plaintiff’s sole allegation is an allegation
23 of an intentional tort) brought in a State or Federal
24 court against a health care provider or health care
25 professional (regardless of the theory of liability on

1 which the action is based) in which the plaintiff al-
2 leges a medical malpractice liability claim.

3 (8) MEDICAL MALPRACTICE LIABILITY
4 CLAIM.—The term “medical malpractice liability
5 claim” means a claim in which the claimant alleges
6 that injury was caused by the provision of (or the
7 failure to provide) health care services.

8 (9) MEDICAL PRODUCT.—The term “medical
9 product” means a device (as defined in section
10 201(h) of the Federal Food, Drug, and Cosmetic
11 Act) or a drug (as defined in section 201(g)(1) of
12 the Federal Food, Drug, and Cosmetic Act).

13 (10) NONECONOMIC DAMAGES.—The term
14 “noneconomic damages” means damages paid to
15 compensate an individual for losses for physical and
16 emotional pain, suffering, inconvenience, physical
17 impairment, mental anguish, disfigurement, loss of
18 enjoyment of life, loss of consortium, and other
19 nonpecuniary losses, but does not include punitive
20 damages.

21 (11) SECRETARY.—The term “Secretary”
22 means the Secretary of Health and Human Services.

23 (12) STATE.—The term “State” means each of
24 the several States, the District of Columbia, the

1 Commonwealth of Puerto Rico, the Virgin Islands,
2 Guam, and American Samoa.

3 **SEC. 103. EFFECTIVE DATE.**

4 (a) IN GENERAL.—Except as provided in subsection
5 (b) and sections 119, 142, and 143, this subtitle shall
6 apply with respect to claims accruing or actions brought
7 on or after the expiration of the 3-year period that begins
8 on the date of the enactment of this Act.

9 (b) EXCEPTION FOR STATES REQUESTING EARLIER
10 IMPLEMENTATION OF REFORMS.—

11 (1) APPLICATION.—A State may submit an ap-
12 plication to the Secretary requesting the early imple-
13 mentation of this subtitle with respect to claims or
14 actions brought in the State.

15 (2) DECISION BY SECRETARY.—The Secretary
16 shall issue a response to a State's application under
17 paragraph (1) not later than 90 days after receiving
18 the application. If the Secretary determines that the
19 State meets the requirements of this subtitle at the
20 time of submitting its application, the Secretary
21 shall approve the State's application, and this sub-
22 title shall apply with respect to actions brought in
23 the State on or after the expiration of the 90-day
24 period that begins on the date the Secretary issues
25 the response. If the Secretary denies the State's ap-

1 plication, the Secretary shall provide the State with
2 a written explanation of the grounds for the deci-
3 sion.

4 PART 2—UNIFORM STANDARDS FOR MEDICAL
5 MALPRACTICE LIABILITY ACTIONS

6 **SEC. 111. STATUTE OF LIMITATIONS.**

7 (a) IN GENERAL.—No medical malpractice liability
8 claim may be brought after the expiration of the 2-year
9 period that begins on the date the alleged injury that is
10 the subject of the action should reasonably have been dis-
11 covered, but in no event after the expiration of the 4-year
12 period that begins on the date the alleged injury occurred.

13 (b) EXCEPTION FOR MINORS.—In the case of an al-
14 leged injury suffered by a minor who has not attained 6
15 years of age, no medical malpractice liability claim may
16 be brought after the expiration of the 2-year period that
17 begins on the date the alleged injury that is the subject
18 of the action should reasonably have been discovered, but
19 in no event after the date on which the minor attains 10
20 years of age.

21 **SEC. 112. REQUIREMENT FOR INITIAL RESOLUTION OF AC-**
22 **TION THROUGH ALTERNATIVE DISPUTE RES-**
23 **OLUTION.**

24 (a) IN GENERAL.—No medical malpractice liability
25 action may be brought in any State court during a cal-

1 endar year unless the medical malpractice liability claim
2 that is the subject of the action has been initially resolved
3 under an alternative dispute resolution system certified for
4 the year by the Secretary under section 132(a), or, in the
5 case of a State in which such a system is not in effect
6 for the year, under the alternative Federal system estab-
7 lished under section 132(b).

8 (b) INITIAL RESOLUTION OF CLAIMS UNDER
9 ADR.—For purposes of subsection (a), an action is “ini-
10 tially resolved” under an alternative dispute resolution
11 system if—

12 (1) the ADR reaches a decision on whether the
13 defendant is liable to the plaintiff for damages; and

14 (2) if the ADR determines that the defendant
15 is liable, the ADR reaches a decision on the amount
16 of damages assessed against the defendant.

17 (c) PROCEDURES FOR FILING ACTIONS.—

18 (1) NOTICE OF INTENT TO CONTEST DECI-
19 SION.—Not later than 60 days after a decision is is-
20 sued with respect to a medical malpractice liability
21 claim under an alternative dispute resolution system,
22 each party affected by the decision shall submit a
23 sealed statement to a court of competent jurisdiction
24 indicating whether or not the party intends to con-
25 test the decision.

1 (2) DEADLINE FOR FILING ACTION.—No medi-
2 cal malpractice liability action may be brought un-
3 less the action is filed in a court of competent juris-
4 diction not later than 90 days after the decision re-
5 solving the medical malpractice liability claim that is
6 the subject of the action is issued under the applica-
7 ble alternative dispute resolution system.

8 (3) COURT OF COMPETENT JURISDICTION.—
9 For purposes of this subsection, the term “court of
10 competent jurisdiction” means—

11 (A) with respect to actions filed in a State
12 court, the appropriate State trial court; and

13 (B) with respect to actions filed in a Fed-
14 eral court, the appropriate United States dis-
15 trict court.

16 (d) EFFECT OF ADR DECISION ON BURDEN OF
17 PROOF IN SUBSEQUENT ACTION.—In any medical mal-
18 practice liability action, the trier of fact shall uphold the
19 decision made under the previous alternative dispute reso-
20 lution system with respect to the claim that is the subject
21 of the action unless the party contesting the decision
22 proves by a preponderance of the evidence that the deci-
23 sion was incorrect.

24 (e) LEGAL EFFECT OF UNCONTESTED ADR DECI-
25 SION.—The decision reached under an alternative dispute

1 resolution system shall, for purposes of enforcement by a
2 court of competent jurisdiction, have the same status in
3 the court as the verdict of a medical malpractice liability
4 action adjudicated in a State or Federal trial court. The
5 previous sentence shall not apply to a decision that is con-
6 tested by a party affected by the decision pursuant to sub-
7 section (c)(1).

8 **SEC. 113. ESTABLISHMENT OF PROCESS FOR RESOLUTION**
9 **OF CLAIMS AGAINST UNITED STATES.**

10 The Attorney General shall establish an alternative
11 dispute resolution process for the resolution of tort claims
12 consisting of medical malpractice liability claims brought
13 against the United States under the Federal Tort Claims
14 Act. Under such process, the resolution of the claim shall
15 occur after the completion of the administrative claim
16 process applicable to the claim under section 2675 of title
17 28, United States Code.

18 **SEC. 114. MANDATORY PRE-TRIAL SETTLEMENT CON-**
19 **FERENCE.**

20 (a) IN GENERAL.—Before the beginning of the trial
21 phase of any medical malpractice liability action, the par-
22 ties shall attend a conference called by the court for pur-
23 poses of determining whether grounds exist upon which
24 the parties may negotiate a settlement for the action.

1 (b) REQUIRING PARTIES TO SUBMIT SETTLEMENT
2 OFFERS.—At the conference called pursuant to subsection
3 (a), each party to a medical malpractice liability action
4 shall present an offer of settlement for the action.

5 **SEC. 115. CALCULATION AND PAYMENT OF DAMAGES.**

6 (a) LIMITATION ON NONECONOMIC DAMAGES.—The
7 total amount of noneconomic damages that may be award-
8 ed to a plaintiff and the members of the plaintiff's family
9 for losses resulting from the injury which is the subject
10 of a medical malpractice liability action may not exceed
11 \$250,000, regardless of the number of parties against
12 whom the action is brought or the number of actions
13 brought with respect to the injury.

14 (b) TREATMENT OF PUNITIVE DAMAGES.—

15 (1) LIMITATION ON AMOUNT.—The total
16 amount of punitive damages that may be imposed
17 under a medical malpractice liability action may not
18 exceed twice the total of the damages awarded to the
19 plaintiff and the members of the plaintiff's family.

20 (2) PAYMENTS TO STATE FOR MEDICAL QUAL-
21 ITY ASSURANCE ACTIVITIES.—

22 (A) IN GENERAL.—Any punitive damages
23 imposed under a medical malpractice liability
24 action shall be paid to the State in which the
25 action is brought.

1 (B) ACTIVITIES DESCRIBED.—A State
2 shall use amount paid pursuant to subpara-
3 graph (A) to carry out activities to assure the
4 safety and quality of health care services pro-
5 vided in the State, including (but not limited
6 to)—

7 (i) licensing or certifying health care
8 professionals and health care providers in
9 the State;

10 (ii) operating alternative dispute reso-
11 lution systems;

12 (iii) carrying out public education pro-
13 grams relating to medical malpractice and
14 the availability of alternative dispute reso-
15 lution systems in the State; and

16 (iv) carrying out programs to reduce
17 malpractice-related costs for retired provid-
18 ers or other providers volunteering to pro-
19 vide services in medically underserved
20 areas.

21 (C) MAINTENANCE OF EFFORT.—A State
22 shall use any amounts paid pursuant to sub-
23 paragraph (A) to supplement and not to replace
24 amounts spent by the State for the activities
25 described in subparagraph (B).

1 (c) PERIODIC PAYMENTS FOR FUTURE LOSSES.—If
2 more than \$100,000 in damages for expenses to be in-
3 curred in the future is awarded to the plaintiff in a medi-
4 cal malpractice liability action, the defendant shall provide
5 for payment for such damages on a periodic basis deter-
6 mined appropriate by the court (based upon projections
7 of when such expenses are likely to be incurred), unless
8 the court determines that it is not in the plaintiff's best
9 interest to receive payments for such damages on such a
10 periodic basis.

11 (d) MANDATORY OFFSETS FOR DAMAGES PAID BY
12 A COLLATERAL SOURCE.—

13 (1) IN GENERAL.—The total amount of dam-
14 ages received by a plaintiff in a medical malpractice
15 liability action shall be reduced (in accordance with
16 paragraph (2)) by any other payment that has been
17 or will be made to the individual to compensate the
18 plaintiff for the injury that was the subject of the
19 action, including payment under—

20 (A) Federal or State disability or sickness
21 programs;

22 (B) Federal, State, or private health insur-
23 ance programs;

24 (C) private disability insurance programs;

1 (D) employer wage continuation programs;
2 and

3 (E) any other source of payment intended
4 to compensate the plaintiff for such injury.

5 (2) AMOUNT OF REDUCTION.—The amount by
6 which an award of damages to a plaintiff shall be re-
7 duced under paragraph (1) shall be—

8 (A) the total amount of any payments
9 (other than such award) that have been made
10 or that will be made to the plaintiff to com-
11 pensate the plaintiff for the injury that was the
12 subject of the action; minus

13 (B) the amount paid by the plaintiff (or by
14 the spouse, parent, or legal guardian of the
15 plaintiff) to secure the payments described in
16 subparagraph (A).

17 **SEC. 116. TREATMENT OF ATTORNEY'S FEES AND OTHER**
18 **COSTS.**

19 (a) LIMITATION ON ATTORNEY'S FEES.—If the
20 plaintiff in a medical malpractice liability action has en-
21 tered into an agreement with the plaintiff's attorney to
22 pay the attorney's fees on a contingency basis, the attor-
23 ney's fees for the action may not exceed—

24 (1) 25 percent of the first \$150,000 of any
25 award or settlement paid to the plaintiff; or

1 (2) 15 percent of any additional amounts paid
2 to the plaintiff.

3 (b) REQUIRING PARTY CONTESTING ADR RULING
4 TO PAY ATTORNEY'S FEES AND OTHER COSTS.—

5 (1) IN GENERAL.—The court in a medical mal-
6 practice liability action shall require the party that
7 (pursuant to section 112(c)(1)) contested the ruling
8 of the alternative dispute resolution system with re-
9 spect to the medical malpractice liability claim that
10 is the subject of the action to pay to the opposing
11 party the costs incurred by the opposing party under
12 the action, including attorney's fees, fees paid to ex-
13 pert witnesses, and other litigation expenses (but not
14 including court costs, filing fees, or other expenses
15 paid directly by the party to the court, or any fees
16 or costs associated with the resolution of the claim
17 under the alternative dispute resolution system), but
18 only if—

19 (A) in the case of an action in which the
20 party that contested the ruling is the plaintiff,
21 the amount of damages awarded to the party
22 under the action does not exceed the amount of
23 damages awarded to the party under the ADR
24 system by at least 10 percent; and

1 (B) in the case of an action in which the
2 party that contested the ruling is the defendant,
3 the amount of damages assessed against the
4 party under the action is not at least 10 per-
5 cent less than the amount of damages assessed
6 under the ADR system.

7 (2) EXCEPTIONS.—Paragraph (1) shall not
8 apply if—

9 (A) the party contesting the ruling made
10 under the previous alternative dispute resolu-
11 tion system shows that—

12 (i) the ruling was procured by corrup-
13 tion, fraud, or undue means,

14 (ii) there was partiality or corruption
15 under the system,

16 (iii) there was other misconduct under
17 the system that materially prejudiced the
18 party's rights, or

19 (iv) the ruling was based on an error
20 of law;

21 (B) the party contesting the ruling made
22 under the previous alternative dispute resolu-
23 tion system presents new evidence before the
24 trier of fact that was not available for presen-
25 tation under the ADR system;

1 (C) the medical malpractice liability action
2 raised a novel issue of law; or

3 (D) the court finds that the application of
4 such paragraph to a party would constitute an
5 undue hardship, and issues an order waiving or
6 modifying the application of such paragraph
7 that specifies the grounds for the court's deci-
8 sion.

9 **SEC. 117. JOINT AND SEVERAL LIABILITY.**

10 The liability of each defendant in a medical mal-
11 practice liability action shall be several only and shall not
12 be joint, and each defendant shall be liable only for the
13 amount of damages allocated to the defendant in direct
14 proportion to the defendant's percentage of responsibility
15 (as determined by the trier of fact).

16 **SEC. 118. UNIFORM STANDARD FOR DETERMINING NEG-**
17 **LIGENCE.**

18 Except as provided in subsection (b), a defendant in
19 a medical malpractice liability action may not be found
20 to have acted negligently unless the defendant's conduct
21 at the time of providing the health care services that are
22 the subject of the action was not reasonable.

1 **SEC. 119. APPLICATION OF MEDICAL PRACTICE GUIDE-**
2 **LINES IN MALPRACTICE LIABILITY ACTIONS.**

3 (a) USE OF GUIDELINES AS AFFIRMATIVE DE-
4 FENSE.—In any medical malpractice liability action, it
5 shall be a complete defense to any allegation that the de-
6 fendant was negligent that, in the provision of (or the fail-
7 ure to provide) the services that are the subject of the
8 action, the defendant followed the appropriate practice
9 guideline.

10 (b) RESTRICTION ON GUIDELINES CONSIDERED
11 APPROPRIATE.—

12 (1) GUIDELINES SANCTIONED BY SEC-
13 RETARY.—For purposes of subsection (a), a practice
14 guideline may not be considered appropriate with re-
15 spect to actions brought during a year unless the
16 Secretary has sanctioned the use of the guideline for
17 purposes of an affirmative defense to medical mal-
18 practice liability actions brought during the year in
19 accordance with paragraph (2) or (3).

20 (2) PROCESS FOR SANCTIONING GUIDELINES.—
21 Not less frequently than October 1 of each year (be-
22 ginning with 1994), the Secretary shall review the
23 practice guidelines and standards developed by the
24 Administrator for Health Care Policy and Research
25 pursuant to section 1142 of the Social Security Act,
26 and shall sanction those guidelines which the Sec-

1 vided during labor or the delivery of a baby, if the
2 defendant health care professional did not previously
3 treat the plaintiff for the pregnancy, the trier of fact
4 may not find that the defendant committed mal-
5 practice and may not assess damages against the de-
6 fendant unless the malpractice is proven by clear
7 and convincing evidence.

8 (2) APPLICABILITY TO GROUP PRACTICES OR
9 AGREEMENTS AMONG PROVIDERS.—For purposes of
10 paragraph (1), a health care professional shall be
11 considered to have previously treated an individual
12 for a pregnancy if the professional is a member of
13 a group practice whose members previously treated
14 the individual for the pregnancy or is providing serv-
15 ices to the individual during labor or the delivery of
16 a baby pursuant to an agreement with another pro-
17 fessional.

18 (b) CLEAR AND CONVINCING EVIDENCE DEFINED.—
19 In subsection (a), the term “clear and convincing evi-
20 dence” is that measure or degree of proof that will
21 produce in the mind of the trier of fact a firm belief or
22 conviction as to the truth of the allegations sought to be
23 established, except that such measure or degree of proof
24 is more than that required under preponderance of the evi-

1 dence, but less than that required for proof beyond a rea-
2 sonable doubt.

3 (c) EFFECTIVE DATE.—This section shall apply to
4 claims accruing or actions brought on or after the expira-
5 tion of the 2-year period that begins on the date of the
6 enactment of this Act.

7 **SEC. 121. PREEMPTION.**

8 (a) IN GENERAL.—This part supersedes any State
9 law only to the extent that State law—

10 (1) permits the recovery of a greater amount of
11 damages by a plaintiff;

12 (2) permits the collection of a greater amount
13 of attorneys' fees by a plaintiff's attorney;

14 (3) establishes a longer period during which a
15 medical malpractice liability claim may be initiated;

16 or

17 (4) establishes a stricter standard for determin-
18 ing whether a defendant was negligent or for deter-
19 mining the liability of defendants described in sec-
20 tion 120(a) in actions described in such section.

21 (b) EFFECT ON SOVEREIGN IMMUNITY AND CHOICE
22 OF LAW OR VENUE.—Nothing in subsection (a) shall be
23 construed to—

1 (1) waive or affect any defense of sovereign im-
2 munity asserted by any State under any provision of
3 law;

4 (2) waive or affect any defense of sovereign im-
5 munity asserted by the United States;

6 (3) affect the applicability of any provision of
7 the Foreign Sovereign Immunities Act of 1976;

8 (4) preempt State choice-of-law rules with re-
9 spect to claims brought by a foreign nation or a citi-
10 zen of a foreign nation; or

11 (5) affect the right of any court to transfer
12 venue or to apply the law of a foreign nation or to
13 dismiss a claim of a foreign nation or of a citizen
14 of a foreign nation on the ground of inconvenient
15 forum.

16 PART 3—REQUIREMENTS FOR ALTERNATIVE DISPUTE
17 RESOLUTION SYSTEMS (ADR)

18 **SEC. 131. BASIC REQUIREMENTS.**

19 (a) IN GENERAL.—A State’s alternative dispute reso-
20 lution system meets the requirements of this section if the
21 system—

22 (1) applies to all medical malpractice liability
23 claims under the jurisdiction of the State courts;

24 (2) requires that a written opinion resolving the
25 dispute be issued not later than 6 months after the

1 date by which each party against whom the claim is
2 filed has received notice of the claim (other than in
3 exceptional cases for which a longer period is re-
4 quired for the issuance of such an opinion), and that
5 the opinion contain—

6 (A) findings of fact relating to the dispute,

7 and

8 (B) a description of the costs incurred in
9 resolving the dispute under the system (includ-
10 ing any fees paid to the individuals hearing and
11 resolving the claim), together with an appro-
12 priate assessment of the costs against any of
13 the parties;

14 (3) requires individuals who hear and resolve
15 claims under the system to meet such qualifications
16 as the State may require (in accordance with regula-
17 tions of the Secretary);

18 (4) is approved by the State or by local govern-
19 ments in the State;

20 (5) with respect to a State system that consists
21 of multiple dispute resolution procedures—

22 (A) permits the parties to a dispute to se-
23 lect the procedure to be used for the resolution
24 of the dispute under the system, and

1 (B) if the parties do not agree on the pro-
2 cedure to be used for the resolution of the dis-
3 pute, assigns a particular procedure to the par-
4 ties;

5 (6) provides for the transmittal to the State
6 agency responsible for monitoring or disciplining
7 health care professionals and health care providers
8 of any findings made under the system that such a
9 professional or provider committed malpractice, un-
10 less, during the 90-day period beginning on the date
11 the system resolves the claim against the profes-
12 sional or provider, the professional or provider
13 brings a medical malpractice liability action contest-
14 ing the decision made under the system; and

15 (7) provides for the regular transmittal to the
16 Administrator for Health Care Policy and Research
17 of information on disputes resolved under the sys-
18 tem, in a manner that assures that the identity of
19 the parties to a dispute shall not be revealed.

20 (b) APPLICATION OF MALPRACTICE LIABILITY
21 STANDARDS TO ALTERNATIVE DISPUTE RESOLUTION.—
22 The provisions of part 2 shall apply with respect to claims
23 brought under a State alternative dispute resolution sys-
24 tem or the alternative Federal system in the same manner

1 as such provisions apply with respect to medical mal-
2 practice liability actions brought in the State.

3 **SEC. 132. CERTIFICATION OF STATE SYSTEMS; APPLICABIL-**
4 **ITY OF ALTERNATIVE FEDERAL SYSTEM.**

5 (a) CERTIFICATION.—

6 (1) IN GENERAL.—Not later than October 1 of
7 each year (beginning with 1994), the Secretary, in
8 consultation with the Attorney General, shall deter-
9 mine whether a State's alternative dispute resolution
10 system meets the requirements of this part for the
11 following calendar year.

12 (2) BASIS FOR CERTIFICATION.—The Secretary
13 shall certify a State's alternative dispute resolution
14 system under this subsection for a calendar year if
15 the Secretary determines under paragraph (1) that
16 the system meets the requirements of section 131.

17 (b) APPLICABILITY OF ALTERNATIVE FEDERAL SYS-
18 TEM.—

19 (1) ESTABLISHMENT AND APPLICABILITY.—
20 Not later than October 1, 1994, the Secretary, in
21 consultation with the Attorney General, shall estab-
22 lish by rule an alternative Federal ADR system for
23 the resolution of medical malpractice liability claims
24 during a calendar year in States that do not have

1 in effect an alternative dispute resolution system
2 certified under subsection (a) for the year.

3 (2) REQUIREMENTS FOR SYSTEM.—Under the
4 alternative Federal ADR system established under
5 paragraph (1)—

6 (A) paragraphs (1), (2), (6), and (7) of
7 section 131(a) shall apply to claims brought
8 under the system;

9 (B) claims brought under the system shall
10 be heard and resolved by arbitrators appointed
11 by the Secretary in consultation with the Attor-
12 ney General; and

13 (C) with respect to a State in which the
14 system is in effect, the Secretary may (at the
15 State's request) modify the system to take into
16 account the existence of dispute resolution pro-
17 cedures in the State that affect the resolution
18 of medical malpractice liability claims.

19 **SEC. 133. REPORTS ON IMPLEMENTATION AND EFFECTIVE-**
20 **NESS OF ALTERNATIVE DISPUTE RESOLU-**
21 **TION SYSTEMS.**

22 (a) IN GENERAL.—Not later than 5 years after the
23 date of the enactment of this Act, the Secretary shall pre-
24 pare and submit to Congress a report describing and eval-
25 uating State alternative dispute resolution systems oper-

1 ated pursuant to this part and the alternative Federal sys-
2 tem established under section 132(b).

3 (b) CONTENTS OF REPORT.—The Secretary shall in-
4 clude in the report prepared and submitted under sub-
5 section (a)—

6 (1) information on—

7 (A) the effect of such systems on the cost
8 of health care within each State,

9 (B) the impact of such systems on the ac-
10 cess of individuals to health care within the
11 State, and

12 (C) the effect of such systems on the qual-
13 ity of health care provided within the State; and

14 (2) to the extent that such report does not pro-
15 vide information on no-fault systems operated by
16 States as alternative dispute resolution systems pur-
17 suant to this part, an analysis of the feasibility and
18 desirability of establishing a system under which
19 medical malpractice liability claims shall be resolved
20 on a no-fault basis.

21 PART 4—OTHER REQUIREMENTS AND PROGRAMS

22 **SEC. 141. FACILITATING DEVELOPMENT AND USE OF**
23 **MEDICAL PRACTICE GUIDELINES.**

24 (a) INCREASE IN AUTHORIZATION OF APPROPRIA-
25 TIONS.—Section 1142(i)(1) of the Social Security Act (42

1 U.S.C. 1320b–12(i)(1)) is amended by striking “and” at
2 the end of subparagraph (D) and by striking subpara-
3 graph (E) and inserting the following:

4 “(E) \$195,000,000 for fiscal year 1994 (of
5 which \$10,000,000 shall be used for sanction-
6 ing practice guidelines for purposes of an af-
7 firmative defense in medical malpractice liabil-
8 ity actions); and

9 “(F) \$20,000,000 for each of fiscal year
10 1995 and 1996, to be used for sanctioning
11 practice guidelines for purposes of an affirma-
12 tive defense in medical malpractice liability ac-
13 tions.”.

14 (b) CONSIDERATION OF MALPRACTICE LIABILITY
15 DATA IN DEVELOPING AND UPDATING GUIDELINES.—
16 Section 1142(c)(5) of such Act (42 U.S.C. 1320b–
17 12(c)(5)) is amended by striking “claims data” and all
18 that follows through “patients” and inserting the follow-
19 ing: “claims data, data on clinical and functional status
20 of patients, and data on medical malpractice liability ac-
21 tions”.

22 (c) DEVELOPMENT OF REPORTING FORMS FOR
23 STATE ADR SYSTEMS.—The Secretary, in consultation
24 with the Administrator for Health Care Policy and Re-
25 search, shall develop a standard reporting form to be used

1 by State alternative dispute resolution systems in trans-
2 mitting information to the Administrator pursuant to sec-
3 tion 131(a)(6) on disputes resolved under such systems.

4 (d) STUDY OF EFFECT OF GUIDELINES ON MEDICAL
5 MALPRACTICE.—

6 (1) STUDY.—The Secretary shall conduct a
7 study of the effect of the use of the medical practice
8 guidelines developed by the Administrator for Health
9 Care Policy and Research on the incidence of and
10 the costs associated with medical malpractice.

11 (2) REPORTS.—(A) Not later than 1 year after
12 the date of the enactment of this Act, the Secretary
13 shall submit an interim report to Congress describ-
14 ing the availability and use of medical practice
15 guidelines and the aggregate costs associated with
16 medical malpractice.

17 (B) Not later than 5 years after the date of the
18 enactment of this Act, the Secretary shall submit a
19 report to Congress on the study conducted under
20 paragraph (1), together with recommendations re-
21 garding expanding the use of medical practice guide-
22 lines for determining the liability of health care pro-
23 fessionals and health care providers for medical mal-
24 practice.

1 **SEC. 142. PERMITTING STATE PROFESSIONAL SOCIETIES**
2 **TO PARTICIPATE IN DISCIPLINARY ACTIVITIES.**
3 **TIES.**

4 (a) **ROLE OF PROFESSIONAL SOCIETIES.**—Notwith-
5 standing any other provision of State or Federal law, a
6 State agency responsible for the conduct of disciplinary
7 actions for a type of health care practitioner may enter
8 into agreements with State or county professional societies
9 of such type of health care practitioner to permit such so-
10 cieties to participate in the licensing of such health care
11 practitioner, and to review any health care malpractice ac-
12 tion, health care malpractice claim or allegation, or other
13 information concerning the practice patterns of any such
14 health care practitioner. Any such agreement shall comply
15 with subsection (b).

16 (b) **REQUIREMENTS OF AGREEMENTS.**—Any agree-
17 ment entered into under subsection (a) for licensing activi-
18 ties or the review of any health care malpractice action,
19 health care malpractice claim or allegation, or other infor-
20 mation concerning the practice patterns of a health care
21 practitioner shall provide that—

22 (1) the health care professional society conducts
23 such activities or review as expeditiously as possible;

24 (2) after the completion of such review, such so-
25 ciety shall report its findings to the State agency
26 with which it entered into such agreement;

1 sional or provider liability insurance to health care profes-
2 sionals and health care providers in the State to—

3 (1) establish risk management programs based
4 on data available to such entity or sanction pro-
5 grams of risk management for health care profes-
6 sionals and health care providers provided by other
7 entities; and

8 (2) require each such professional or provider,
9 as a condition of maintaining insurance, to partici-
10 pate in one program described in paragraph (1) at
11 least once in each 3-year period.

12 (c) EFFECTIVE DATE.—This section shall take effect
13 2 years after the date of the enactment of this Act.

14 **SEC. 144. GRANTS FOR MEDICAL SAFETY PROMOTION.**

15 (a) RESEARCH ON MEDICAL INJURY PREVENTION
16 AND COMPENSATION.—

17 (1) IN GENERAL.—The Secretary shall make
18 grants for the conduct of basic research in the pre-
19 vention of and compensation for injuries resulting
20 from health care professional or health care provider
21 malpractice, and research of the outcomes of health
22 care procedures.

23 (2) PREFERENCE FOR RESEARCH ON CERTAIN
24 ACTIVITIES.—In making grants under paragraph
25 (1), the Secretary shall give preference to applica-

1 tions for grants to conduct research on the behavior
2 of health care providers and health care profes-
3 sionals in carrying out their professional duties and
4 of other participants in systems for compensating in-
5 dividuals injured by medical malpractice, the effects
6 of financial and other incentives on such behavior,
7 the determinants of compensation system outcomes,
8 and the costs and benefits of alternative compensa-
9 tion policy options.

10 (3) APPLICATION.—The Secretary may not
11 make a grant under paragraph (1) unless an appli-
12 cant submits an application to the Secretary at such
13 time, in such form, in such manner, and containing
14 such information as the Secretary may require.

15 (b) GRANTS FOR LICENSING AND DISCIPLINARY AC-
16 TIVITIES.—

17 (1) IN GENERAL.—The Secretary shall make
18 grants to States to assist States in improving the
19 States' ability to license and discipline health care
20 professionals.

21 (2) USES FOR GRANTS.—A State may use a
22 grant awarded under subsection (a) to develop and
23 implement improved mechanisms for monitoring the
24 practices of health care professionals or for conduct-
25 ing disciplinary activities.

1 (3) TECHNICAL ASSISTANCE.—The Secretary
2 shall provide technical assistance to States receiving
3 grants under paragraph (1) to assist them in evalu-
4 ating their medical practice acts and procedures and
5 to encourage the use of efficient and effective early
6 warning systems and other mechanisms for detecting
7 practices which endanger patient safety and for dis-
8 ciplining health care professionals.

9 (4) APPLICATIONS.—The Secretary may not
10 make a grant under paragraph (1) unless the appli-
11 cant submits an application to the Secretary at such
12 time, in such form, in such manner, and containing
13 such information as the Secretary shall require.

14 (c) GRANTS FOR PUBLIC EDUCATION PROGRAMS.—

15 (1) IN GENERAL.—The Secretary shall make
16 grants to States and to local governments, private
17 nonprofit organizations, and health professional
18 schools (as defined in paragraph (3)) for—

19 (A) educating the general public about the
20 appropriate use of health care and realistic ex-
21 pectations of medical intervention;

22 (B) educating the public about the re-
23 sources and role of health care professional li-
24 censing and disciplinary boards in investigating

1 claims of incompetence or health care mal-
2 practice; and

3 (C) developing programs of faculty train-
4 ing and curricula for educating health care pro-
5 fessionals in quality assurance, risk manage-
6 ment, and medical injury prevention.

7 (2) APPLICATIONS.—The Secretary may not
8 make a grant under paragraph (1) unless the appli-
9 cant submits an application to the Secretary at such
10 time, in such form, in such manner, and containing
11 such information as the Secretary shall require.

12 (3) HEALTH PROFESSIONAL SCHOOL DE-
13 FINED.—In paragraph (1), the term “health profes-
14 sional school” means a school of nursing (as defined
15 in section 853(2) of the Public Health Service Act)
16 or an institution described in section 701(4) of such
17 Act.

18 (d) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated not more than
20 \$15,000,000 for each of the first 5 fiscal years beginning
21 on or after the date of the enactment of this Act for grants
22 under this section.

1 **SEC. 145. STUDY OF BARRIERS TO VOLUNTARY SERVICE BY**
2 **PHYSICIANS.**

3 (a) STUDY.—The Secretary shall conduct a study to
4 determine the factors preventing or discouraging physi-
5 cians (whether practicing or retired) from volunteering to
6 provide health care services in medically underserved
7 areas.

8 (b) REPORTS.—(1) Not later than 1 year after the
9 date of the enactment of this Act, the Secretary shall sub-
10 mit an interim report to Congress on the study conducted
11 under subsection (a), together with the Secretary's rec-
12 ommendations for actions to increase the number of physi-
13 cians volunteering to provide health care services in medi-
14 cally underserved areas.

15 (2) Not later than 5 years after the date of the enact-
16 ment of this Act, the Secretary shall submit a final report
17 to Congress on the study conducted under subsection (a)
18 (taking into account the effects of this subtitle on the inci-
19 dence and costs of medical malpractice), together with the
20 Secretary's recommendations for actions to increase the
21 number of physicians volunteering to provide health care
22 services in medically underserved areas.

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