

103^D CONGRESS
1ST SESSION

H. R. 2433

To impose certain requirements on medical malpractice liability claims.

IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 1993

Mr. DORNAN introduced the following bill; which was referred jointly to the
Committees on the Judiciary and Energy and Commerce

A BILL

To impose certain requirements on medical malpractice
liability claims.

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 Injury Com-
5 pensation Reform Act of 1993”.

6 **SEC. 2. GENERAL PROVISIONS.**

7 (a) CONGRESSIONAL FINDINGS.—

8 (1) EFFECT ON INTERSTATE COMMERCE.—The
9 Congress finds that the health care and insurance
10 industries are industries affecting interstate com-
11 merce and the medical malpractice litigation systems

1 existing throughout the United States affect inter-
2 state commerce by contributing to the high cost of
3 health care and premiums for malpractice insurance
4 purchased by health care providers.

5 (2) EFFECT ON FEDERAL SPENDING.—The
6 Congress finds that the medical malpractice litiga-
7 tion systems existing throughout the United States
8 have a significant effect on the amount, distribution,
9 and use of Federal funds because of—

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

13 (B) the large number of individuals who
14 benefit because of the exclusion from Federal
15 taxes of the amounts spent by their employers
16 to provide them with health insurance benefits;

17 (C) the large number of health care provid-
18 ers and health care professionals who provide
19 items or services for which the Federal Govern-
20 ment makes payments; and

21 (D) the large number of such providers
22 and professionals who have received direct or
23 indirect financial assistance from the Federal
24 Government because of their status as such
25 professionals or providers.

1 (b) APPLICABILITY.—This Act shall apply with re-
2 spect to any medical malpractice liability claim and to any
3 medical malpractice liability action brought in any State
4 or Federal court, except that this Act shall not apply to—

5 (1) a claim or action for damages arising from
6 a vaccine-related injury or death to the extent that
7 title XXI of the Public Health Service Act applies to
8 the claim or action; or

9 (2) a claim or action in which the claimant’s
10 sole allegation is an allegation of an injury arising
11 from the use of a medical product.

12 (c) PREEMPTION OF STATE LAW.—Subject to section
13 10, this Act supersedes State law only to the extent that
14 State law differs from any provision of law established by
15 or under this Act. Any issue that is not governed by any
16 provision of law established by or under this Act shall be
17 governed by otherwise applicable State or Federal law.

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

24 **SEC. 3. DEFINITIONS.**

25 As used in this Act:

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

6 (2) ECONOMIC DAMAGES.—The term “economic
7 damages” means damages paid to compensate an in-
8 dividual for losses for hospital and other medical ex-
9 penses, lost wages, lost employment, and other pecu-
10 niary losses.

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 State law or regulation to be licensed or
15 certified by the State to provide such services in the
16 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 State
21 law or regulation to be licensed or certified by the
22 State to engage in the delivery of such services in
23 the State.

1 (5) INJURY.—The term “injury” means any ill-
2 ness, disease, or other harm that is the subject of
3 a medical malpractice liability action or claim.

4 (6) MEDICAL MALPRACTICE LIABILITY AC-
5 TION.—The term “medical malpractice liability ac-
6 tion” means a civil action (other than an action in
7 which the claimant’s sole allegation is an allegation
8 of an intentional tort) brought in a State or Federal
9 court against a health care provider or health care
10 professional (regardless of the theory of liability on
11 which the action is based) in which the claimant al-
12 leges a medical malpractice liability claim.

13 (7) MEDICAL MALPRACTICE LIABILITY
14 CLAIM.—The term “medical malpractice liability
15 claim” means a claim in which the claimant alleges
16 that injury was caused by the provision of (or the
17 failure to provide) health care services.

18 (8) MEDICAL PRODUCT.—The term “medical
19 product” means a device (as defined in section
20 201(h) of the Federal Food, Drug, and Cosmetic
21 Act) or a drug (as defined in section 201(g)(1) of
22 the Federal Food, Drug, and Cosmetic Act).

23 (9) NONECONOMIC DAMAGES.—The term “non-
24 economic damages” means damages paid to com-
25 pensate an individual for losses for physical and

1 emotional pain, suffering, inconvenience, physical
2 impairment, mental anguish, disfigurement, loss of
3 enjoyment of life, loss of consortium, and other
4 nonpecuniary losses, but does not include punitive
5 damages.

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

8 (11) STATE.—The term “State” means each of
9 the several States, the District of Columbia, the
10 Commonwealth of Puerto Rico, and any other terri-
11 tory or possession of the United States.

12 **SEC. 4. EFFECTIVE DATE.**

13 (a) IN GENERAL.—Except as provided in subsection
14 (b) and section 11, this Act shall apply with respect to
15 claims accruing or actions brought on or after the expira-
16 tion of the 3-year period that begins on the date of the
17 enactment of this Act.

18 (b) EXCEPTION FOR STATES REQUESTING EARLIER
19 IMPLEMENTATION OF REFORMS.—

20 (1) APPLICATION.—A State may submit an ap-
21 plication to the Secretary requesting the early imple-
22 mentation of this Act with respect to claims or ac-
23 tions brought in the State.

24 (2) DECISION BY SECRETARY.—The Secretary
25 shall issue a response to a State’s application under

1 paragraph (1) not later than 90 days after receiving
2 the application. If the Secretary determines that the
3 State meets the requirements of this Act at the time
4 of submitting its application, the Secretary shall ap-
5 prove the State's application, and this Act shall
6 apply with respect to actions brought in the State on
7 or after the expiration of the 90-day period that be-
8 gins on the date the Secretary issues the response.
9 If the Secretary denies the State's application, the
10 Secretary shall provide the State with a written ex-
11 planation of the grounds for the decision.

12 **SEC. 5. STATUTE OF LIMITATIONS.**

13 (a) IN GENERAL.—No medical malpractice liability
14 claim may be brought after the expiration of the 2-year
15 period that begins on the date the alleged injury that is
16 the subject of the action should reasonably have been dis-
17 covered, but in no event after the expiration of the 4-year
18 period that begins on the date the alleged injury occurred.

19 (b) EXCEPTION FOR MINORS.—In the case of an al-
20 leged injury suffered by a minor who has not attained 6
21 years of age, no medical malpractice liability claim may
22 be brought after the expiration of the 2-year period that
23 begins on the date the alleged injury that is the subject
24 of the action should reasonably have been discovered, but

1 in no event after the date on which the minor attains 10
2 years of age.

3 **SEC. 6. ATTORNEYS' FEES.**

4 (a) LIMITATION ON CONTINGENCY FEES.—An attor-
5 ney shall not contract for or collect a contingency fee for
6 representing a claimant in a medical malpractice liability
7 action in excess of the following:

8 (1) 40 percent of the first \$50,000 (or portion
9 thereof) of the amount recovered by the claimant.

10 (2) 33 $\frac{1}{3}$ percent of the next \$50,000 (or por-
11 tion thereof) of the amount recovered by the claim-
12 ant.

13 (3) 25 percent of the next \$500,000 (or portion
14 thereof) of the amount recovered by the claimant.

15 (4) 15 percent of any amounts recovered by the
16 claimant in excess of \$600,000.

17 This subsection applies whether the recovery is by settle-
18 ment, arbitration, or judgment.

19 (b) CALCULATION OF PERIODIC PAYMENTS.—If peri-
20 odic payments are awarded to the claimant pursuant to
21 section 7(b), the court shall place a total value on these
22 payments based upon the projected life expectancy of the
23 claimant and include this amount in computing the total
24 award from which attorneys' fees are calculated under
25 subsection (a).

1 (c) EFFECT OF FAILURE TO COMPLY.—Failure to
2 comply with this section by an attorney at law shall be
3 grounds for professional discipline by the appropriate
4 State agency responsible for the conduct of disciplinary
5 actions against attorneys-at-law.

6 (d) DEFINITIONS.—For purposes of this section—

7 (1) the term “contingency fee” means any fee
8 for professional legal services which is in whole or in
9 part contingent upon the recovery of any amount of
10 damages, whether through judgment or settlement;
11 and

12 (2) the term “recovered” means the net sum re-
13 covered after deducting any disbursements or costs
14 incurred in connection with prosecution or settle-
15 ment of the claim, except that costs of medical care
16 incurred by the claimant and the attorney’s office
17 overhead costs or charges shall not be deductible dis-
18 bursements under this paragraph.

19 **SEC. 7. CALCULATION AND PAYMENT OF DAMAGES.**

20 (a) LIMITATION ON NONECONOMIC DAMAGES.—The
21 total amount of noneconomic damages that may be award-
22 ed to a claimant for losses resulting from the injury which
23 is the subject of a medical malpractice liability action may
24 not exceed \$250,000, regardless of the number of parties

1 against whom the action is brought or the number of ac-
2 tions brought with respect to the injury.

3 (b) PERIODIC PAYMENTS FOR FUTURE LOSSES.—If
4 more than \$50,000 in damages for expenses to be incurred
5 in the future is awarded to the claimant in a medical mal-
6 practice liability action, the court shall, at the request of
7 either party, enter a judgment ordering such damages to
8 be paid on a periodic basis determined appropriate by the
9 court (based upon projections of when such expenses are
10 likely to be incurred).

11 (c) MANDATORY OFFSETS FOR DAMAGES PAID BY A
12 COLLATERAL SOURCE.—The total amount of damages re-
13 ceived by a claimant in a medical malpractice liability ac-
14 tion shall be reduced by any other payment that has been
15 or will be made to the individual to compensate the claim-
16 ant for the injury that was the subject of the action, in-
17 cluding payment under—

18 (1) Federal or State disability or sickness pro-
19 grams;

20 (2) Federal, State, or private health insurance
21 programs;

22 (3) private disability insurance programs;

23 (4) employer wage continuation programs; and

24 (5) any other source of payment intended to
25 compensate the claimant for such injury.

1 **SEC. 8. NOTICE OF ACTION.**

2 (a) NOTICE REQUIREMENT.—

3 (1) IN GENERAL.—No medical malpractice li-
4 ability action may be commenced unless the defend-
5 ant has been given at least 90 days notice of the in-
6 tention to commence the action.

7 (2) CONTENTS OF NOTICE.—The notice under
8 paragraph (1) shall include the legal basis of the
9 medical malpractice liability claim on which the ac-
10 tion is based and the type of loss sustained, includ-
11 ing the specific nature of the injuries suffered.

12 (b) EFFECT ON STATUTE OF LIMITATIONS.—If the
13 notice under paragraph (1) is served within 90 days before
14 the expiration of the statute of limitations for filing the
15 medical malpractice liability action, the time for commenc-
16 ing the action shall extend for 90 days after the notice
17 under paragraph (1) is served.

18 (c) EFFECT OF FAILURE TO COMPLY.—Failure to
19 comply with this section shall not invalidate any court pro-
20 ceedings in the medical malpractice liability action in-
21 volved, and shall not affect the jurisdiction of the court
22 to render a judgment in the action, but a failure to comply
23 with this section by an attorney at law shall be grounds
24 for professional discipline by the appropriate State agency
25 responsible for the conduct of disciplinary actions against
26 attorneys-at-law.

1 **SEC. 9. INJUNCTIVE RELIEF.**

2 Whenever any person has engaged or is about to en-
3 gage in any conduct in violation of this Act, the appro-
4 priate court may, upon application of an interested party,
5 issue an injunction or other appropriate order restraining
6 such conduct.

7 **SEC. 10. PREEMPTION.**

8 (a) IN GENERAL.—The preceding provisions of this
9 Act supersede any State law only to the extent that State
10 law—

11 (1) permits the recovery of a greater amount of
12 damages by claimant;

13 (2) permits the collection of a greater amount
14 of attorneys' fees by a claimant's attorney; or

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

17 (b) EFFECT ON SOVEREIGN IMMUNITY AND CHOICE
18 OF LAW OR VENUE.—Nothing in subsection (a) shall be
19 construed to—

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

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

25 (3) affect the applicability of any provision of
26 the Foreign Sovereign Immunities Act of 1976;

1 (4) preempt State choice-of-law rules with re-
2 spect to claims brought by a foreign country or a
3 citizen of a foreign country; or

4 (5) affect the right of any court to transfer
5 venue or to apply the law of a foreign country or to
6 dismiss a claim of a foreign country or of a citizen
7 of a foreign nation on the ground of inconvenient
8 forum.

9 **SEC. 11. PERMITTING STATE PROFESSIONAL SOCIETIES TO**
10 **PARTICIPATE IN DISCIPLINARY ACTIVITIES.**

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

23 (b) **REQUIREMENTS OF AGREEMENTS.**—Any agree-
24 ment entered into under subsection (a) for licensing activi-
25 ties or the review of any health care malpractice action,

1 health care malpractice claim or allegation, or other infor-
2 mation concerning the practice patterns of a health care
3 practitioner shall provide that—

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

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

9 (3) the conduct of such activities or review and
10 the reporting of such findings be conducted in a
11 manner which assures the preservation of confiden-
12 tiality of health care information and of the review
13 process; and

14 (4) no individual affiliated with such society is
15 liable for any damages or injury directly caused by
16 the individual's actions in conducting such activities
17 or review.

18 (c) AGREEMENTS NOT MANDATORY.—Nothing in
19 this section may be construed to require a State to enter
20 into agreements with societies described in subsection (a)
21 to conduct the activities described in such subsection.

22 (d) EFFECTIVE DATE.—This section shall take effect
23 2 years after the date of the enactment of this Act.

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