

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1989

To provide for medical injury compensation reform for health care services furnished using funds provided under certain Federal programs or under group health plans, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 5, 1993

Mr. McMILLAN (for himself, Mr. TAYLOR of North Carolina, Mr. SANTORUM, Mr. DELAY, Mr. GINGRICH, Mr. HASTERT, Mr. HOBSON, Mr. KASICH, Mr. KOLBE, Mr. PAXON, Mrs. ROUKEMA, Mr. WALKER, Mr. BALLENGER, Mr. BLILEY, Mr. DREIER, Mr. GOSS, Mr. GRANDY, Mr. SOLOMON, Mr. CASTLE, Mr. SUNDQUIST, and Mr. SAM JOHNSON of Texas) introduced the following bill; which was referred jointly to the Committees on the Judiciary, Ways and Means, and Energy and Commerce

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## A BILL

To provide for medical injury compensation reform for health care services furnished using funds provided under certain Federal programs or under group health plans, 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 Injury Com-  
5       pensation Fairness Act of 1993”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress finds that—

3 (1) health care expenditures are escalating be-  
4 yond the ability of Americans to afford them, having  
5 increased from 5.9 percent of gross national product  
6 in 1965 to over 12 percent in 1990;

7 (2) the medical injury compensation system  
8 currently in effect in the United States is ineffectual  
9 in compensating injured persons, has very high ad-  
10 ministrative costs, and contributes to the high level  
11 of unnecessary spending on health care;

12 (3) as many as 15 out of 16 persons injured  
13 due to medical negligence never get compensation  
14 through the current medical malpractice system;

15 (4) malpractice insurance premiums, only 40  
16 percent of which ever reach injured persons as com-  
17 pensation for their injuries, increased at an average  
18 rate of 18.3 percent per year from 1982 to 1988;

19 (5) unnecessary defensive medical practices,  
20 rendered by physicians in anticipation of juries' ret-  
21 rospective application of poorly specified standards  
22 of care to their diagnostic and treatment choices,  
23 add billions of dollars to the Nation's health care  
24 bill;

25 (6) the law governing medical malpractice oper-  
26 ates to limit access to health care by driving costs

1 to unaffordable levels and by discouraging physicians  
2 from treating high-risk patients and from practicing  
3 in high-risk areas and specialties; and

4 (7) the Federal Government, which directly fi-  
5 nances about 30 percent of the health care  
6 consumed in the United States and subsidizes a sub-  
7 stantial portion of private health insurance, has a le-  
8 gitimate financial interest in addressing the prob-  
9 lems associated with the current medical malpractice  
10 system.

11 (b) PURPOSE.—It is the purpose of this Act to—

12 (1) encourage the efficient resolution of medical  
13 injury claims, using alternative methods of dispute  
14 resolution;

15 (2) ensure fairness in the awards granted in  
16 medical injury cases;

17 (3) reduce inappropriate, unnecessary or defen-  
18 sive medical practices;

19 (4) reduce public and private health care costs;

20 (5) improve access to health care; and

21 (6) facilitate informed, responsible choices in  
22 the selection of alternative methods of dispute reso-  
23 lution and in the specification of appropriate stand-  
24 ards for medical practice.

1 **SEC. 3. MANDATORY RESOLUTION OF CLAIMS THROUGH**  
2 **CERTIFIED DISPUTE RESOLUTION SYSTEMS.**

3 (a) APPLICATION TO CLAIMS ARISING FROM SERV-  
4 ICES FINANCED THROUGH CERTAIN FEDERAL PRO-  
5 GRAMS.—

6 (1) IN GENERAL.—Each individual or entity  
7 providing or receiving health care services for which  
8 payment may be made in whole or in part with  
9 funds provided under a Federal program described  
10 in paragraph (2) shall be deemed to have entered  
11 into an agreement—

12 (A) to resolve any medical malpractice li-  
13 ability claim arising from the provision of (or  
14 failure to provide) such services through a State  
15 dispute resolution system that is certified by  
16 the Secretary under section 4(b) (or the alter-  
17 native Federal ADR system applicable under  
18 section 4(c)); and

19 (B) to bring any medical malpractice liabil-  
20 ity action that arises from a claim resolved  
21 through such a system only in accordance with  
22 the procedures described in section 5.

23 (2) FEDERAL PROGRAMS DESCRIBED.—The  
24 Federal programs described in this paragraph are as  
25 follows:

1 (A) The health insurance program under  
2 title XVIII of the Social Security Act.

3 (B) A State plan for medical assistance  
4 under title XIX of the Social Security Act.

5 (C) The health benefit program for Fed-  
6 eral employees under chapter 89 of title 5,  
7 United States Code.

8 (D) Any program for the provision of hos-  
9 pital care and medical services by the Depart-  
10 ment of Veterans Affairs under chapter 17 of  
11 title 38, United States Code.

12 (E) A program for the provision of services  
13 at facilities of the Indian Health Service or at  
14 other facilities under the Indian Health Care  
15 Improvement Act.

16 (F) The program authorized under sec-  
17 tions 1079 and 1086 of title 10, United States  
18 Code.

19 (G) The program for providing medical  
20 care at facilities of the uniformed services under  
21 title 10, United States Code.

22 (b) APPLICATION TO SERVICES FURNISHED UNDER  
23 EMPLOYER-SPONSORED HEALTH PLANS.—

1           (1) RESTRICTION ON DEDUCTIBILITY OF BUSI-  
2           NESS EXPENSES.—Section 162 of the Internal Reve-  
3           nue Code of 1986 is amended—

4                   (A) by redesignating subsection (m) as  
5                   subsection (n); and

6                   (B) by inserting after subsection (l) the  
7                   following new subsection:

8           “(m) CONDITIONING DEDUCTIBILITY OF HEALTH  
9           INSURANCE EXPENSES ON APPLICATION OF ALTER-  
10          NATIVE DISPUTE RESOLUTION PROCEDURES.—Notwith-  
11          standing any other provision of this Code, no deduction  
12          may be taken under this section (including a deduction  
13          taken under subsection (l)) for expenses paid for insurance  
14          which constitutes medical care unless there is in effect an  
15          agreement described in section 3(a) of the Medical Injury  
16          Compensation Fairness Act of 1993 with respect to the  
17          resolution of medical malpractice claims arising from the  
18          provision of (or failure to provide) such medical care.”.

19           (2) REQUIREMENT FOR EXEMPTION FROM EX-  
20          CISE TAX FOR NONCONFORMING PLANS OF TAX-EX-  
21          EMPT ORGANIZATIONS.—Section 5000(c) of the In-  
22          ternal Revenue Code of 1986 is amended by striking  
23          the period at the end and inserting the following: “,  
24          or (in the case of an employee or an employer orga-  
25          nization exempt from taxation under subtitle A) does

1 not have in effect an agreement described in section  
2 3(a) of the Medical Injury Compensation Fairness  
3 Act of 1993 with respect to the resolution of medical  
4 malpractice claims arising from the provision of (or  
5 failure to provide) items and services for which pay-  
6 ment may be made under the plan.”.

7 (3) EFFECTIVE DATE.—The amendments made  
8 by this subsection shall apply to taxable years begin-  
9 ning after December 1994.

10 (c) WAIVER OF AGREEMENTS NOT PERMITTED.—An  
11 individual or entity may not waive an agreement referred  
12 to in subsection (a) and may seek the enforcement of the  
13 agreement in any court of competent jurisdiction.

14 **SEC. 4. REQUIREMENTS FOR DISPUTE RESOLUTION PRO-**  
15 **GRAMS.**

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

19 (1) provides that the standards described in  
20 section 6 shall apply to all claims resolved under the  
21 system;

22 (2) requires that a written opinion resolving the  
23 dispute be issued not later than 6 months after the  
24 date by which each party against whom the claim is  
25 filed has received notice of the claim (other than in

1 exceptional cases for which a longer period is re-  
2 quired for the issuance of such an opinion), and that  
3 the opinion contain—

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

5 and

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

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

16 (4) is approved by the State or by local govern-  
17 ments in the State;

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

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

23 (B) if the parties do not agree on the pro-  
24 cedure to be used for the resolution of the dis-



1           pute, assigns a particular procedure to the par-  
2           ties;

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

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

18          (b) CERTIFICATION OF STATE SYSTEMS.—

19          (1) IN GENERAL.—Not later than October 1 of  
20          each year (beginning with 1994), the Secretary, in  
21          consultation with the Attorney General, shall deter-  
22          mine whether a State's alternative dispute resolution  
23          system meets the requirements of subsection (a) for  
24          the following calendar year.

1           (2) BASIS FOR CERTIFICATION.—The Secretary  
2 shall certify a State’s alternative dispute resolution  
3 system under this subsection for a calendar year if  
4 the Secretary determines under paragraph (1) that  
5 the system meets the requirements of subsection (a).

6           (c) APPLICABILITY OF ALTERNATIVE FEDERAL SYS-  
7 TEM.—

8           (1) ESTABLISHMENT AND APPLICABILITY.—  
9 Not later than October 1, 1994, the Secretary, in  
10 consultation with the Attorney General, shall estab-  
11 lish by rule an alternative Federal ADR system for  
12 the resolution of medical malpractice liability claims  
13 during a calendar year in States that do not have  
14 in effect an alternative dispute resolution system  
15 certified under subsection (b) for the year.

16           (2) REQUIREMENTS FOR SYSTEM.—Under the  
17 alternative Federal ADR system established under  
18 paragraph (1)—

19                   (A) paragraphs (2), (6), and (7) of sub-  
20 section (a) shall apply to claims brought under  
21 the system;

22                   (B) claims brought under the system shall  
23 be heard and resolved by arbitrators appointed  
24 by the Secretary in consultation with the Attor-  
25 ney General; and

1 (C) with respect to a State in which the  
2 system is in effect, the Secretary may (at the  
3 State's request) modify the system to take into  
4 account the existence of dispute resolution pro-  
5 cedures in the State that affect the resolution  
6 of medical malpractice liability claims.

7 **SEC. 5. STANDARDS FOR MEDICAL MALPRACTICE LIABIL-**  
8 **ITY ACTIONS BROUGHT AFTER RESOLUTION**  
9 **UNDER ADR SYSTEM.**

10 (a) NO ACTION PERMITTED UNTIL RESOLUTION OF  
11 CLAIM UNDER ADR SYSTEM.—

12 (1) IN GENERAL.—If a medical malpractice li-  
13 ability claim is subject to an agreement under sec-  
14 tion 3(a), no medical malpractice liability action that  
15 is based on the claim may be brought in any court  
16 until the claim is initially resolved under an alter-  
17 native dispute resolution system in accordance with  
18 this Act.

19 (2) INITIAL RESOLUTION OF CLAIMS UNDER  
20 ADR.—For purposes of paragraph (1), an action is  
21 “initially resolved” under an alternative dispute res-  
22 olution system if—

23 (A) the ADR reaches a decision on wheth-  
24 er the defendant is liable to the plaintiff for  
25 damages; and

1 (B) if the ADR determines that the de-  
2 fendant is liable, the ADR reaches a decision on  
3 the amount of damages assessed against the de-  
4 fendant.

5 (b) PROCEDURES FOR FILING ACTIONS.—

6 (1) NOTICE OF INTENT TO CONTEST DECI-  
7 SION.—Not later than 60 days after a decision is is-  
8 sued with respect to a claim under an alternative  
9 dispute resolution system described in section 4,  
10 each party affected by the decision shall submit a  
11 sealed statement to a court of competent jurisdiction  
12 indicating whether or not the party intends to con-  
13 test the decision.

14 (2) DEADLINE FOR FILING ACTION.—No civil  
15 action arising from a claim that is subject to alter-  
16 native dispute resolution under this Act may be  
17 brought unless the action is filed in a court of com-  
18 petent jurisdiction not later than 90 days after the  
19 decision resolving the medical malpractice liability  
20 claim that is the subject of the action is issued  
21 under the applicable alternative dispute resolution  
22 system.

23 (3) MANDATORY PRE-TRIAL SETTLEMENT CON-  
24 FERENCE.—

1           (A) IN GENERAL.—Before the beginning of  
2 the trial phase of any medical malpractice li-  
3 ability action arising from a claim that is sub-  
4 ject to alternative dispute resolution under this  
5 Act, the parties shall attend a conference called  
6 by the court for purposes of determining wheth-  
7 er grounds exist upon which the parties may  
8 negotiate a settlement for the action.

9           (B) REQUIRING PARTIES TO SUBMIT SET-  
10 TLEMENT OFFERS.—At the conference called  
11 pursuant to subparagraph (A), each party to a  
12 medical malpractice liability action shall present  
13 an offer of settlement for the action.

14           (4) COURT OF COMPETENT JURISDICTION.—  
15 For purposes of this subsection, the term “court of  
16 competent jurisdiction” means—

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

19           (B) with respect to actions filed in a Fed-  
20 eral court, the appropriate United States dis-  
21 trict court.

22           (c) EFFECT OF ADR DECISION ON BURDEN OF  
23 PROOF IN SUBSEQUENT ACTION.—In any action arising  
24 from a claim that is subject to an agreement under section  
25 3(a), the trier of fact shall uphold the decision made under

1 the previous alternative dispute resolution system with re-  
2 spect to the claim unless the party contesting the decision  
3 proves by a preponderance of the evidence that the deci-  
4 sion was incorrect.

5 (d) REQUIRING PARTY CONTESTING ADR RULING  
6 TO PAY ATTORNEY'S FEES AND OTHER COSTS.—

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

21 (A) in the case of an action in which the  
22 party that contested the ruling is the plaintiff,  
23 the amount of damages awarded to the party  
24 under the action does not exceed the amount of

1 damages awarded to the party under the ADR  
2 system by at least 10 percent; and

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

9 (2) EXCEPTIONS.—Paragraph (1) shall not  
10 apply if—

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

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

16 (ii) there was partiality or corruption  
17 under the system,

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

21 (iv) the ruling was based on an error  
22 of law;

23 (B) the party contesting the ruling made  
24 under the previous alternative dispute resolu-  
25 tion system presents new evidence before the

1           trier of fact that was not available for presen-  
2           tation under the ADR system;

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

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

11          (e) LEGAL EFFECT OF UNCONTESTED ADR DECI-  
12          SION.—The decision reached under an alternative dispute  
13          resolution system shall, for purposes of enforcement by a  
14          court of competent jurisdiction, have the same status in  
15          the court as the verdict of an action adjudicated in a State  
16          or Federal trial court. The previous sentence shall not  
17          apply to a decision that is contested by a party affected  
18          by the decision pursuant to subsection (b)(1).

19          (f) APPLICABILITY OF STANDARDS.—The standards  
20          described in section 5 shall apply to any action arising  
21          from a claim that is subject to an agreement under section  
22          3(a) in the same manner as such standards apply to the  
23          resolution of such claims.



1 **SEC. 6. STANDARDS FOR THE RESOLUTION OF CLAIMS AND**  
2 **ACTIONS.**

3 (a) **APPLICABILITY.**—This section shall apply with  
4 respect to medical malpractice liability claims for which  
5 an agreement described in section 3(a) is in effect.

6 (b) **STATUTE OF LIMITATIONS.**—

7 (1) **IN GENERAL.**—No claim may be brought  
8 after the expiration of the 2-year period that begins  
9 on the date the alleged injury that is the subject of  
10 the claim should reasonably have been discovered,  
11 but in no event after the expiration of the 4-year pe-  
12 riod that begins on the date the alleged injury oc-  
13 curred.

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

22 (c) **CALCULATION AND PAYMENT OF DAMAGES.**—

23 (1) **LIMITATION ON NONECONOMIC DAMAGES.**—  
24 The total amount of noneconomic damages that may  
25 be awarded to a claimant and the members of the  
26 claimant's family for losses resulting from the injury

1 which is the subject of a claim may not exceed  
2 \$250,000, regardless of the number of parties  
3 against whom the claim is brought or the number of  
4 claims brought with respect to the injury.

5 (2) TREATMENT OF PUNITIVE DAMAGES.—

6 (A) LIMITATION ON AMOUNT.—The total  
7 amount of punitive damages that may be im-  
8 posed under a claim may not exceed twice the  
9 total of the damages awarded to the claimant  
10 and the members of the claimant's family.

11 (B) PAYMENTS TO STATE FOR MEDICAL  
12 QUALITY ASSURANCE ACTIVITIES.—

13 (i) IN GENERAL.—Any punitive dam-  
14 ages imposed under a claim shall be paid  
15 to the State in which the claim is brought.

16 (ii) ACTIVITIES DESCRIBED.—A State  
17 shall use amount paid pursuant to clause  
18 (i) to carry out activities to assure the  
19 safety and quality of health care services  
20 provided in the State, including (but not  
21 limited to)—

22 (I) licensing or certifying health  
23 care professionals and health care  
24 providers in the State;

1 (II) operating alternative dispute  
2 resolution systems;

3 (III) carrying out public edu-  
4 cation programs relating to medical  
5 malpractice and the availability of al-  
6 ternative dispute resolution systems in  
7 the State; and

8 (IV) carrying out programs to re-  
9 duce malpractice-related costs for re-  
10 tired providers or other providers vol-  
11 unteering to provide services in medi-  
12 cally underserved areas.

13 (iii) MAINTENANCE OF EFFORT.—A  
14 State shall use any amounts paid pursuant  
15 to clause (i) to supplement and not to re-  
16 place amounts spent by the State for the  
17 activities described in clause (ii).

18 (3) PERIODIC PAYMENTS FOR FUTURE  
19 LOSSES.—If more than \$100,000 in damages for ex-  
20 penses to be incurred in the future is awarded to the  
21 claimant, the party against whom the damages are  
22 awarded shall provide for payment for such damages  
23 on a periodic basis determined appropriate by the al-  
24 ternative dispute resolution system (based upon pro-  
25 jections of when such expenses are likely to be in-

1 curred), unless it is determined that it is not in the  
2 claimant's best interests to receive payments for  
3 such damages on such a periodic basis.

4 (4) MANDATORY OFFSETS FOR DAMAGES PAID  
5 BY A COLLATERAL SOURCE.—

6 (A) IN GENERAL.—The total amount of  
7 damages received by a claimant shall be re-  
8 duced (in accordance with subparagraph (B))  
9 by any other payment that has been or will be  
10 made to compensate the claimant for the injury  
11 that was the subject of the claim, including  
12 payment under—

13 (i) Federal or State disability or sick-  
14 ness programs;

15 (ii) Federal, State, or private health  
16 insurance programs;

17 (iii) private disability insurance pro-  
18 grams;

19 (iv) employer wage continuation pro-  
20 grams; and

21 (v) any other source of payment in-  
22 tended to compensate the claim for such  
23 injury.

24 (B) AMOUNT OF REDUCTION.—The  
25 amount by which an award of damages to a

1 claimant shall be reduced under subparagraph  
2 (A) shall be—

- 3 (i) the total amount of any payments  
4 (other than such award) that have been  
5 made or that will be made to the claimant  
6 to compensate the claimant for the injury  
7 that was the subject of the claim; minus  
8 (ii) the amount paid by the claimant  
9 (or by the spouse, parent, or legal guard-  
10 ian of the claimant) to secure the pay-  
11 ments described in clause (i).

12 (d) LIMITATION ON ATTORNEY'S FEES.—If the  
13 claimant has entered into an agreement with the claim-  
14 ant's attorney to pay the attorney's fees on a contingency  
15 basis, the attorney's fees for the claim may not exceed—

16 (1) 25 percent of the first \$150,000 of any  
17 award or settlement paid to the claimant; or

18 (2) 15 percent of any additional amounts paid  
19 to the claimant.

20 (e) JOINT AND SEVERAL LIABILITY.—The liability of  
21 each party against whom a claim is filed shall be several  
22 only and shall not be joint, and each party shall be liable  
23 only for the amount of damages allocated to the party in  
24 direct proportion to the party's percentage of responsibil-  
25 ity (as determined by the trier of fact).

1 (f) UNIFORM STANDARD FOR DETERMINING NEG-  
2 LIGENCE.—A party against whom a claim is filed may not  
3 be found to have acted negligently unless the party's con-  
4 duct at the time of providing the health care services that  
5 are the subject of the claim was not reasonable.

6 (g) APPLICATION OF MEDICAL PRACTICE GUIDE-  
7 LINES.—

8 (1) USE OF GUIDELINES AS AFFIRMATIVE DE-  
9 FENSE.—In the resolution of any claim, it shall be  
10 a complete defense to any allegation that a party  
11 against whom the claim is filed was negligent that,  
12 in the provision of (or the failure to provide) the  
13 services that are the subject of the claim, the party  
14 followed the appropriate practice guideline.

15 (2) RESTRICTION ON GUIDELINES CONSIDERED  
16 APPROPRIATE.—

17 (A) GUIDELINES SANCTIONED BY SEC-  
18 RETARY.—For purposes of paragraph (1), a  
19 practice guideline may not be considered appro-  
20 priate with respect to claims during a year un-  
21 less the Secretary has sanctioned the use of the  
22 guideline for purposes of an affirmative defense  
23 to claims brought during the year in accordance  
24 with subparagraph (B) or (C).

1           (B) PROCESS FOR SANCTIONING GUIDE-  
2           LINES.—Not less frequently than October 1 of  
3           each year (beginning with 1994), the Secretary,  
4           shall review the practice guidelines and stand-  
5           ards developed by the Administrator for Health  
6           Care Policy and Research pursuant to section  
7           1142 of the Social Security Act, and shall sanc-  
8           tion those guidelines which the Secretary con-  
9           siders appropriate for purposes of an affirma-  
10          tive defense to claims brought during the next  
11          calendar year as appropriate practice guidelines  
12          for purposes of paragraph (1).

13          (C) USE OF STATE GUIDELINES.—Upon  
14          the application of a State, the Secretary may  
15          sanction practice guidelines selected by the  
16          State for purposes of an affirmative defense to  
17          claims brought in the State as appropriate  
18          practice guidelines for purposes of paragraph  
19          (1) if the guidelines meet such requirements as  
20          the Secretary may impose.

21          (3) PROHIBITING APPLICATION OF FAILURE TO  
22          FOLLOW GUIDELINES AS PRIMA FACIE EVIDENCE OF  
23          NEGLIGENCE.—No claimant may be deemed to have  
24          presented prima facie evidence that a party against  
25          whom the claim is filed was negligent solely by show-

1 ing that the party failed to follow the appropriate  
2 practice guideline.

3 (h) SPECIAL PROVISION FOR CERTAIN OBSTETRIC  
4 SERVICES.—

5 (1) IMPOSITION OF HIGHER STANDARD OF  
6 PROOF.—

7 (A) IN GENERAL.—In the case of a claim  
8 relating to services provided during labor or the  
9 delivery of a baby, if the party against whom  
10 the claim is filed did not previously treat the  
11 claimant for the pregnancy, the trier of fact  
12 may not find that the party committed mal-  
13 practice and may not assess damages against  
14 the party unless the malpractice is proven by  
15 clear and convincing evidence.

16 (B) APPLICABILITY TO GROUP PRACTICES  
17 OR AGREEMENTS AMONG PROVIDERS.—For  
18 purposes of subparagraph (A), a party shall be  
19 considered to have previously treated an indi-  
20 vidual for a pregnancy if the party is a member  
21 of a group practice whose members previously  
22 treated the claimant for the pregnancy or is  
23 providing services to the claimant during labor  
24 or the delivery of a baby pursuant to an agree-  
25 ment with another party.



1           (2) CLEAR AND CONVINCING EVIDENCE DE-  
2 FINED.—In paragraph (1), the term “clear and con-  
3 vincing evidence” is that measure or degree of proof  
4 that will produce in the mind of the trier of fact a  
5 firm belief or conviction as to the truth of the allega-  
6 tions sought to be established, except that such  
7 measure or degree of proof is more than that re-  
8 quired under preponderance of the evidence, but less  
9 than that required for proof beyond a reasonable  
10 doubt.

11       (i) PREEMPTION.—

12           (1) IN GENERAL.—This section supersedes any  
13 State law only to the extent that State law—

14           (A) permits the recovery of a greater  
15 amount of damages by a plaintiff;

16           (B) permits the collection of a greater  
17 amount of attorneys’ fees by a plaintiff’s attor-  
18 ney;

19           (C) establishes a longer period during  
20 which a medical malpractice liability claim may  
21 be initiated; or

22           (D) establishes a stricter standard for de-  
23 termining whether a defendant was negligent or  
24 for determining the liability of defendants de-

1           scribed in subsection (h) in actions described in  
2           such subsection.

3           (2) EFFECT ON SOVEREIGN IMMUNITY AND  
4 CHOICE OF LAW OR VENUE.—Nothing in paragraph  
5 (1) shall be construed to—

6           (A) waive or affect any defense of sov-  
7 ereign immunity asserted by any State under  
8 any provision of law;

9           (B) waive or affect any defense of sov-  
10 ereign immunity asserted by the United States;

11           (C) affect the applicability of any provision  
12 of the Foreign Sovereign Immunities Act of  
13 1976;

14           (D) preempt State choice-of-law rules with  
15 respect to claims brought by a foreign nation or  
16 a citizen of a foreign nation; or

17           (E) affect the right of any court to trans-  
18 fer venue or to apply the law of a foreign nation  
19 or to dismiss a claim of a foreign nation or of  
20 a citizen of a foreign nation on the ground of  
21 inconvenient forum.

22 **SEC. 7. DEFINITIONS.**

23           As used in this Act:

24           (1) ALTERNATIVE DISPUTE RESOLUTION SYS-  
25 TEM; ADR.—The term “alternative dispute resolution

1 system” or “ADR” means a system established by  
2 a State that provides for the resolution of medical  
3 malpractice liability claims in a manner other than  
4 through medical malpractice liability actions.

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

10 (3) ECONOMIC DAMAGES.—The term “economic  
11 damages” means damages paid to compensate an in-  
12 dividual for losses for hospital and other medical ex-  
13 penses, lost wages, lost employment, and other pecu-  
14 niary losses.

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

21 (5) HEALTH CARE PROVIDER.—The term  
22 “health care provider” means any organization or  
23 institution that is engaged in the delivery of health  
24 care services in a State and that is required by State  
25 law or regulation to be licensed or certified by the

1 State to engage in the delivery of such services in  
2 the State.

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

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

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

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

1           (10) NONECONOMIC DAMAGES.—The term  
2           “noneconomic damages” means damages paid to  
3           compensate an individual for losses for physical and  
4           emotional pain, suffering, inconvenience, physical  
5           impairment, mental anguish, disfigurement, loss of  
6           enjoyment of life, loss of consortium, and other  
7           nonpecuniary losses, but does not include punitive  
8           damages.

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

11          (12) STATE.—The term “State” means each of  
12          the several States, the District of Columbia, the  
13          Commonwealth of Puerto Rico, the Virgin Islands,  
14          Guam, and American Samoa.

15   **SEC. 8. EFFECTIVE DATE.**

16          This Act shall apply to claims accruing on or after  
17          January 1, 1994.

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