

107TH CONGRESS
2^D SESSION

H. R. 5253

To modify the antitrust exemption applicable to the business of medical malpractice insurance, to address current issues for health care providers, to reform medical malpractice litigation by making available alternative dispute resolution methods, requiring plaintiffs to submit affidavits of merit before proceeding, and enabling judgments to be satisfied through periodic payments, to reform the medical malpractice insurance market, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2002

Mr. SANDLIN (for himself, Mr. SHOWS, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. REYES, Mr. ISRAEL, Mr. DOGGETT, Mr. ROSS, Mr. PASCRELL, Ms. SANCHEZ, Ms. BERKLEY, Mr. GONZALEZ, Mr. HOLT, Mr. MEEKS of New York, and Ms. SOLIS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Energy and Commerce, Ways and Means, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To modify the antitrust exemption applicable to the business of medical malpractice insurance, to address current issues for health care providers, to reform medical malpractice litigation by making available alternative dispute resolution methods, requiring plaintiffs to submit affidavits of merit before proceeding, and enabling judgments to be satisfied through periodic payments, to reform the

medical malpractice insurance market, and for other purposes.

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

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
 5 “Medical Liability Insurance Crisis Response Act of
 6 2002”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
 8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ANTITRUST MATTERS: AMENDMENTS TO THE
 MCCARRAN-FERGUSON ACT

Sec. 101. Short title.
 Sec. 102. Rules of construction.
 Sec. 103. Amendments.
 Sec. 104. Study and report.
 Sec. 105. Effective date.

TITLE II—ADDRESSING CURRENT ISSUES FOR HEALTH CARE
 PROVIDERS

Sec. 201. Prompt payment of claims.
 Sec. 202. Eliminating nurse shortages.

“PART H—NATIONAL NURSE SERVICE CORPS SCHOLARSHIP PROGRAM

“Sec. 851. National Nurse Service Corps Scholarship Program.

“PART I—INITIATIVES TO RECRUIT NURSES AND COMBAT THE NURSING
 SHORTAGE

“Sec. 855. Nurse recruitment grant program.

“PART J—INITIATIVES TO STRENGTHEN THE NURSE WORKFORCE

“Sec. 857. Grants for career ladder programs.
 “Sec. 858. Grants for nurse training in long-term care for the elderly.
 “Sec. 859. Grants for internship and residency programs.
 “Sec. 860. Developing retention strategies and best practices in nursing
 staff management.
 “Sec. 861. Stipend and scholarship program.

TITLE III—MEDICAL MALPRACTICE LIABILITY REFORM

- Sec. 301. Definitions.
 Sec. 302. Federal tort reform.
 Sec. 303. Alternative dispute resolution methods.
 Sec. 304. Preventing frivolous malpractice suits.
 Sec. 305. Requirement for affidavit of merit.
 Sec. 306. Periodic payment of awards.

TITLE IV—MEDICAL MALPRACTICE INSURANCE REFORMS

- Sec. 401. Advisory Commission on Medical Malpractice.
 Sec. 402. Freeze in medical malpractice insurance rates.
 Sec. 403. Withdrawal from medical malpractice insurance market.
 Sec. 404. Guaranteed renewability of coverage.
 Sec. 405. Guaranteed coverage for certain health care providers.
 Sec. 406. Medical malpractice insurance disclosure.
 Sec. 407. Medical malpractice insurance price comparison.

TITLE V—ADDITIONAL PROVISIONS

- Sec. 501. State consideration of additional and alternative methods.
 Sec. 502. Mandating equal treatment between traditional insurers and risk retention groups, including medical malpractice risk retention groups.

1 **TITLE I—ANTITRUST MATTERS:**
 2 **AMENDMENTS TO THE**
 3 **McCARRAN-FERGUSON ACT**

4 **SEC. 101. SHORT TITLE.**

5 This title may be cited as the “Medical Malpractice
 6 Insurance Competitive Pricing Act of 2002”.

7 **SEC. 102. RULES OF CONSTRUCTION.**

8 The amendments made by this title preserve—

9 (1) the provisions relating to State taxing and
 10 regulatory authority in section 2 of the Act of March
 11 9, 1945 (59 Stat. 34; 15 U.S.C. 1012), commonly
 12 known as the McCarran-Ferguson Act;

13 (2) the availability, to persons engaged in the
 14 business of medical malpractice insurance, of the de-
 15 fense of State action in the same manner and to the

1 same extent as such defense is available to other
2 persons;

3 (3) the availability, to persons engaged in the
4 business of medical malpractice insurance, of any
5 antitrust immunity or defense that may be applica-
6 ble under law other than the McCarran-Ferguson
7 Act;

8 (4) the legal standards applicable under the
9 McCarran-Ferguson Act, as in effect before such Act
10 is amended by this title, to all conduct described in
11 the safe harbors found in subparagraphs (B) and
12 (C) of section 2(b)(1) of the McCarran-Ferguson
13 Act, as amended by this title; and

14 (5) the provisions relating to boycott, coercion,
15 or intimidation in section 3(b) of the McCarran-Fer-
16 guson Act.

17 **SEC. 103. AMENDMENTS.**

18 Section 2 of the Act of March 9, 1945 (59 Stat. 34;
19 15 U.S.C. 1012), commonly known as the McCarran-Fer-
20 guson Act, is amended—

21 (1) in subsection (b) by striking “: *Provided*,”
22 and all that follows through “law.” and inserting the
23 following: “except as follows:

1 “(1)(A) The antitrust laws shall be applicable
2 to the business of medical malpractice insurance ex-
3 cept as provided in subparagraphs (B) and (C).

4 “(B) The antitrust laws shall not be applicable
5 to conduct that consists of making an agreement or
6 engaging in joint conduct—

7 “(i)(I) to collect, compile, classify, or dis-
8 seminate historical data;

9 “(II) to develop procedures to collect, com-
10 pile, classify, or disseminate historical data; or

11 “(III) to verify that historical data is accu-
12 rate and complete;

13 “(ii) to determine, using standard actuarial
14 techniques, or disseminate, a loss development
15 factor or developed losses;

16 “(iii) to develop or disseminate a standard
17 medical malpractice insurance policy form (in-
18 cluding a standard addendum to a medical mal-
19 practice insurance policy form and standard
20 terminology in such a policy form) if such
21 agreement or joint conduct does not include an
22 agreement to adhere to such standard form, or
23 to require adherence to such standard form, ex-
24 cept that the fact that 2 or more persons en-

1 gaged in the business of medical malpractice in-
2 surance use such standard form—

3 “(I) shall not be sufficient in itself to
4 support a finding that an agreement to ad-
5 here, or to require adherence, to such
6 standard form exists; and

7 “(II) may be used only for the pur-
8 pose of supplementing or explaining direct
9 evidence of the existence of an agreement
10 to adhere, or to require adherence, to such
11 standard form;

12 “(iv) to develop or disseminate, for use in
13 providing medical malpractice insurance in a
14 State, a manual that is filed, before dissemina-
15 tion, with the State entity that regulates the
16 business of medical malpractice insurance under
17 State law, if such manual includes only—

18 “(I) information and conduct de-
19 scribed in clauses (i), (ii), and (iii), includ-
20 ing relativity factors;

21 “(II) during the transition period, a
22 trend factor or information to which a
23 trend factor has been applied, to the extent
24 permitted under subparagraph (C); and

1 “(III) explanations and instructions
2 for using the manual (or any of the infor-
3 mation contained in the manual), if such
4 agreement or joint conduct does not in-
5 clude an agreement among competitors to
6 adhere, or to require adherence, to any of
7 such explanations or instructions;

8 “(v) to provide medical malpractice insur-
9 ance pursuant to a public necessity market
10 mechanism; or

11 “(vi) to administer a public necessity mar-
12 ket mechanism in a State, pursuant to the au-
13 thorization of and under the supervision of such
14 State, if all persons who provide medical mal-
15 practice insurance in such State pursuant to
16 such mechanism, and all persons seeking to ob-
17 tain medical malpractice insurance through
18 such mechanism, have a reasonable opportunity
19 to appeal determinations affecting them to a
20 governmental entity;

21 to the extent that such conduct is regulated by State
22 law.

23 “(C) During the transition period, the antitrust
24 laws shall not be applicable to conduct that consists
25 of making an agreement or engaging in joint con-

1 duct to determine or disseminate a trend factor, to
2 the extent that such conduct is regulated by State
3 law.

4 “(2) Subsequent to the transition period, the
5 independent purchase of a trend factor by a person
6 engaged in the business of medical malpractice in-
7 surance from a person not engaged in providing
8 such insurance (and not affiliated with a person en-
9 gaged in providing such insurance) shall be pre-
10 sumed not to violate the antitrust laws.

11 “(3) The Federal Trade Commission Act shall
12 be applicable to the business of medical malpractice
13 insurance to the extent that such business is not
14 regulated by State law, except that, with respect to
15 enforcement of the antitrust laws, section 5 of such
16 Act shall be applicable to the business of medical
17 malpractice insurance to the same extent as the
18 other antitrust laws.”, and

19 (2) by adding at the end the following:

20 “(c) For purposes of subsection (b)—

21 “(1) the term ‘antitrust laws’ has the meaning
22 given it in subsection (a) of the first section of the
23 Clayton Act (15 U.S.C. 12), except that such term
24 includes section 5 of the Federal Trade Commission
25 Act (15 U.S.C. 45) as such section 5 applies to con-

1 duct that constitutes a violation of the Sherman Act
2 or the Clayton Act;

3 “(2) the term ‘developed losses’ means aggregate
4 aggregate paid losses and aggregate reserves held for re-
5 ceived claims, as adjusted by a loss development fac-
6 tor;

7 “(3) the term ‘historical data’ means informa-
8 tion respecting—

9 “(A) losses paid by, claims received by, re-
10 serves for such claims set aside by, or units of
11 exposure to loss in medical malpractice insur-
12 ance policies sold by any person engaged in the
13 business of medical malpractice insurance; or

14 “(B) medical malpractice insurance pre-
15 miums received by any person engaged in the
16 business of medical malpractice insurance, if
17 such information is not disseminated in a form
18 from which information respecting premiums
19 received by any separately identifiable person
20 engaged in the business of medical malpractice
21 insurance may be derived;

22 “(4) the term ‘medical malpractice insurance
23 policy’ means a contract under which medical mal-
24 practice insurance is sold to an insured;

1 “(5) the term ‘loss’ means an amount paid or
2 to be paid by a person engaged in the business of
3 medical malpractice insurance to (or for the benefit
4 of) a claimant to satisfy a claim on a medical mal-
5 practice insurance policy, and includes any attorney,
6 investigatory, or litigation expenses that are sepa-
7 rately incurred, identified, and allocated by such per-
8 son with respect to that particular claim;

9 “(6) the term ‘loss development factor’ means
10 an adjustment to be made to the aggregate of losses
11 incurred during a prior period of time that have
12 been paid or for which claims have been received and
13 reserves are being held, in order to estimate the ag-
14 gregate of the losses incurred during such period
15 that will ultimately be paid;

16 “(7) the term ‘medical malpractice insurance’
17 means insurance against loss caused by the action or
18 inaction of any health care provider;

19 “(8) the term ‘public necessity market mecha-
20 nism’ means a plan established by State law or by
21 the State entity that regulates the business of med-
22 ical malpractice insurance under State law—

23 “(A) for providing a type of medical mal-
24 practice insurance in a State;

1 “(B) in which the persons providing such
2 type of medical malpractice insurance pursuant
3 to such mechanism represent a substantial
4 number of the persons engaged in the business
5 of providing such type of insurance in such
6 State and are either required by State law, or
7 formally requested or ordered by such State en-
8 tity, to participate;

9 “(C) the purpose of which is to make such
10 type of insurance available to persons who
11 would not otherwise be able to obtain such type
12 of insurance at affordable cost; and

13 “(D) in which the rate for such type of in-
14 surance is subject to the approval or dis-
15 approval of such State;

16 “(9) the term ‘relativity factor’ means a ratio
17 comparing one classification of historical data to an-
18 other such classification, or comparing developed
19 losses in one such classification to developed losses
20 in another such classification;

21 “(10) the term ‘transition period’ means the 2-
22 year period beginning on the effective date of the In-
23 surance Competitive Pricing Act of 2002; and

24 “(11) the term ‘trend factor’ means an adjust-
25 ment to be made to developed losses in order to ac-

1 count for any change that is anticipated to affect
2 losses.”.

3 **SEC. 104. STUDY AND REPORT.**

4 (a) **STUDY.**—During the 5-year period beginning on
5 the effective date of this title, the Attorney General shall
6 conduct a study to determine the effect of this title, and
7 the amendments made by this title, on the business of
8 medical malpractice insurance.

9 (b) **REPORT.**—Not later than 1 year after the expira-
10 tion of the 5-year period referred to in subsection (a), the
11 Attorney General shall submit, to the Speaker of the
12 House of Representatives and the President pro tempore
13 of the Senate, a report summarizing the results of the
14 study required by subsection (a).

15 **SEC. 105. EFFECTIVE DATE.**

16 This title shall take effect 1 year after the date of
17 the enactment of this Act.

18 **TITLE II—ADDRESSING CUR-**
19 **RENT ISSUES FOR HEALTH**
20 **CARE PROVIDERS**

21 **SEC. 201. PROMPT PAYMENT OF CLAIMS.**

22 (a) **GROUP HEALTH PLANS.**—

23 (1) **PUBLIC HEALTH SERVICE ACT AMEND-**
24 **MENTS.**—(A) Subpart 2 of part A of title XXVII of

1 the Public Health Service Act is amended by adding
2 at the end the following new section:

3 **“SEC. 2707. PROMPT PAYMENT OF CLAIMS.**

4 “(a) IN GENERAL.—A group health plan, and a
5 health insurance issuer offering health insurance coverage
6 in connection with a group health plan, shall provide for
7 prompt payment of claims submitted for health care serv-
8 ices or supplies furnished to a participant, beneficiary, or
9 enrollee with respect to benefits covered by the plan or
10 issuer, in a manner that is no less protective than the pro-
11 visions referred to in subsection (b).

12 “(b) PROVISIONS.—The provisions referred to in this
13 subsection are the provisions of section 1842(c)(2) of the
14 Social Security Act (42 U.S.C. 1395u(c)(2)), as modified
15 as follows:

16 “(1) ALTERNATIVE INTEREST RATE.—Instead
17 of applying the interest rate calculated under section
18 3902(a) of title 31, United States Code, the interest
19 rate shall be 1 percent of the payment amount due
20 plus, in the case of payments not made within 25
21 days of the due date, an additional 1 percent inter-
22 est due for every month the payment is past due.

23 “(2) COVERAGE OF 100 PERCENT OF CLAIMS.—
24 The reference in such section 1842(c)(2) to ‘not less
25 than 95 percent of all claims submitted under this

1 part' shall be deemed to be a reference to '100 per-
2 cent of all claims submitted under the plan or cov-
3 erage involved'.

4 “(c) PERMITTING ADDITIONAL PENALTIES.—State
5 Insurance Commissioners may establish and impose mone-
6 tary penalties or other penalties for failure by a group
7 health plan, and a health insurance issuer offering health
8 insurance coverage in connection with a group health plan,
9 to comply with the provisions referred to in subsection
10 (b).”.

11 (2) ERISA AMENDMENTS.—(A) Subpart B of
12 part 7 of subtitle B of title I of the Employee Re-
13 tirement Income Security Act of 1974 is amended by
14 adding at the end the following new section:

15 **“SEC. 714. PROMPT PAYMENT OF CLAIMS.**

16 “(a) IN GENERAL.—A group health plan, and a
17 health insurance issuer offering health insurance coverage
18 in connection with a group health plan, shall provide for
19 prompt payment of claims submitted for health care serv-
20 ices or supplies furnished to a participant or beneficiary
21 with respect to benefits covered by the plan or issuer, in
22 a manner that is no less protective than the provisions
23 referred to in subsection (b).

24 “(b) PROVISIONS.—The provisions referred to in this
25 subsection are the provisions of section 1842(c)(2) of the

1 Social Security Act (42 U.S.C. 1395u(c)(2)), as modified
2 as follows:

3 “(1) ALTERNATIVE INTEREST RATE.—Instead
4 of applying the interest rate calculated under section
5 3902(a) of title 31, United States Code, the interest
6 rate shall be 1 percent of the payment amount due
7 plus, in the case of payments not made within 25
8 days of the due date, an additional 1 percent inter-
9 est due for every month the payment is past due.

10 “(2) COVERAGE OF 100 PERCENT OF CLAIMS.—
11 The reference in such section 1842(c)(2) to ‘not less
12 than 95 percent of all claims submitted under this
13 part’ shall be deemed to be a reference to ‘100 per-
14 cent of all claims submitted under the plan or cov-
15 erage involved’.

16 “(c) PERMITTING ADDITIONAL PENALTIES.—State
17 Insurance Commissioners may establish and impose mone-
18 tary penalties or other penalties for failure by a group
19 health plan, and a health insurance issuer offering health
20 insurance coverage in connection with a group health plan,
21 to comply with the provisions referred to in subsection
22 (b).”.

23 (D) The table of contents in section 1 of such
24 Act is amended by inserting after the item relating
25 to section 713 the following new item:

“Sec. 714. Prompt payment of claims.”.

1 (3) INTERNAL REVENUE CODE AMEND-
2 MENTS.—

3 (A) IN GENERAL.—Subchapter B of chap-
4 ter 100 of the Internal Revenue Code of 1986
5 is amended—

6 (i) in the table of sections, by insert-
7 ing after the item relating to section 9812
8 the following new item:

 “Sec. 9813. Prompt payment of claims.”;

9 and

10 (ii) by inserting after section 9812 the
11 following:

12 **“SEC. 9813. PROMPT PAYMENT OF CLAIMS.**

13 “A group health plan shall provide for prompt pay-
14 ment of claims submitted for health care services or sup-
15 plies furnished to a participant or beneficiary with respect
16 to benefits covered by the plan, in a manner that is no
17 less protective than the provisions referred to in subsection
18 (b).

19 “(b) PROVISIONS.—The provisions referred to in this
20 subsection are the provisions of section 1842(c)(2) of the
21 Social Security Act (42 U.S.C. 1395u(c)(2)), as modified
22 as follows:

23 “(1) ALTERNATIVE INTEREST RATE.—Instead
24 of applying the interest rate calculated under section
25 3902(a) of title 31, United States Code, the interest

1 rate shall be 1 percent of the payment amount due
2 plus, in the case of payments not made within 25
3 days of the due date, an additional 1 percent inter-
4 est due for every month the payment is past due.

5 “(2) COVERAGE OF 100 PERCENT OF CLAIMS.—
6 The reference in such section 1842(c)(2) to ‘not less
7 than 95 percent of all claims submitted under this
8 part’ shall be deemed to be a reference to ‘100 per-
9 cent of all claims submitted under the plan involved’.

10 “(c) PERMITTING ADDITIONAL PENALTIES.—State
11 Insurance Commissioners may establish and impose mone-
12 tary penalties or other penalties for failure by a group
13 health plan to comply with the provisions referred to in
14 subsection (b).”.

15 (b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B
16 of title XXVII of the Public Health Service Act is amend-
17 ed by inserting after section 2752 the following new sec-
18 tion:

19 **“SEC. 2753. PROMPT PAYMENT OF CLAIMS.**

20 “The provisions of section 2707 shall apply to health
21 insurance coverage offered by a health insurance issuer
22 in the individual market in the same manner as they apply
23 to health insurance coverage offered by a health insurance
24 issuer in connection with a group health plan in the small
25 or large group market.”.

1 (c) PROTECTION OF STATES' RIGHTS.—Any issue re-
2 relating to prompt payment for health care services or sup-
3 plies that is not governed by any provision of law as
4 amended by this section shall be governed by otherwise
5 applicable State or Federal law. This section (and the pro-
6 visions amended by this section) does not preempt or
7 supercede any law that imposes shorter time frames for
8 payment, greater penalties for non-payment, and, in gen-
9 eral, provides greater assurances that group health plans
10 and health insurance issuers provide for prompt payment
11 of claims submitted for health care services or supplies
12 furnished to a participant, beneficiary, or enrollee with re-
13 spect to benefits covered by the plan or issuer.

14 (d) EFFECTIVE DATES.—

15 (1) GROUP HEALTH PLANS AND GROUP
16 HEALTH INSURANCE COVERAGE.—The amendments
17 made by subsection (a) apply with respect to group
18 health plans for plan years beginning on or after
19 January 1, 2003.

20 (2) INDIVIDUAL HEALTH INSURANCE COV-
21 ERAGE.—The amendment made by subsection (b)
22 apply with respect to health insurance coverage of-
23 fered, sold, issued, renewed, in effect, or operated in
24 the individual market on or after such date.

1 **SEC. 202. ELIMINATING NURSE SHORTAGES.**

2 Title VIII of the Public Health Service Act (42
3 U.S.C. 296 et seq.) is amended—

4 (1) in section 846(a)(3), by inserting “in a
5 nursing home, in a hospice, in a home health agency,
6 in a nurse-managed health center, in a public health
7 department,” after “in a public hospital,”;

8 (2) in section 801, by adding at the end the fol-
9 lowing:

10 “(9) **HEALTH CARE FACILITY.**—The term
11 ‘health care facility’ means an Indian Health service
12 health center, a Native Hawaiian health center, a
13 hospital, a migrant health center, a community
14 health center, a Federally qualified health center, a
15 nurse-managed health center, a rural health clinic, a
16 nursing home, a home health care agency, a hospice,
17 a public health clinic, a long-term care facility, a
18 skilled nursing facility, or any other public, non-
19 profit, or private facility designated by the Sec-
20 retary.”; and

21 (3) by adding at the end the following:

1 **“PART H—NATIONAL NURSE SERVICE CORPS**
2 **SCHOLARSHIP PROGRAM**
3 **“SEC. 851. NATIONAL NURSE SERVICE CORPS SCHOLAR-**
4 **SHIP PROGRAM.**

5 “(a) PROGRAM AUTHORIZED.—The Secretary shall
6 establish a National Nurse Service Corps Scholarship pro-
7 gram (referred to in this section as the ‘program’) that
8 provides scholarships to individuals seeking nursing edu-
9 cation in exchange for service by such individuals in crit-
10 ical nursing shortage areas or facilities.

11 “(b) PREFERENCE.—In awarding scholarships under
12 this section, the Secretary shall give preference to appli-
13 cants with the greatest financial need, applicants who
14 agree to serve in health care facilities experiencing nursing
15 shortages in medically underserved areas, applicants cur-
16 rently working in a health care facility who agree to serve
17 the period of obligated service at such facility, minority
18 nurse applicants, and applicants with an interest in a
19 practice area of nursing that has unmet needs.

20 “(c) REQUIREMENTS.—To be eligible to participate
21 in the program, an individual must—

22 “(1) be accepted for enrollment, or be enrolled,
23 in an accredited school of nursing, on a full- or part-
24 time basis, to take courses leading to a collegiate or
25 associate degree in nursing, or a diploma in nursing;

1 “(2) submit an application to participate in the
2 program; and

3 “(3) enter into an agreement with the Sec-
4 retary, at the time of submittal of such application,
5 to—

6 “(A) accept the conditions of the scholar-
7 ship and remain enrolled in a school of nursing;

8 “(B) maintain an acceptable level of aca-
9 demic standing;

10 “(C) maintain enrollment in a course of
11 study until the individual completes the course
12 of study; and

13 “(D) serve as a nurse for a period of not
14 less than 2 years in a critical nursing shortage
15 area or facility, or the individual may complete
16 such required period of service on a part-time
17 basis subject to—

18 “(i) an agreement entered into by the
19 facility and the individual which is ap-
20 proved by the Secretary; and

21 “(ii) the individual agrees in writing
22 that the period of obligated service will be
23 extended so that the aggregate amount of
24 less than full-time service performed will

1 equal the amount of service that would be
2 performed through full-time service.

3 “(d) RULE OF CONSTRUCTION.—In selecting individ-
4 uals to participate in the program, the Secretary shall give
5 preference to individuals serving at public or nonprofit pri-
6 vate facilities, unless only a private facility is present in
7 the geographic area that the Secretary determines is expe-
8 riencing a nursing shortage. While giving priority to indi-
9 viduals who propose to provide service in public or non-
10 profit private facilities, the Secretary must not disregard
11 the needs of areas that individuals seek to provide services
12 in which no public or nonprofit private facility is oper-
13 ating, including rural areas.

14 “(e) APPLICATIONS.—

15 “(1) IN GENERAL.—The application forms for
16 the programs shall include—

17 “(A) a fair summary of the rights and li-
18 abilities of an individual whose application is
19 approved by the Secretary; and

20 “(B) information respecting meeting a
21 service obligation and such other information as
22 may be necessary for the individual to under-
23 stand the program.

24 “(2) ACCESSIBILITY.—The application form
25 and all other information furnished by the Secretary

1 shall be written so that it may be understood by the
2 average individual applying to participate in the pro-
3 gram. The Secretary shall make such application
4 forms, and other information available to individuals
5 desiring to participate in the program, on a date
6 sufficiently early to ensure that such individuals
7 have adequate time to carefully review and evaluate
8 such forms and information.

9 “(3) DISTRIBUTION.—The Secretary shall dis-
10 tribute to junior and senior high schools, community
11 colleges, universities, and schools of nursing mate-
12 rials providing information on the program and shall
13 encourage the schools to disseminate the materials
14 to students of the schools.

15 “(f) SCHOLARSHIP.—

16 “(1) IN GENERAL.—A scholarship provided to a
17 student for a school year under a written contract
18 under the program shall consist of—

19 “(A) payment to, or (in accordance with
20 paragraph (2)) on behalf of the student of—

21 “(i) the tuition of the student in such
22 school year; and

23 “(ii) all other reasonable educational
24 expenses and support services, including
25 fees, books, and laboratory expenses in-

1 curred by the student in such school year;

2 and

3 “(B) payment to the student of a stipend
4 of \$400 per month (adjusted in accordance with
5 paragraph (3)) for each month that the student
6 is enrolled.

7 “(2) CONTRACTS.—

8 “(A) WITH A SCHOOL OF NURSING.—The
9 Secretary may contract with a school of nurs-
10 ing, in which a participant in the program is
11 enrolled, for the payment to the school of nurs-
12 ing of the amounts of tuition and other reason-
13 able educational expenses described in para-
14 graph (1)(A).

15 “(B) WITH AN INDIVIDUAL.—The Sec-
16 retary shall prepare a written contract for the
17 program that shall be provided to any indi-
18 vidual who is enrolled or accepted for enroll-
19 ment at a school of nursing and who desires to
20 participate in the program at the time that an
21 application is provided to such individual. The
22 contract described in this paragraph shall con-
23 tain a provision that any financial obligation of
24 the United States arising out of a contract en-
25 tered into under this section and any obligation

1 of the individual which is conditioned thereon,
2 is contingent upon funds being appropriated for
3 scholarships under this section.

4 “(3) MONTHLY STIPEND.—The amount of the
5 monthly stipend for each month that a student is
6 enrolled, specified in paragraph (1)(B) and as pre-
7 viously adjusted (if at all) in accordance with this
8 paragraph, shall be increased by the Secretary as
9 the Secretary determines to be reasonable.

10 “(g) BREACH OF AGREEMENT.—In the case of an in-
11 dividual who enters into an agreement under this section
12 to provide service as a nurse in consideration for receiving
13 a scholarship, such individual is liable to the Federal Gov-
14 ernment in accordance with sections 338E and 338F as
15 amended in the future. If the individual begins providing
16 less than full-time service but fails to begin or complete
17 the period of obligated service, the methods stated in sec-
18 tion 338E(c) for determining the damages for breach of
19 the individual’s written contract will be used after con-
20 verting periods of obligated service or of service performed
21 into their full-time equivalence.

22 “(h) FUND REGARDING USE OF AMOUNTS RECOV-
23 ERED FOR CONTRACT BREACH.—There is established in
24 the Treasury of the United States a fund to be known

1 as the National Nurse Service Corps Replacement Fund.

2 Such fund shall be governed under section 338F.

3 “(i) SERVICE INFORMATION.—The Secretary shall
4 provide to an individual who has participated in the pro-
5 gram and is nearing the conclusion of his or her service
6 obligation, information regarding other opportunities for
7 nursing in critical nursing shortage areas or facilities.

8 “(j) REPORT.—Not later than 18 months after the
9 first loan cycle, and annually thereafter, the Secretary
10 shall prepare and submit to Congress a report describing
11 the program, including statements regarding—

12 “(1) the number of enrollees, scholarships, and
13 grant recipients by year of study;

14 “(2) the number of graduates;

15 “(3) the amount of scholarship payments made
16 for each of tuition, stipends, and other expenses;

17 “(4) which educational institution the scholar
18 attended;

19 “(5) the number and placement location of the
20 scholars;

21 “(6) the default rate and actions required;

22 “(7) the amount of outstanding default funds;

23 “(8) to the extent that it can be determined,
24 the reason for the default;

1 “(9) the demographics of the individuals par-
2 ticipating in the scholarship program; and

3 “(10) recommendations for future modifications
4 of the scholarship program.

5 “(k) DEFINITIONS.—In this section:

6 “(1) COMMUNITY HEALTH CENTER.—The term
7 ‘community health center’ has the meaning given
8 such term in section 330(a).

9 “(2) CRITICAL NURSING SHORTAGE AREA OR
10 FACILITY.—

11 “(A) IN GENERAL.—The term ‘critical
12 nursing shortage area or facility’ means—

13 “(i) an urban or rural area that the
14 Secretary determines is experiencing a
15 nursing shortage;

16 “(ii) a population that the Secretary
17 determines has such a shortage; or

18 “(iii) a health care facility or other
19 public, nonprofit, or private facility that
20 the Secretary determines has a shortage.

21 “(B) FACTORS TO CONSIDER.—In making
22 a determination regarding a critical nursing
23 shortage area or facility, the Secretary shall use
24 the criteria in section 846 for not more than 12
25 months, and after such period—

1 “(i) the ratio of available nurses to
2 the number of individuals in the area or
3 population group;

4 “(ii) the demonstrated need of a
5 health care facility or other public, non-
6 profit, or private facility in the area; or

7 “(iii) the presence of innovative reten-
8 tion strategies utilized by eligible facilities.

9 “(3) RURAL HEALTH CLINIC.—The term ‘rural
10 health clinic’ has the meaning given such term in
11 section 1861(aa)(2) of the Social Security Act.

12 “(1) AUTHORIZATION OF APPROPRIATIONS.—For the
13 purpose of payments under agreements entered into under
14 subsection (a), there are authorized to be appropriated
15 \$40,000,000 for fiscal year 2003 and such sums as may
16 be necessary for fiscal years 2004 through 2007.

17 **“PART I—INITIATIVES TO RECRUIT NURSES AND**
18 **COMBAT THE NURSING SHORTAGE**

19 **“SEC. 855. NURSE RECRUITMENT GRANT PROGRAM.**

20 “(a) PROGRAM AUTHORIZED.—The Secretary shall
21 award grants to eligible entities to increase nursing edu-
22 cation opportunities.

23 “(b) ELIGIBLE ENTITY.—In this section, the term
24 ‘eligible entity’ means a school of nursing, or a health care
25 facility, or a partnership of such school and facility.

1 “(c) USE OF FUNDS.—An eligible entity that receives
2 a grant under subsection (a) shall use funds received from
3 such grant to—

4 “(1) support outreach programs at primary,
5 junior, and secondary schools that inform guidance
6 counselors and students of education opportunities
7 regarding nursing;

8 “(2) carry out special projects to increase nurs-
9 ing education opportunities for individuals who are
10 from disadvantaged backgrounds (including economi-
11 cally disadvantaged backgrounds and racial and eth-
12 nic minorities underrepresented among registered
13 nurses) by providing student scholarships or sti-
14 pends, pre-entry preparation, or retention activities;

15 “(3) support education programs for nursing
16 students who require assistance with math, science,
17 English, and medical terminology;

18 “(4) meet the costs of dependent care and
19 transportation for individuals who are taking part in
20 a nursing education program at any level; or

21 “(5) support community-based partnerships
22 seeking to recruit nurses in rural communities and
23 medically underserved urban communities, and other
24 communities experiencing a nursing shortage.

1 certified nurse assistants, and home health aides
2 who enroll in entry level nursing programs, advanced
3 practice nursing degree programs, RN/Master nurs-
4 ing degree programs, doctoral nursing programs,
5 nurse administrator programs, and training pro-
6 grams focused on specific technology use or disease
7 management;

8 “(2) provide career counseling to individuals
9 seeking to advance within the nursing profession;

10 “(3) provide employees of the facility advanced
11 training and education at the school of nursing or
12 health care facility;

13 “(4) establish or expand nursing practice ar-
14 rangements in noninstitutional settings to dem-
15 onstrate methods to improve access to primary
16 health care in medically underserved communities;
17 and

18 “(5) develop programs, including distance
19 learning programs in coordination with the Office
20 for the Advancement of Telehealth, to facilitate edu-
21 cational advancement for individuals with existing
22 degrees or health care training.

23 “(d) APPLICATION.—An eligible entity seeking a
24 grant under subsection (a) shall submit an application to
25 the Secretary at such time, in such a manner, and con-

1 taining such information as the Secretary may reasonably
2 require.

3 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
4 is authorized to be appropriated to carry out this section
5 \$20,000,000 for fiscal year 2003 and such sums as may
6 be necessary for fiscal years 2004 through 2007.

7 **“SEC. 858. GRANTS FOR NURSE TRAINING IN LONG-TERM**
8 **CARE FOR THE ELDERLY.**

9 “(a) PROGRAM AUTHORIZED.—The Secretary shall
10 award grants to eligible entities to develop and incorporate
11 gerontology curriculum and competencies and to encour-
12 age individuals to enter the nursing profession with a
13 focus on providing long-term care for the elderly.

14 “(b) ELIGIBLE ENTITY.—The term ‘eligible entity’
15 means a—

16 “(1) school of nursing;

17 “(2) health care facility; or

18 “(3) partnership of paragraphs (1) and (2).

19 “(c) USE OF FUNDS.—An eligible entity that receives
20 a grant under subsection (a) shall use funds under such
21 grant to—

22 “(1) provide training to individuals who will
23 provide long-term care for the elderly;

1 and residency programs that encourage mentoring and the
2 development of specialties.

3 “(b) DEFINITION.—The term ‘eligible entity’ means
4 a partnership of a school of nursing and health care facil-
5 ity.

6 “(c) USE OF FUNDS.—An eligible entity that receives
7 a grant under subsection (a) shall use such funds received
8 through such grant to—

9 “(1) develop internship and residency programs
10 and curriculum and training programs for graduates
11 of a nursing program;

12 “(2) provide support for faculty and mentors;
13 and

14 “(3) provide support for nurses participating in
15 internship and residency programs on both a full-
16 time and part-time basis.

17 “(d) APPLICATION.—An eligible entity seeking a
18 grant under subsection (a) shall submit an application to
19 the Secretary at such time, in such a manner, and con-
20 taining such information as the Secretary may reasonably
21 require.

22 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
23 is authorized to be appropriated to carry out this section
24 \$10,000,000 for fiscal year 2003 and such sums as may
25 be necessary for fiscal years 2004 through 2007.

1 **“SEC. 860. DEVELOPING RETENTION STRATEGIES AND**
2 **BEST PRACTICES IN NURSING STAFF MAN-**
3 **AGEMENT.**

4 “(a) PROGRAM AUTHORIZED.—The Secretary shall
5 award grants to eligible entities to carry out and evaluate
6 demonstrations of models and best practices in nursing
7 care and develop innovative strategies or approaches for
8 retention of professional nurses.

9 “(b) DEFINITIONS.—In this section:

10 “(1) ELIGIBLE ENTITY.—The term ‘eligible en-
11 tity’ means—

12 “(A) a partnership or coalition containing
13 a health care facility and a school of nursing;

14 “(B) a partnership or coalition containing
15 a health care facility and another organization
16 with expertise in outcome and cost-effectiveness
17 measurement; or

18 “(C) containing a health care facility dem-
19 onstrating proficiency in outcomes and cost-ef-
20 fectiveness measurement, and receipt of accredi-
21 tation by an accepted organization shall con-
22 stitute evidence of such proficiency.

23 “(2) NURSE LEADERSHIP.—The term ‘nurse
24 leadership’ includes nurse executives, nurse adminis-
25 trators, and nurse managers.

1 “(3) PROFESSIONAL NURSE.—The term ‘profes-
2 sional nurse’ means a registered nurse who holds a
3 valid and unrestricted license to practice nursing in
4 a State.

5 “(c) DISTRIBUTION OF GRANTS.—Grants awarded
6 under this section shall be distributed among a variety of
7 geographic regions and among a range of different types
8 and sizes of health care facilities.

9 “(d) DURATION OF GRANTS.—Grants awarded under
10 this section shall be awarded for a period not greater than
11 2 years (and may be renewable only once).

12 “(e) ALLOCATION.—The Secretary shall determine
13 the amount of a grant awarded under this section to the
14 nursing services of the health care facility based on the
15 number of staffed beds as follows, and if the Secretary
16 deems appropriate these amounts may be adjusted:

17 “(1) A maximum of \$200,000 for a facility with
18 less than 100 staffed beds.

19 “(2) A maximum of \$400,000 for a facility with
20 less than 400 staffed beds.

21 “(3) A maximum of \$600,000 for a facility with
22 400 or more staffed beds.

23 “(f) PRIORITY CRITERIA.—The Secretary shall give
24 priority in awarding grants under this section to health
25 care facilities that have not previously received a grant

1 under this section, and in the case of a grant renewal,
2 the Secretary shall give priority to grant recipients who
3 have demonstrated outcome improvements or have been
4 designated as a magnet hospital by the American Nurses
5 Credentialing Center.

6 “(g) USE OF FUNDS.—An eligible entity that receives
7 a grant under subsection (a) shall use such grant funds
8 to do one or more of the following:

9 “(1) Improve the quality of the health care fa-
10 cility work environment, including improving com-
11 munication and collaboration among health care pro-
12 fessionals.

13 “(2) Initiate or maintain aggressive nurse re-
14 tention programs, including other initiatives as
15 deemed appropriate by the nurse retention com-
16 mittee at the health care facility.

17 “(3) Reduce workplace injuries.

18 “(4) Reduce rates of nursing sensitive patient
19 outcomes.

20 “(5) Provide high quality evaluations of the
21 cost-effectiveness and patient-outcomes of best prac-
22 tices, to assist health care facility decision-makers in
23 determining appropriate nurse retention strategies.

24 “(6) Promote continuing nursing education and
25 career development.

1 “(h) APPLICATION.—

2 “(1) IN GENERAL.—An eligible entity desiring a
3 grant under subsection (a) shall submit an applica-
4 tion to the Secretary at such time, and in such man-
5 ner, and containing such information as the Sec-
6 retary may reasonably require.

7 “(2) CONTENTS.—The application submitted
8 under paragraph (1) shall include a description of—

9 “(A) the project or projects proposed to be
10 carried out with grant funds;

11 “(B) the means by which to evaluate the
12 project with respect to its cost-effectiveness and
13 outcomes as they relate to staff turnover, work-
14 place injuries, and patient care outcomes that
15 are sensitive to nursing care; and

16 “(C) the system of patient outcomes meas-
17 urement, which shall be described by the nurse
18 leadership and professional nurses of the health
19 care facility and shall be sensitive to nursing
20 care and shall evaluate the specific needs of the
21 patients served by the health care facility and
22 the educational needs of the nursing staff at
23 such facility to meet the needs of the patients,
24 and the health care facility must allocate suffi-
25 cient funds to carry out the system;

1 “(D) the health care facility’s organiza-
2 tional and clinical decision-making processes
3 that incorporate the input of the nursing staff,
4 including the development of a nurse retention
5 committee, the inclusion of nurse executive par-
6 ticipation in senior level management of the
7 health care facility, and a nurse residency train-
8 ing program for new graduate nurses entering
9 the workforce on a full-time basis, or nurses re-
10 turning to work at a health care facility on a
11 full-time basis after an absence of not less than
12 3 years without working in the nursing field.

13 “(i) AUTHORIZATION OF APPROPRIATIONS.—There is
14 to be authorized to be appropriated to carry out this sec-
15 tion \$10,000,000 for fiscal year 2003 and such sums as
16 may be necessary for fiscal years 2004 through 2007.

17 **“SEC. 861. STIPEND AND SCHOLARSHIP PROGRAM.**

18 “(a) PROGRAM AUTHORIZED.—

19 “(1) IN GENERAL.—The Secretary shall estab-
20 lish a scholarship and stipend program to encourage
21 individuals to seek a masters degree or a doctoral
22 degree at a school of nursing.

23 “(2) LIMITATION.—Assistance provided under
24 paragraph (1) for a part-time masters degree pro-
25 gram shall be provided for not more than 6 years

1 and for a part-time doctoral degree program not
2 more than 7 years.

3 “(b) ELIGIBILITY.—To be eligible to receive a schol-
4 arship or stipend under this section, an individual shall—

5 “(1) submit an application to the Secretary at
6 such time, in such manner, and containing such in-
7 formation as the Secretary may reasonably require;

8 “(2) be accepted for enrollment, or be enrolled,
9 in an accredited school of nursing, on a full- or part-
10 time basis to take courses leading to a masters de-
11 gree or doctoral degree;

12 “(3) enter into an agreement with the Sec-
13 retary, at the time of submittal of such application,
14 to—

15 “(A) accept the conditions of the scholar-
16 ship and remain enrolled in a school of nursing;

17 “(B) maintain an acceptable level of aca-
18 demic standing; and

19 “(C) maintain enrollment in a course of
20 study until the individual completes the course
21 of study; and

22 “(4) teach at an accredited school of nursing
23 for 1 year for each year of assistance with a course
24 load determined by the school of nursing where the
25 teaching will take place, and the individual may

1 complete such required period of service on a part-
2 time basis subject to—

3 “(A) an agreement entered into by the fa-
4 cility and the individual which is approved by
5 the Secretary; and

6 “(B) the individual agrees in writing that
7 the period of obligated service will be extended
8 so that the aggregate amount of less than full-
9 time service will equal the amount of service
10 that would be performed through full-time serv-
11 ice.

12 “(c) APPLICATION.—The Secretary shall disseminate
13 application forms to individuals and in such forms,
14 include—

15 “(1) a summary of the rights and liabilities of
16 an individual whose application is approved by the
17 Secretary; and

18 “(2) information respecting meeting the service
19 obligation described in subsection (b)(4).

20 “(d) SCHOLARSHIP.—

21 “(1) IN GENERAL.—A scholarship provided to a
22 student for a school year under a written contract
23 under the program shall consist of—

24 “(A) payment to, or (in accordance with
25 paragraph (2)) on behalf of the student of—

1 “(i) the tuition of the student in such
2 school year; and

3 “(ii) all other reasonable educational
4 expenses and support services, including
5 fees, books, and laboratory expenses in-
6 curred by the student in such school year;
7 and

8 “(B) payment to the student of a stipend
9 of \$400 per month (adjusted in accordance with
10 paragraph (3)) for each month that the student
11 is enrolled.

12 “(2) CONTRACTS.—

13 “(A) WITH A SCHOOL OF NURSING.—The
14 Secretary may contract with a school of nurs-
15 ing, in which a participant in the program is
16 enrolled, for the payment to the school of nurs-
17 ing of the amounts of tuition and other reason-
18 able educational expenses described in para-
19 graph (1)(A).

20 “(B) WITH AN INDIVIDUAL.—The Sec-
21 retary shall prepare a written contract for the
22 program that shall be provided to any indi-
23 vidual who is enrolled or accepted for enroll-
24 ment at a school of nursing and who desires to
25 participate in the program at the time that an

1 application is provided to such individual. The
2 contract described in this paragraph shall con-
3 tain a provision that any financial obligation of
4 the United States arising out of a contract en-
5 tered into under this section and any obligation
6 of the individual which is conditioned thereon,
7 is contingent upon funds being appropriated for
8 scholarships under this section.

9 “(3) MONTHLY STIPEND.—The amount of the
10 monthly stipend for each month that a student is
11 enrolled, specified in paragraph (1)(B) and as pre-
12 viously adjusted (if at all) in accordance with this
13 paragraph, shall be increased by the Secretary as
14 the Secretary determines to be reasonable.

15 “(e) BREACH OF AGREEMENT.—In the case of an in-
16 dividual who enters into an agreement under this section
17 to provide service as a nurse in consideration for receiving
18 a scholarship, such individual is liable to the Federal Gov-
19 ernment in accordance with sections 338E and 338F as
20 amended in the future. If the individual begins providing
21 less than full-time service but fails to begin or complete
22 the period of obligated service, the methods stated in sec-
23 tion 338E(c) for determining the damages for breach of
24 the individual’s written contract will be used after con-

1 verting periods of obligated service or of service performed
2 into their full-time equivalence.

3 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to carry out this section
5 \$10,000,000 for fiscal year 2003 and such sums as may
6 be necessary for fiscal years 2004 through 2007.”.

7 **TITLE III—MEDICAL MAL-**
8 **PRACTICE LIABILITY RE-**
9 **FORM**

10 **SEC. 301. DEFINITIONS.**

11 In this title, the following definitions apply:

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

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

22 (3) FUTURE DAMAGES.—The term “future
23 damages” means damages for economic or non-
24 economic loss incurred after the time of judgment.

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

7 (5) HEALTH CARE PROVIDER.—The term
8 “health care provider” means any organization or
9 institution that is engaged in the delivery of health
10 care services in a State and that is required by the
11 laws or regulations of the State to be licensed or cer-
12 tified by the State to engage in the delivery of such
13 services in the State.

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

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

23 (8) MEDIATION.—The term “mediation” means
24 a settlement process coordinated by a neutral third

1 party and without the ultimate rendering of a formal
2 opinion as to factual or legal findings.

3 (9) MEDICAL MALPRACTICE CLAIM.—The term
4 “medical malpractice claim” means a claim against
5 a health care provider, a health care professional, or
6 a blood or tissue bank licensed or registered by the
7 Food and Drug Administration in which a claimant
8 alleges that injury was caused by the provision of (or
9 the failure to provide) health care services, except
10 that such term does not include—

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

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

16 (10) MEDICAL MALPRACTICE LIABILITY AC-
17 TION.—The term “medical malpractice liability ac-
18 tion” means a civil action brought in a State or Fed-
19 eral court against a health care provider, a health
20 care professional, or a blood or tissue bank licensed
21 or registered by the Food and Drug Administration
22 in which the plaintiff alleges a medical malpractice
23 claim.

1 **SEC. 302. FEDERAL TORT REFORM.**

2 (a) IN GENERAL.—Except as provided in section 303,
3 this title shall apply with respect to any medical mal-
4 practice liability action brought in any State or Federal
5 court, except that this title shall not apply to a claim or
6 action for damages arising from a vaccine-related injury
7 or death to the extent that title XXI of the Public Health
8 Service Act applies to the claim or action.

9 (b) PREEMPTION.—The provisions of this title shall
10 preempt any State law to the extent such law relates to
11 a type of tort reform included under this title and is incon-
12 sistent with such provisions.

13 (c) EFFECT ON SOVEREIGN IMMUNITY AND CHOICE
14 OF LAW OR VENUE.—Nothing in this title shall be con-
15 strued to—

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

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

21 (3) affect the applicability of any provision of
22 the Foreign Sovereign Immunities Act of 1976;

23 (4) preempt State choice-of-law rules with re-
24 spect to claims brought by a foreign nation or a cit-
25 izen of a foreign nation; or

1 (5) affect the right of any court to transfer
2 venue or to apply the law of a foreign nation or to
3 dismiss a claim of a foreign nation or of a citizen
4 of a foreign nation on the ground of inconvenient
5 forum.

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

12 **SEC. 303. ALTERNATIVE DISPUTE RESOLUTION METHODS.**

13 (a) **MANDATORY MEDIATION.**—In any medical mal-
14 practice liability action, before such action comes to trial,
15 mediation shall be required. Such mediation shall be con-
16 ducted by one or more mediators who are selected by
17 agreement of the parties or, if the parties do not agree,
18 who are qualified under applicable State law and selected
19 by the court.

20 (b) **REQUIREMENTS.**—Mediation under subsection
21 (a) shall be made available by a State subject to the fol-
22 lowing requirements:

23 (1) Participation in such mediation shall be in
24 lieu of any alternative dispute resolution method re-
25 quired by any other law or by any contractual ar-

1 rangement made by or on behalf of the parties be-
2 fore the commencement of the action.

3 (2) Each State shall disclose to residents of the
4 State the availability and procedures for resolution
5 of consumer grievances regarding the provision of
6 (or failure to provide) health care services, including
7 such mediation.

8 (3) Each State shall provide that such medi-
9 ation may begin before or after, at the option of the
10 claimant, the commencement of a medical mal-
11 practice liability action.

12 (4) The Attorney General, in consultation with
13 the Secretary of Health and Human Services, shall,
14 by regulation, develop requirements with respect to
15 such mediation to ensure that it is carried out in a
16 manner that—

17 (A) is affordable for the parties involved;

18 (B) encourages timely resolution of claims;

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

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

23 (c) FURTHER REDRESS AND ADMISSIBILITY.—Any
24 party dissatisfied with a determination reached with re-
25 spect to a medical malpractice claim as a result of an al-

1 ternative dispute resolution method applied under this sec-
2 tion shall not be bound by such determination. The results
3 of any alternative dispute resolution method applied under
4 this section, and all statements, offers, and communica-
5 tions made during the application of such method, shall
6 be inadmissible for purposes of adjudicating the claim.

7 **SEC. 304. PREVENTING FRIVOLOUS MALPRACTICE SUITS.**

8 (a) CERTIFICATION.—The signatures of attorneys or
9 parties constitute a certificate by them that they have read
10 the pleading that to the best of their knowledge, informa-
11 tion, and belief formed after reasonable inquiry the med-
12 ical malpractice claim is not groundless and brought in
13 bad faith or groundless and groundless and brought for
14 the purpose of harassment. Attorneys or parties who shall
15 bring a fictitious suit as an experiment to get an opinion
16 of the court, or who shall file any fictitious pleading in
17 a cause for such a purpose, or shall make statements in
18 a pleading which they know to be groundless and false,
19 for the purpose of securing a delay of the trial of the
20 cause, shall be held guilty of contempt. If a pleading is
21 signed in violation of this subsection, the court, upon mo-
22 tion or upon its own initiative, after notice and hearing,
23 shall impose an appropriate sanction, such as striking the
24 pleadings, dismissing the suit, and requiring payment of
25 costs, attorneys fees, and sanctions (if appropriate) plus

1 interest, upon the person who signed it, a represented
2 party, or both.

3 (b) PROCESS; RULES.—Courts shall presume that
4 pleadings are filed in good faith. No sanctions under this
5 section may be imposed except for good cause, the particu-
6 lars of which must be stated in the sanction order. The
7 term “groundless” means, for purposes of this section,
8 having no basis in law or fact and not warranted by good
9 faith argument for the extension, modification, or reversal
10 of existing law. A general denial does not constitute a vio-
11 lation of this subsection (a). The amount requested in
12 damages, if any, does not constitute a violation of sub-
13 section (a).

14 **SEC. 305. REQUIREMENT FOR AFFIDAVIT OF MERIT.**

15 (a) REQUIRING SUBMISSION WITH COMPLAINT.—No
16 medical malpractice liability action may be brought by any
17 individual unless, at the time the individual brings the ac-
18 tion (except as provided in subsection (b)(1)), the indi-
19 vidual (or the individual’s attorney) submits an affidavit
20 declaring that—

21 (1) the individual (or the individual’s attorney)
22 has consulted and reviewed the facts of the action
23 with a qualified specialist;

24 (2) the individual (or the individual’s attorney)
25 has obtained a written report by a qualified spe-

1 cialist that clearly identifies the individual and that
2 includes the specialist's statement of belief that,
3 based on a review of the available medical record
4 and other relevant material, there is a reasonable
5 and meritorious cause for the filing of the action
6 against the defendant; and

7 (3) on the basis of the qualified specialist's re-
8 view and consultation, that the individual (or the in-
9 dividual's attorney) has concluded that there is a
10 reasonable and meritorious cause for the filing of the
11 action.

12 (b) EXTENSION IN CERTAIN INSTANCES.—

13 (1) IN GENERAL.—Subject to paragraph (2),
14 subsection (a) shall not apply with respect to an in-
15 dividual who brings a medical malpractice liability
16 action without submitting an affidavit described in
17 such subsection if—

18 (A) the individual is unable to obtain the
19 affidavit before the expiration of the applicable
20 statute of limitations;

21 (B) as of the time the individual brings the
22 action, the individual has been unable to obtain
23 adequate medical records or other information
24 necessary to prepare the affidavit; or

1 (C) other good cause exists for failing to
2 submit the affidavit.

3 (2) DEADLINE FOR SUBMISSION WHERE EX-
4 TENSION APPLIES.—In the case of an individual who
5 brings an action for which paragraph (1) applies,
6 the action shall be dismissed unless the individual
7 (or the individual’s attorney) submits the affidavit
8 described in subsection (a) not later than—

9 (A) in the case of an action for which sub-
10 paragraph (A) of paragraph (1) applies, 90
11 days after bringing the action;

12 (B) in the case of an action for which sub-
13 paragraph (B) of paragraph (1) applies, 90
14 days after obtaining the information described
15 in such subparagraph; or

16 (C) in the case of an action for which sub-
17 paragraph (C) of paragraph (1) applies, 90
18 days after the good cause involved ceases to
19 exist.

20 (c) QUALIFIED SPECIALIST DEFINED.—In sub-
21 section (a), a “qualified specialist” means, with respect
22 to a medical malpractice liability action, a health care pro-
23 fessional who is reasonably believed by the individual
24 bringing the action (or the individual’s attorney)—

1 (1) to be knowledgeable in the relevant issues
2 involved in the action,

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

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

9 (d) **SANCTIONS FOR SUBMITTING FALSE ALLEGA-**
10 **TIONS.**—Upon the motion of any party or its own initia-
11 tive, the court in a medical malpractice liability action may
12 impose a sanction on a party or the party’s attorney (or
13 both), including a requirement that the party reimburse
14 the other party to the action for costs and a reasonable
15 attorney’s fee, if an affidavit described in subsection (a)
16 is submitted without reasonable cause and is found to be
17 untrue.

18 (e) **CONFIDENTIALITY OF SPECIALIST.**—Upon a
19 showing of good cause by a defendant, the court may as-
20 certain the identity of a specialist referred to in subsection
21 (a) while preserving confidentiality.

22 **SEC. 306. PERIODIC PAYMENT OF AWARDS.**

23 (a) **AUTHORITY TO PERMIT PERIODIC PAYMENTS.**—
24 The court may instruct the trier of fact to find, or may
25 otherwise order that, part or all of future damages that

1 exceed \$250,000 be paid on an appropriate periodic basis.
2 The court shall ensure that the amount and present value
3 of periodic payments constitute full recovery of the dam-
4 ages awarded for the claimant's injury and that the pay-
5 ment schedule is found to be in the best interests of all
6 the parties to the action.

7 (b) BOND OR SECURITY FOR FUTURE DAMAGES.—
8 If future damages are awarded on a periodic basis, the
9 court shall require the defendant to post security or a
10 bond, or otherwise ensure the full payment of such dam-
11 ages.

12 (c) MODIFICATION OF PAYMENT SCHEDULE.—Ex-
13 cept where the parties agree otherwise, in a medical mal-
14 practice liability action, the court shall retain authority to
15 modify, on the basis of changed circumstances, the pay-
16 ment schedule of any periodic payments of future damages
17 awarded in the action.

18 (d) DEATH OF PLAINTIFF.—Except where the par-
19 ties agree otherwise, if a plaintiff to whom future damages
20 are awarded in a medical malpractice liability action and
21 made payable on a periodic basis dies before completion
22 of the payment of such damages, the court shall order the
23 payment of any remaining portion of such damages be
24 paid to the estate of the plaintiff. Insofar as damages in
25 a medical malpractice liability action include payment for

1 future medical expenses for the plaintiff, the previous sen-
2 tence shall not apply and no such payments shall be made
3 for expenses incurred after the date of death of the plain-
4 tiff.

5 **TITLE IV—MEDICAL MAL-**
6 **PRACTICE INSURANCE RE-**
7 **FORMS**

8 **SEC. 401. ADVISORY COMMISSION ON MEDICAL MAL-**
9 **PRACTICE.**

10 (a) APPOINTMENT.—

11 (1) IN GENERAL.—Not later than 90 days after
12 the date of the enactment of this Act, the Secretary
13 of Health and Human Services, in consultation with
14 the Congress, shall appoint an Advisory Commission
15 on Medical Malpractice (in this section referred to as
16 the “Commission”).

17 (2) COMPOSITION.—The Commission shall con-
18 sist of 11 members, appointed without regard to the
19 civil service laws. Seven members shall be represent-
20 atives of health care professional organizations, 2 of
21 whom shall be self-employed physicians (allopathic
22 or osteopathic). The remaining members shall have
23 expertise in health care quality or economics, but 2
24 shall have expertise in insurance and at least 1 shall
25 be a representative of patients.

1 (3) TERMS; QUORUM.—The members of the
2 Commission shall serve until submission of the re-
3 port pursuant to subsection (d), at which time the
4 Commission shall terminate. A vacancy arising in
5 the Commission shall be filled in the same manner
6 as the original appointment is made. A majority of
7 members shall constitute a quorum, and action shall
8 be taken only by a majority vote of those present
9 and voting.

10 (b) DUTIES.—The Commission shall examine the
11 causes of the medical malpractice crisis. As part of such
12 examination, the Commission shall study and examine the
13 following issues:

14 (1) The financial statements and information
15 submitted to regulators by insurance companies that
16 offer medical malpractice insurance, as well as any
17 other information maintained by regulators that may
18 be relevant to this issue.

19 (2) How reductions in the investment income of
20 insurers may be adversely affecting the financial
21 outlook of these companies, thus increasing physi-
22 cian premiums to compensate for any declines.

23 (3) The underwriting history of medical mal-
24 practice insurance to determine whether premiums
25 have historically experienced similar increases and

1 also determine whether current market conditions
2 are in some way unique.

3 (4) The competitiveness of markets, particularly
4 in those areas experiencing the sharpest premium in-
5 creases. For example, has the lack of competition in
6 the medical malpractice insurance market adversely
7 affected physician premiums?

8 (5) How malpractice settlements and judgments
9 compare to premiums earned for medical malpractice
10 lines of insurance. In particular, how incurred but
11 not yet reported holdings have affected the reserve
12 practices of medical malpractice insurers.

13 (6) The effect of current laws (at both the Fed-
14 eral and State levels) on medical malpractice insur-
15 ance rates.

16 (7) The underlying causes of changes in med-
17 ical malpractice insurance premiums.

18 (c) STAFFING; COMPENSATION.—

19 (1) STAFFING.—The Secretary of Health and
20 Human Services shall furnish to the Commission an
21 executive secretary and such secretarial, clerical, and
22 other services as may be necessary to conduct its
23 business, and may call upon other agencies of the
24 Government for statistical data, reports, and other

1 information which will assist the Commission in the
2 performance of its duties.

3 (2) COMPENSATION.—Members of the Commis-
4 sion, while serving on business of the Commission
5 (inclusive of travel time), shall be entitled to receive
6 the daily equivalent of the annual rate of basic max-
7 imum rate of pay payable from time to time under
8 section 5376 of title 5, United States Code, for each
9 day and, while so serving away from their homes or
10 regular places of business, may be allowed travel ex-
11 penses, including per diem in lieu of subsistence, in
12 the same manner as provided in section 5703 of title
13 5, United States Code, for individuals in the Govern-
14 ment employed intermittently.

15 (d) REPORT.—Not later than one year after the date
16 the Commission is appointed, the Commission shall submit
17 to Congress a report that provides specific legislative
18 changes that would address the problems the Commission
19 found, including a proposal for the reduction of medical
20 malpractice insurance rates.

21 (e) RESPONSE TO REPORT.—The appropriate com-
22 mittees of the House of Representatives and the Senate
23 shall hold hearings on the Commission's report and con-
24 sider legislation to address these problems.

1 **SEC. 402. FREEZE IN MEDICAL MALPRACTICE INSURANCE**
2 **RATES.**

3 (a) DECLARATION OF INTERSTATE COMMERCE.—
4 Congress finds that medical malpractice insurance cov-
5 erage affects interstate commerce.

6 (b) FREEZE.—Notwithstanding any other provision
7 of law, effective on the date of the enactment of this Act,
8 the rates charged for medical malpractice insurance cov-
9 erage during the period beginning on the day after the
10 date of the enactment of this Act and ending on the date
11 that is 6 months after the date the Commission files its
12 report under section 401(d) shall not exceed the rates in
13 effect for such coverage as of January 1, 2002 (or, in the
14 case of coverage not offered as of such date, such com-
15 parable rate as is approved by the Secretary of Health
16 and Human Services).

17 (c) EXCEPTION.—Any entity which can demonstrate
18 to the Secretary of Health and Human Services that
19 under the terms of subsection (b) it would be unable to
20 earn a fair rate of return shall be exempt from the freeze
21 in rates under such subsection.

22 **SEC. 403. WITHDRAWAL FROM MEDICAL MALPRACTICE IN-**
23 **SURANCE MARKET.**

24 (a) LIMITATION.—Any entity that discontinues writ-
25 ing medical malpractice insurance coverage in a State

1 shall also discontinue the writing of any other line of in-
2 surance in such State.

3 (b) ORDERLY WITHDRAWAL.—If an entity discon-
4 tinues writing medical malpractice insurance coverage in
5 a State, it shall file with the insurance commissioner of
6 that State a plan of orderly withdrawal, pursuant to which
7 the insurer shall make such arrangements as are nec-
8 essary to ensure that any person insured by the entity
9 shall continue to be insured until the end of the term of
10 the policy held by such person.

11 (c) SUNSET.—Subsections (a) and (b) shall only
12 apply during the 3-year period beginning on the date of
13 the enactment of this Act.

14 **SEC. 404. GUARANTEED RENEWABILITY OF COVERAGE.**

15 (a) IN GENERAL.—Subject to subsection (b), all med-
16 ical malpractice insurance coverage shall be guaranteed re-
17 newable. Rates for such coverage shall increase by no more
18 than the rate of increase in the health care component
19 of the consumer price index for all urban consumers.

20 (b) EXCEPTIONS.—

21 (1) RATE FREEZE.—Subsection (a) shall not af-
22 fect or supersede the application of section 402.

23 (2) LIMITATION.—An entity is not required to
24 renew medical malpractice insurance coverage in the
25 case of fraud, excessive claims on which indemnity

1 has been paid, or nonpayment of premiums by the
2 insured health care provider.

3 **SEC. 405. GUARANTEED COVERAGE FOR CERTAIN HEALTH**
4 **CARE PROVIDERS.**

5 Any entity that is licensed to offer medical mal-
6 practice insurance coverage shall offer medical malpractice
7 insurance coverage to any health care provider that has
8 zero medical malpractice claims (as defined in section
9 301(10)) on which indemnity has been paid during the
10 previous 3 years.

11 **SEC. 406. MEDICAL MALPRACTICE INSURANCE DISCLO-**
12 **SURE.**

13 (a) IN GENERAL.—Annually on or before March 1,
14 every insurer writing medical malpractice insurance cov-
15 erage to a health care provider shall file with the Secretary
16 of Health and Human Services a copy of the Annual
17 Statement it files with the Department of Insurance in
18 the State in which it is domiciled. Every such insurer shall
19 also file the following information with the Secretary:

20 (1) INFORMATION ON CLOSED CLAIMS.—

21 (A) The number of new claims reported
22 during the preceding year, and the total
23 amounts reserved for such claims and for allo-
24 cated loss adjustment expenses in connection
25 with such claims.

1 (B) The number of claims closed during
2 the preceding year, and the amount paid on
3 such claims, broken out as follows:

4 (i) The number of claims closed each
5 year with payment, and the amount paid
6 on such claims and on allocated loss ad-
7 justment expenses in connection with such
8 claims.

9 (ii) The number of claims closed each
10 year without payment, and the amount of
11 allocated loss adjustment expenses in con-
12 nection with such claims.

13 (2) INFORMATION REGARDING VERDICTS, PAY-
14 MENT, AND SEVERITY OF INJURY IN CONNECTION
15 WITH VERDICTS.—For each verdict rendered against
16 the insurer for more than \$100,000, the amount of
17 the verdict, the amount paid to the plaintiff, and the
18 category of injury suffered by the plaintiff, cat-
19 egorized as follows:

20 (A) TEMPORARY INJURY.—

21 (i) Emotional distress.

22 (ii) lacerations, contusions, minor
23 scars, and rash not resulting in permanent
24 scarring or disfigurement.

25 (iii) Non-life-threatening infections.

1 (iv) Falls not resulting in fractures.

2 (v) Medication errors.

3 (B) PERMANENT INJURY.—

4 (i) Major injury, including loss of one
5 or more fingers, organs, limbs, deafness,
6 loss of sight, loss of fertility, permanent
7 scarring or disfigurement, and brain dam-
8 age.

9 (ii) Catastrophic injury requiring life-
10 long care or having a fatal prognosis.

11 (C) DEATH.—Death.

12 (3) INFORMATION ON RATE CHANGES.—Each
13 rate change implemented during the preceding five-
14 year period, by state and by medical specialty.

15 (4) INFORMATION ON PREMIUMS AND LOSSES
16 BY MEDICAL SPECIALTY.—

17 (A) Written premiums and paid losses for
18 the preceding year, and earned premiums and
19 incurred losses for the preceding year, broken
20 out by medical specialty.

21 (B) Number of providers insured in each
22 medical specialty.

23 (5) INFORMATION ON PREMIUMS AND LOSSES
24 BY EXPERIENCE OF THE INSURED.—

1 (A) Written premiums and paid losses for
2 the preceding year, and earned premiums and
3 incurred losses for the preceding year, broken
4 out as follows:

5 (i) All insureds with no incidents
6 within the preceding five-year period.

7 (ii) All insureds with one incident
8 within the preceding five-year period.

9 (iii) All insureds with two incidents
10 within the preceding five-year period.

11 (iv) All insureds with three or more
12 incidents within the preceding five-year pe-
13 riod.

14 (B) Number of providers insured—

15 (i) with no incidents within the pre-
16 ceding five-year period;

17 (ii) with one incident within the pre-
18 ceding five-year period;

19 (iii) with two incidents within the pre-
20 ceding five-year period; or

21 (iv) with three or more incidents with-
22 in the preceding five-year period.

23 (6) INFORMATION ON THE PERFORMANCE OF
24 THE INVESTMENTS OF THE INSURER.—The value of
25 the investments held in the investment portfolio of

1 the insurer as of December 31 of the preceding cal-
2 endar year, and the rate of return earned on such
3 investments, broken down by category of investment,
4 as follows:

5 (A) United States government bonds.

6 (B) Bonds exempt from tax by the United
7 States.

8 (C) Other bonds (unaffiliated).

9 (D) bonds of affiliates.

10 (E) Preferred stocks (unaffiliated),

11 (F) Preferred stocks of affiliates.

12 (G) Common stock (unaffiliated).

13 (H) Common stock of affiliates.

14 (I) Mortgage loans.

15 (J) Real estate.

16 (K) Any additional categories of invest-
17 ments specified by the Secretary.

18 (b) ANNUAL REPORT.—The Secretary shall submit
19 to Congress by July 1 of each year a report on the per-
20 formance of the medical malpractice insurance market
21 during the preceding year. Such report shall be based on
22 the information submitted pursuant to this section.

23 (c) RULES.—The Secretary shall promulgate rules to
24 carry out the purposes of this section.

1 (d) INSURER DEFINED.—For purposes of this sec-
2 tion, the term “insurer” includes every insurance company
3 authorized to transact insurance business in any State,
4 every risk retention group, every insurance company
5 issuing insurance to or through a purchasing group, and
6 any other person providing insurance coverage.

7 **SEC. 407. MEDICAL MALPRACTICE INSURANCE PRICE COM-**
8 **PARISON.**

9 (a) INTERNET SITE.—Not later than July 1, 2003,
10 and after consultation with the medical malpractice insur-
11 ance industry, the Secretary of Health and Human Serv-
12 ices shall establish an interactive, secure internet site (in
13 this section referred to as the “internet site”) which shall
14 enable any health care provider licensed in the United
15 States to obtain a quote from each medical malpractice
16 insurer licensed to write the type of coverage sought by
17 the provider.

18 (b) ONLINE FORMS.—

19 (1) IN GENERAL.—The internet site shall en-
20 able health care providers to complete an online
21 form that shall capture a comprehensive set of infor-
22 mation sufficient to generate a quote for each in-
23 surer. The Secretary shall develop transmission soft-
24 ware components which allow such information to be
25 formatted for delivery to each medical malpractice

1 insurer based on the requirements of the computer
2 system of the insurer.

3 (2) PROTECTION OF CONFIDENTIALITY OF IN-
4 FORMATION DISCLOSED.—All information provided
5 by a health care provider for purposes of generating
6 a quote through the internet site shall be used only
7 for that purpose and shall not be used in connection
8 with the National Physician’s Data Bank or for any
9 other purposes, including in connection with any
10 legal action.

11 (c) INTEGRATION OF RATING CRITERIA.—The Sec-
12 retary shall integrate the rating criteria of each insurer
13 into its online form after consultation with each insurer.
14 The Secretary shall integrate such criteria using one of
15 the following methods:

16 (1) Developing a customized interface with the
17 insurer’s own rating engine.

18 (2) Accessing a third-party rating engine of the
19 insurer’s choice.

20 (3) Loading the carrier’s rating information
21 into a rating engine operated by the Secretary.

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

24 (d) PRESENTATION OF QUOTES.—After a health care
25 provider has answered all the questions appearing on the

1 online form, such provider will be presented with quotes
2 from each medical malpractice insurer licensed to write
3 the coverage requested by the provider.

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

14 (f) USER-FRIENDLY FEATURES.—The Secretary
15 shall design the internet site to incorporate user-friendly
16 formats and self-help guidance materials, and shall de-
17 velop a user-friendly internet user-interface.

18 (g) CONTACT INFORMATION.—The internet site shall
19 also provide contact information, including address and
20 telephone number, for each medical malpractice insurer
21 for which a provider obtains a quote at the site.

22 (h) REPORT.—Not later than December 31, 2004,
23 the Secretary shall submit a report to the Congress on
24 the development, implementation and effects of the inter-
25 net site. Such report shall be based on—

1 (1) the Secretary’s consultation with health
2 care providers, medical malpractice insurers, State
3 insurance commissioners, and other interested par-
4 ties; and

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

7 The report shall describe the Secretary’s views concerning
8 the extent to which this section has contributed to increas-
9 ing the availability of medical malpractice insurance cov-
10 erage, and the effect this section has had on the cost of
11 medical malpractice insurance coverage.

12 **TITLE V—ADDITIONAL** 13 **PROVISIONS**

14 **SEC. 501. STATE CONSIDERATION OF ADDITIONAL AND AL-** 15 **TERNATIVE METHODS.**

16 It is the sense of Congress that the States, as primary
17 regulators of the insurance industry, should consider the
18 following additional and alternative methods for dealing
19 with the rates and availability of medical malpractice in-
20 surance:

21 (1) Using claims history as a rating factor in
22 establishing premiums and requiring each medical
23 malpractice insurer to offer its lowest rate to all doc-
24 tors in a State meeting its eligibility criteria for such
25 rate.

1 (2) Limiting the percentage of an insurer’s as-
2 sets that can be invested in stocks or other high-risk
3 investments and preventing insurers from seeking to
4 recoup losses on their investments by raising rates.

5 (3) Requiring prior approval by the state insur-
6 ance regulators of any medical malpractice insurance
7 rates and allowing health care providers to intervene
8 in proceedings regarding rate changes.

9 (4) Establishing new medical malpractice insur-
10 ance entities, using loans authorized by States, simi-
11 lar to the model (enacted in Missouri) that estab-
12 lished a new workers compensation insurer.

13 (5) Setting up a fund to address birth-related
14 neurological injury compensation.

15 **SEC. 502. MANDATING EQUAL TREATMENT BETWEEN TRA-**
16 **DITIONAL INSURERS AND RISK RETENTION**
17 **GROUPS, INCLUDING MEDICAL MAL-**
18 **PRACTICE RISK RETENTION GROUPS.**

19 (a) RISK RETENTION GROUPS.—Section 3 of the Li-
20 ability Risk Retention Act of 1986 (15 U.S.C. 3902) is
21 amended—

22 (1) in subsection (a)(1), in the matter before
23 subparagraph (A), by inserting “or have a disparate
24 impact on,” after “directly or indirectly”; and

1 (2) in subsection (c), by inserting “or has a dis-
2 parate impact on” after “which discriminates
3 against”.

4 (b) PURCHASING GROUPS.—Section 4 of such Act
5 (15 U.S.C. 3903) is amended—

6 (1) in subsection (a)—

7 (A) by striking “or” at the end of para-
8 graph (7);

9 (B) by redesignating paragraph (8) as
10 paragraph (9); and

11 (C) by inserting after paragraph (7) the
12 following new paragraph:

13 “(8) have a disparate impact on a purchasing
14 group; or”; and

15 (2) in subsection (c), by inserting “or has a dis-
16 parate impact on” after “which discriminates
17 against”.

○