

108TH CONGRESS  
1ST SESSION

# H. R. 1116

To reform the medical malpractice insurance business, to provide for Federal alternative medical malpractice insurance, and to limit frivolous lawsuits.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2003

Mr. CONYERS (for himself, Ms. BERKLEY, Mr. BAIRD, Mr. BERMAN, Mr. WEXLER, Mr. DELAHUNT, Mr. NADLER, Ms. NORTON, and Mr. PASCRELL) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To reform the medical malpractice insurance business, to provide for Federal alternative medical malpractice insurance, and to limit frivolous lawsuits.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Medical Malpractice  
5 Insurance and Litigation Reform Act”.

6       **SEC. 2. TABLE OF CONTENTS.**

7       The table of contents for this Act is as follows:

- Sec. 1. Short title.  
 Sec. 2. Table of contents.

#### TITLE I—MEDICAL MALPRACTICE INSURANCE REFORM

- Sec. 101. Prohibition on anticompetitive activities by medical malpractice insurers.  
 Sec. 102. Medical malpractice insurance price comparison.  
 Sec. 103. Procedural requirements for medical malpractice insurers' proposed rate increases.

#### TITLE II—FEDERAL MEDICAL MALPRACTICE INSURANCE ASSOCIATION

- Sec. 201. Establishment; purpose.  
 Sec. 202. Board of directors.  
 Sec. 203. Administration.  
 Sec. 204. Rates.  
 Sec. 205. Investment policy.  
 Sec. 206. Medical malpractice risk management program.  
 Sec. 207. Seed money to be funded by Treasury Department loan.  
 Sec. 208. Disclosure of data by medical malpractice insurers.  
 Sec. 209. Annual report by Chairperson.  
 Sec. 210. Financial matters.  
 Sec. 211. Definitions.

#### TITLE III—LIMITING FRIVOLOUS MEDICAL MALPRACTICE SUITS

- Sec. 301. Health care specialist affidavit.  
 Sec. 302. Sanctions for frivolous actions and pleadings.  
 Sec. 303. Mandatory mediation.  
 Sec. 304. Applicability.  
 Sec. 305. Definitions.

# **1 TITLE I—MEDICAL MAL-** **2 PRACTICE INSURANCE RE-** **3 FORM**

## **4 SEC. 101. PROHIBITION ON ANTICOMPETITIVE ACTIVITIES** **5 BY MEDICAL MALPRACTICE INSURERS.**

6 Notwithstanding any other provision of law, nothing  
 7 in the Act of March 9, 1945 (15 U.S.C. 1011 et seq., com-  
 8 monly known as the “McCarran-Ferguson Act”) shall be  
 9 construed to permit commercial insurers to engage in any  
 10 form of price fixing, bid rigging, or market allocations in  
 11 connection with the conduct of the business of providing

1 medical malpractice insurance. This section does not apply  
2 to the information-gathering and rate-setting activities of  
3 any State commissions of insurance, or any other State  
4 regulatory body with authority to set insurance rates.

5 **SEC. 102. MEDICAL MALPRACTICE INSURANCE PRICE COM-**  
6 **PARISON.**

7 (a) INTERNET SITE.—Not later than 90 days after  
8 the date of the enactment of this Act, and after consulta-  
9 tion with the medical malpractice insurance industry, the  
10 Secretary of Health and Human Services shall establish  
11 an interactive internet site which shall enable any health  
12 care provider licensed in the United States to obtain a  
13 quote from each medical malpractice insurer licensed to  
14 write the type of coverage sought by the provider.

15 (b) ONLINE FORMS.—

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

1           (2) PROTECTION OF CONFIDENTIALITY OF IN-  
2           FORMATION DISCLOSED.—All information provided  
3           by a health care provider for purposes of generating  
4           a quote through the internet site shall be used only  
5           for that purpose.

6           (c) INTEGRATION OF RATING CRITERIA.—The Sec-  
7           retary shall integrate the rating criteria of each insurer  
8           into its online form after consultation with each insurer.  
9           The Secretary shall integrate such criteria using one of  
10          the following methods:

11           (1) Developing a customized interface with the  
12           insurer's own rating engine.

13           (2) Accessing a third-party rating engine of the  
14           insurer's choice.

15           (3) Loading the carrier's rating information  
16           into a rating engine operated by the Secretary.

17           (4) Any other method agreed on between the  
18           Secretary and the insurer.

19           (d) PRESENTATION OF QUOTES.—After a health care  
20           provider has answered all the questions appearing on the  
21           online form, such provider will be presented with quotes  
22           from each medical malpractice insurer licensed to write  
23           the coverage requested by the provider.

24           (e) ACCURACY OF QUOTES.—Quotes provided at the  
25           internet site shall at all times be accurate. Whenever any

1 insurer changes its rates, such rate changes shall be imple-  
2 mented at the internet site by the Secretary, in consulta-  
3 tion with the insurer, as soon as practicable, but in no  
4 event later than 10 days after such changes take effect.  
5 During any period during which an insurer has changed  
6 its rates but the Secretary has not yet implemented such  
7 changed rates on the internet site, quotes for that insurer  
8 shall not be obtainable at the internet site.

9 (f) USER-FRIENDLY FEATURES.—The Secretary  
10 shall design the internet site to incorporate user-friendly  
11 formats and self-help guidance materials, and shall de-  
12 velop a user-friendly internet user-interface.

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

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

21 (1) the Secretary's consultation with health  
22 care providers, medical malpractice insurers, State  
23 insurance commissioners, and other interested par-  
24 ties; and

1           (2) the Secretary's analysis of other informa-  
2           tion available to the Secretary.

3   The report shall describe the Secretary's views concerning  
4   the extent to which this section has contributed to increas-  
5   ing the availability of medical malpractice insurance, and  
6   the effect this section has had on the cost of medical mal-  
7   practice insurance.

8   **SEC. 103. PROCEDURAL REQUIREMENTS FOR MEDICAL**  
9                   **MALPRACTICE INSURERS' PROPOSED RATE**  
10                  **INCREASES.**

11       (a) IN GENERAL.—Each State shall have in effect a  
12   policy under which—

13           (1) any health care professional (as defined in  
14       title III of this Act) licensed by the State has stand-  
15       ing in any State administrative proceeding to chal-  
16       lenge a proposed rate increase in medical mal-  
17       practice insurance; and

18           (2) a provider of medical malpractice insurance  
19       in the State may not implement a rate increase in  
20       such insurance unless the provider, at minimum,  
21       first submits to the appropriate State agency a de-  
22       scription of the rate increase and a substantial jus-  
23       tification for the rate increase.

24       (b) RULEMAKING.—The Attorney General shall pro-  
25   mulgate rules to carry out this section.

1 (c) EFFECTIVE DATE.—The requirements of this sec-  
2 tion shall take effect 1 year after the date of the enact-  
3 ment of this Act.

4 **TITLE II—FEDERAL MEDICAL**  
5 **MALPRACTICE INSURANCE**  
6 **ASSOCIATION**

7 **SEC. 201. ESTABLISHMENT; PURPOSE.**

8 (a) ESTABLISHMENT.—There is established a body  
9 corporate to be known as the Federal Medical Malpractice  
10 Insurance Association, which shall be in the Department  
11 of Health and Human Services.

12 (b) OFFICES.—The Association shall maintain its  
13 principal office in the District of Columbia and shall be  
14 deemed, for purposes of venue in civil actions, to be a resi-  
15 dent thereof. Agencies or offices may be established by the  
16 Association in such other place or places as it may deem  
17 necessary or appropriate in the conduct of its operations.

18 (c) PURPOSE.—The purpose of the Association shall  
19 be to provide medical malpractice insurance based on cus-  
20 tomary coverage terms and liability amounts in states  
21 where such insurance is unavailable or is unavailable at  
22 reasonable and customary terms, as determined by the As-  
23 sociation.

24 **SEC. 202. BOARD OF DIRECTORS.**

25 (a) APPOINTMENT OF BOARD.—

1           (1) IN GENERAL.—There is hereby established  
2           a board of directors for the Association, consisting  
3           of 5 members appointed by the President, with the  
4           advice and consent of the Senate.

5           (2) INITIAL APPOINTMENTS.—The first 5 mem-  
6           bers shall be appointed not later than 90 days after  
7           the date of the enactment of this Act. Of the first  
8           5 members appointed, each shall serve a term end-  
9           ing on July 1 of one of the following years: 2004,  
10          2005, 2006, 2007, and 2008, as determined by lot  
11          amongst themselves.

12          (3) SUBSEQUENT MEMBERS; VACANCIES.—Each  
13          member appointed after the first 5 members shall be  
14          appointed to a term of 5 years. In the case of a va-  
15          cancy, the member appointed to fill the vacancy shall  
16          serve the remainder of the uncompleted term to  
17          which the vacancy relates.

18          (b) ELIGIBILITY.—Any person may be a director  
19          who—

20                (1) does not have any interest as a stockholder,  
21                employee, attorney, agent, broker, or contractor of  
22                an insurance entity who writes medical malpractice  
23                insurance or whose affiliates write medical mal-  
24                practice insurance; and



1           (2) is of good moral character and who has  
2       never pleaded guilty to, or been found guilty of, a  
3       felony.

4       (c) CHAIRPERSON.—The board shall annually elect a  
5       chairperson and any other officers it deems necessary for  
6       the performance of its duties. Board committees and sub-  
7       committees may also be formed.

8       (d) AUTHORITY.—The board is vested with full  
9       power, authority, and jurisdiction over the Association.  
10      The board may perform all acts necessary or convenient  
11      in the administration of the Association or in connection  
12      with the insurance business to be carried on by the Asso-  
13      ciation. In this regard, the board is empowered to function  
14      in all aspects as a governing body of a private insurance  
15      carrier.

16   **SEC. 203. ADMINISTRATION.**

17      (a) ADMINISTRATOR.—The board shall appoint, and  
18      fix the pay of, an administrator, who shall serve at the  
19      pleasure of the board. The administrator shall be ap-  
20      pointed from among individuals with proven successful ex-  
21      perience as an executive at the general management level  
22      in the insurance industry. The administrator shall act as  
23      the Association's chief executive officer, in charge of the  
24      day-to-day operations and management of the Association.

1 The first administrator shall be appointed not later than  
2 90 days after the date of the enactment of this Act.

3 (b) COMMENCEMENT OF OPERATIONS.—The board  
4 shall ensure that the Association is fully operational not  
5 later than 180 days after the date of the enactment of  
6 this Act.

7 **SEC. 204. RATES.**

8 The board shall have full power and authority to es-  
9 tablish rates to be charged by the Association for insur-  
10 ance. The board shall contract for the services of or hire  
11 an independent actuary, a member in good standing with  
12 the American Academy of Actuaries, to develop and rec-  
13 ommend actuarially sound rates. Rates shall be set at  
14 amounts sufficient, when invested, to carry all claims to  
15 maturity, meet the reasonable expenses of conducting the  
16 business of the Association and maintain a reasonable sur-  
17 plus. The Association shall conduct a medical malpractice  
18 insurance program that shall be neither more nor less than  
19 self-supporting. The Association is authorized to purchase  
20 reinsurance related to its underlying insurance obligations.

21 **SEC. 205. INVESTMENT POLICY.**

22 The board shall formulate and adopt an investment  
23 policy and supervise the investment activities of the Asso-  
24 ciation. The administrator may invest and reinvest the  
25 surplus or reserves of the Association subject to any limi-

1 tations imposed on domestic insurance companies by ap-  
 2 plicable laws. The Association may retain an independent  
 3 investment counsel. The board shall periodically review  
 4 and appraise the investment strategy being followed and  
 5 the effectiveness of such services. Any investment counsel  
 6 retained or hired shall periodically report to the board on  
 7 investment results and related matters.

8 **SEC. 206. MEDICAL MALPRACTICE RISK MANAGEMENT**  
 9 **PROGRAM.**

10 The administrator shall formulate, implement, and  
 11 monitor a medical malpractice risk management program  
 12 for all policyholders. To the extent practicable, the admin-  
 13 istrator shall obtain input from the National Association  
 14 of Insurance Commissioners in developing such program.  
 15 The administrator or board may refuse to insure, or may  
 16 terminate the insurance of, any insured who disregards  
 17 the medical malpractice risk management plan. In deter-  
 18 mining the premium payable by an insured, the Associa-  
 19 tion shall consider the compliance of the insured with the  
 20 Association's medical malpractice risk management.

21 **SEC. 207. SEED MONEY TO BE FUNDED BY TREASURY DE-**  
 22 **PARTMENT LOAN.**

23 (a) NO APPROPRIATION.—The Association shall not  
 24 receive any appropriation, directly or indirectly, except as  
 25 provided in subsection (b).

1 (b) INITIAL LOANS.—During the first year of the As-  
2 sociation’s operations, the Secretary of the Treasury shall  
3 make 1 or more loans to the Association in such amounts  
4 as may be necessary for start-up funding and initial cap-  
5 italization of the Association. The board of the Association  
6 shall make application to the Department of the Treasury  
7 for the loans, stating the amount to be loaned to the Asso-  
8 ciation. The loans shall be for a term of 5 years and, at  
9 the time the application for such loans is approved, shall  
10 bear interest at an annual rate determined by the Sec-  
11 retary of the Treasury. Thereafter, the Association may  
12 seek such additional loans or funding as may be author-  
13 ized by law.

14 **SEC. 208. DISCLOSURE OF DATA BY MEDICAL MAL-**  
15 **PRACTICE INSURERS.**

16 Not later than March 1 of each year, each insurer  
17 writing medical malpractice insurance coverage to a health  
18 care provider shall file with the Chairperson a copy of the  
19 annual statement it files with the department of insurance  
20 in the State in which it is domiciled. Each such insurer  
21 shall also file the following information with the Chair-  
22 person, to the extent it is not disclosed on the insurer’s  
23 annual statement:

24 (1) Information on closed claims.

1           (2) Information regarding verdicts, payment,  
2           and severity of injury in connection with verdicts.

3           (3) Information on rate changes.

4           (4) Information on premiums and losses by  
5           medical specialty.

6           (5) Information on premiums and losses by ex-  
7           perience of the insured.

8           (6) Information on the performance of the in-  
9           vestments of the insurer.

10 **SECTION 209. ANNUAL REPORT BY CHAIRPERSON.**

11           (a) IN GENERAL.—The Chairperson shall file an an-  
12 nual report with the President and the Congress, which  
13 shall include—

14           (1) a statement of the Association’s accounts,  
15           funds, and securities;

16           (2) copies of any other reports required to be  
17           filed by applicable law and by the National Associa-  
18           tion of Insurance Commissioners;

19           (3) any appropriate request for additional  
20           loans;

21           (4) an assessment of the medical malpractice  
22           insurance marketplace; and

23           (5) to the extent practicable, an assessment as  
24           to why health care providers are unable to obtain  
25           malpractice insurance in certain markets, or are un-

1       able to obtain malpractice insurance at reasonable  
2       and customary terms.

3       (b) OBLIGATIONS OF CHAIRPERSON.—The Chair-  
4       person shall determine what data shall be included under  
5       section 208 by insurers writing medical malpractice insur-  
6       ance coverage to a health care provider.

7       **SEC. 210. FINANCIAL MATTERS.**

8       (a) BUDGET.—The administrator shall annually sub-  
9       mit to the board for its approval an estimated budget of  
10      the entire expense of administering the Association for the  
11      succeeding calendar year having due regard to the busi-  
12      ness interests and contract obligations of the Association.

13      (b) DETERMINATION OF CASH DIVIDEND.—The in-  
14      curred loss experience and expense of the Association shall  
15      be ascertained each year to include but not be limited to  
16      estimates of outstanding liabilities for claims reported to  
17      the Association but not yet paid and liabilities for claims  
18      arising from injuries which have occurred but have not  
19      yet been reported to the Association. If there is an excess  
20      of assets over liabilities, necessary reserves and a reason-  
21      able surplus, then a cash dividend shall be declared or a  
22      credit allowed to any health care provider who has com-  
23      plied with the Association's medical malpractice risk man-  
24      agement program.

1 **SEC. 211. DEFINITIONS.**

2 In this title, the following definitions apply:

3 (1) ASSOCIATION.—The term “Association”  
4 means the Federal Medical Malpractice Insurance  
5 Association established under section 201.

6 (2) MEDICAL MALPRACTICE INSURANCE.—The  
7 term “medical malpractice insurance” means insur-  
8 ance against legal liability of the insured, and  
9 against loss, damage, or expense incident to a claim  
10 of such liability arising out of the death or injury of  
11 any person due to medical, dental, podiatric, cer-  
12 tified nurse-midwifery, or hospital malpractice by  
13 any licensed physician, dentist, podiatrist, certified  
14 nurse-midwife, certified registered nurse anesthetist,  
15 hospital, or clinical psychologist.

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

18 (A) Any facility defined as a hospital  
19 under State law and issued an operating certifi-  
20 cate as a hospital or nursing home, and those  
21 distinct parts of a facility that are subject to  
22 the powers of visitation, examination, inspec-  
23 tion, and investigation of the State mental hy-  
24 giene agency which provide hospital or nursing  
25 home service.

(B) Any ambulance service which is registered or certified under State law and which is designed and equipped to provide definitive acute medical care pursuant to rules and regulations of the State health agency, which must include, but not be limited to, the provision of advanced life support services.

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

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

## **TITLE III—LIMITING FRIVOLOUS MEDICAL MALPRACTICE SUITS**

### **SEC. 301. HEALTH CARE SPECIALIST AFFIDAVIT.**

(a) REQUIRING SUBMISSION WITH COMPLAINT.—No medical malpractice liability action may be brought by any individual unless, at the time the individual brings the action (except as provided in subsection (b)(1)), it is accompanied by the affidavit of a qualified specialist that includes the specialist's statement of belief that, based on a review of the available medical record and other relevant



1 material, there is a reasonable and meritorious cause for  
2 the filing of the action against the defendant.

3 (b) EXTENSION IN CERTAIN INSTANCES.—

4 (1) IN GENERAL.—Subject to paragraph (2),  
5 subsection (a) shall not apply with respect to an in-  
6 dividual who brings a medical malpractice liability  
7 action without submitting an affidavit described in  
8 such subsection if, as of the time the individual  
9 brings the action, the individual has been unable to  
10 obtain adequate medical records or other informa-  
11 tion necessary to prepare the affidavit.

12 (2) DEADLINE FOR SUBMISSION WHERE EX-  
13 TENSION APPLIES.—In the case of an individual who  
14 brings an action for which paragraph (1) applies,  
15 the action shall be dismissed unless the individual  
16 (or the individual’s attorney) submits the affidavit  
17 described in subsection (a) not later than 90 days  
18 after obtaining the information described in such  
19 subparagraph.

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) CONFIDENTIALITY OF SPECIALIST.—Upon a  
10 showing of good cause by a defendant, the court may as-  
11 certain the identity of a specialist referred to in subsection  
12 (a) while preserving confidentiality.

13 **SEC. 302. SANCTIONS FOR FRIVOLOUS ACTIONS AND**  
14 **PLEADINGS.**

15 (a) SIGNATURE REQUIRED.—Every pleading, written  
16 motion, and other paper in any medical malpractice liabil-  
17 ity action shall be signed by at least 1 attorney of record  
18 in the attorney's individual name, or, if the party is not  
19 represented by an attorney, shall be signed by the party.  
20 Each paper shall state the signer's address and telephone  
21 number, if any. An unsigned paper shall be stricken unless  
22 omission of the signature is corrected promptly after being  
23 called to the attention of the attorney or party.

24 (b) CERTIFICATE OF MERIT.—By presenting to the  
25 court (whether by signing, filing, submitting, or later ad-

1 vocating) a pleading, written motion, or other paper, an  
 2 attorney or unrepresented party is certifying that to the  
 3 best of the person's knowledge, information and belief,  
 4 formed after an inquiry reasonable under the cir-  
 5 cumstances—

6 (1) it is not being presented for any improper  
 7 purpose, such as to harass or to cause unnecessary  
 8 delay or needless increase in the cost of litigation;

9 (2) the claims, defenses, and other legal conten-  
 10 tions therein are warranted by existing law or by a  
 11 nonfrivolous argument for the extension, modifica-  
 12 tion, or reversal of existing law or the establishment  
 13 of new law; and

14 (3) the allegations and other factual contentions  
 15 have evidentiary support or, if specifically so identi-  
 16 fied, are reasonable based on a lack of information  
 17 or belief.

18 (c) MANDATORY SANCTIONS.—

19 (1) FIRST VIOLATION.—If, after notice and a  
 20 reasonable opportunity to respond, a court, upon  
 21 motion or upon its own initiative, determines that  
 22 subsection (b) has been violated, the court shall find  
 23 each attorney or party in violation in contempt of  
 24 court and shall require the payment of costs and at-  
 25 torneys fees. The court may also impose additional

1 appropriate sanctions, such as striking the plead-  
2 ings, dismissing the suit, and sanctions plus interest,  
3 upon the person in violation, or upon both such per-  
4 son and such person's attorney or client (as the case  
5 may be).

6 (2) SECOND VIOLATION.—If, after notice and a  
7 reasonable opportunity to respond, a court, upon  
8 motion or upon its own initiative, determines that  
9 subsection (b) has been violated and that the attor-  
10 ney or party with respect to which the determination  
11 was made has committed one previous violation of  
12 subsection (b) before this or any other court, the  
13 court shall find each such attorney or party in con-  
14 tempt of court and shall require the payment of  
15 costs and attorneys fees, and require such person in  
16 violation (or both such person and such person's at-  
17 torney or client (as the case may be)) to pay a mon-  
18 etary fine. The court may also impose additional ap-  
19 propriate sanctions, such as striking the pleadings,  
20 dismissing the suit and sanctions plus interest, upon  
21 such person in violation, or upon both such person  
22 and such person's attorney or client (as the case  
23 may be).

24 (3) THIRD VIOLATION.—If, after notice and a  
25 reasonable opportunity to respond, a court, upon

1 motion or upon its own initiative, determines that  
2 subsection (b) has been violated and that the attor-  
3 ney or party with respect to which the determination  
4 was made has committed more than one previous  
5 violation of subsection (b) before this or any other  
6 court, the court shall find each such attorney or  
7 party in contempt of court, refer each such attorney  
8 to one or more appropriate State bar associations  
9 for disciplinary proceedings, require the payment of  
10 costs and attorneys fees, and require such person in  
11 violation (or both such person and such person's at-  
12 torney or client (as the case may be)) to pay a mon-  
13 etary fine. The court may also impose additional ap-  
14 propriate sanctions, such as striking the pleadings,  
15 dismissing the suit, and sanctions plus interest,  
16 upon such person in violation, or upon both such  
17 person and such person's attorney or client (as the  
18 case may be).

19 **SEC. 303. MANDATORY MEDIATION.**

20 (a) IN GENERAL.—In any medical malpractice liabil-  
21 ity action, before such action comes to trial, mediation  
22 shall be required. Such mediation shall be conducted by  
23 one or more mediators who are selected by agreement of  
24 the parties or, if the parties do not agree, who are quali-  
25 fied under applicable State law and selected by the court.

1 (b) REQUIREMENTS.—Mediation under subsection  
2 (a) shall be made available by a State subject to the fol-  
3 lowing requirements:

4 (1) Participation in such mediation shall be in  
5 lieu of any alternative dispute resolution method re-  
6 quired by any other law or by any contractual ar-  
7 rangement made by or on behalf of the parties be-  
8 fore the commencement of the action.

9 (2) Each State shall disclose to residents of the  
10 State the availability and procedures for resolution  
11 of consumer grievances regarding the provision of  
12 (or failure to provide) health care services, including  
13 such mediation.

14 (3) Each State shall provide that such medi-  
15 ation may begin before or after, at the option of the  
16 claimant, the commencement of a medical mal-  
17 practice liability action.

18 (4) The Attorney General, in consultation with  
19 the Secretary of Health and Human Services, shall,  
20 by regulation, develop requirements with respect to  
21 such mediation to ensure that it is carried out in a  
22 manner that—

23 (A) is affordable for the parties involved;

24 (B) encourages timely resolution of claims;

1 (C) encourages the consistent and fair res-  
2 olution of claims; and

3 (D) provides for reasonably convenient ac-  
4 cess to dispute resolution.

5 (c) FURTHER REDRESS AND ADMISSIBILITY.—Any  
6 party dissatisfied with a determination reached with re-  
7 spect to a medical malpractice claim as a result of an al-  
8 ternative dispute resolution method applied under this sec-  
9 tion shall not be bound by such determination. The results  
10 of any alternative dispute resolution method applied under  
11 this section, and all statements, offers, and communica-  
12 tions made during the application of such method, shall  
13 be inadmissible for purposes of adjudicating the claim.

14 **SEC. 304. APPLICABILITY.**

15 (a) IN GENERAL.—Except as provided in section 303,  
16 this title shall apply with respect to any medical mal-  
17 practice liability action brought on or after the date of  
18 the enactment of this Act in any State or Federal court,  
19 except that this title shall not apply to a claim or action  
20 for damages arising from a vaccine-related injury or death  
21 to the extent that title XXI of the Public Health Service  
22 Act applies to the claim or action.

23 (b) PREEMPTION.—The provisions of this title shall  
24 preempt any State law to the extent such law relates to

1 a type of tort reform included under this title and is incon-  
2 sistent with such provisions.

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

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

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

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

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

16 (5) affect the right of any court to transfer  
17 venue or to apply the law of a foreign nation or to  
18 dismiss a claim of a foreign nation or of a citizen  
19 of a foreign nation on the ground of inconvenient  
20 forum.

21 (d) FEDERAL COURT JURISDICTION NOT ESTAB-  
22 LISHED ON FEDERAL QUESTION GROUNDS.—Nothing in  
23 this title shall be construed to establish any jurisdiction  
24 in the district courts of the United States over medical



1 malpractice liability actions on the basis of section 1331  
2 or 1337 of title 28, United States Code.

3 **SEC. 305. DEFINITIONS.**

4 In this title, the following definitions apply:

5 (1) **ALTERNATIVE DISPUTE RESOLUTION METH-**  
6 **OD.**—The term “alternative dispute resolution meth-

7 od” means a method that provides for the resolution  
8 of medical malpractice claims in a manner other  
9 than through medical malpractice liability actions.

10 (2) **CLAIMANT.**—The term “claimant” means  
11 any person who alleges a medical malpractice claim,  
12 and any person on whose behalf such a claim is al-

13 leged, including the decedent in the case of an action  
14 brought through or on behalf of an estate.

15 (3) **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 the laws or regulations of the State to  
19 be licensed or certified by the State to provide such  
20 services in the State.

21 (4) **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 the  
25 laws or regulations of the State to be licensed or cer-

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

3           (5) 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 a medical  
6       malpractice claim.

7           (6) MANDATORY.—The term “mandatory”  
8       means required to be used by the parties to attempt  
9       to resolve a medical malpractice claim notwith-  
10      standing any other provision of an agreement, State  
11      law, or Federal law.

12          (7) MEDIATION.—The term “mediation” means  
13      a settlement process coordinated by a neutral third  
14      party and without the ultimate rendering of a formal  
15      opinion as to factual or legal findings.

16          (8) MEDICAL MALPRACTICE CLAIM.—The term  
17      “medical malpractice claim” means a claim against  
18      a health care provider, a health care professional, or  
19      a blood or tissue bank licensed or registered by the  
20      Food and Drug Administration in which a claimant  
21      alleges that injury was caused by the provision of (or  
22      the failure to provide) health care services, except  
23      that such term does not include—

24            (A) any claim based on an allegation of an  
25            intentional tort; or

1 (B) any claim based on an allegation that  
2 a product is defective or unreasonably dan-  
3 gerous.

4 (9) MEDICAL MALPRACTICE LIABILITY AC-  
5 TION.—The term “medical malpractice liability ac-  
6 tion” means a civil action brought in a State or Fed-  
7 eral court against a health care provider, a health  
8 care professional, or a blood or tissue bank licensed  
9 or registered by the Food and Drug Administration  
10 in which the plaintiff alleges a medical malpractice  
11 claim.

12 (10) STATE.—The term “State” includes the  
13 District of Columbia and any commonwealth, terri-  
14 tory, or possession of the United States.

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