

108TH CONGRESS  
1ST SESSION

# H. R. 1219

To limit frivolous medical malpractice lawsuits, to reform the medical malpractice insurance business in order to reduce the cost of medical malpractice insurance, to enhance patient access to medical care, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2003

Mr. CONYERS (for himself and Mr. DINGELL) 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 limit frivolous medical malpractice lawsuits, to reform the medical malpractice insurance business in order to reduce the cost of medical malpractice insurance, to enhance patient access to medical care, 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 Malpractice and Insurance Reform Act of  
6 2003”.

1           (b) TABLE OF CONTENTS.—The table of contents for  
2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—LIMITING FRIVOLOUS MEDICAL MALPRACTICE  
LAWSUITS

Sec. 101. Statute of limitations.

Sec. 102. Health care specialist affidavit.

Sec. 103. Sanctions for frivolous actions and pleadings.

Sec. 104. Mandatory mediation.

Sec. 105. Limitation on punitive damages.

Sec. 106. Reduction in premiums paid by physicians for medical malpractice in-  
surance coverage.

Sec. 107. Definitions.

Sec. 108. Applicability.

TITLE II—MEDICAL MALPRACTICE INSURANCE REFORM

Sec. 201. Prohibition on anticompetitive activities by medical malpractice insur-  
ers.

Sec. 202. Medical malpractice insurance price comparison.

TITLE III—ENHANCING PATIENT ACCESS TO CARE THROUGH  
DIRECT ASSISTANCE

Sec. 301. Grants and contracts regarding health provider shortages.

Sec. 302. Health professional assignments to trauma centers through national  
health service corps.

TITLE IV—INDEPENDENT ADVISORY COMMISSION ON MEDICAL  
MALPRACTICE INSURANCE

Sec. 401. Establishment.

Sec. 402. Duties.

Sec. 403. Report.

Sec. 404. Membership.

Sec. 405. Director and staff; experts and consultants.

Sec. 406. Powers.

Sec. 407. Authorization of appropriations.

1 **TITLE I—LIMITING FRIVOLOUS**  
2 **MEDICAL MALPRACTICE LAW-**  
3 **SUITS**

4 **SEC. 101. STATUTE OF LIMITATIONS.**

5 (a) IN GENERAL.—A medical malpractice action shall  
6 be barred unless the complaint is filed within 3 years after  
7 the right of action accrues.

8 (b) ACCRUAL.—A right of action referred to in sub-  
9 section (a) accrues upon the last to occur of the following  
10 dates:

11 (1) The date of the injury.

12 (2) The date on which the claimant discovers,  
13 or through the use of reasonable diligence should  
14 have discovered, the injury.

15 (3) The date on which the claimant becomes 18  
16 years of age.

17 (c) APPLICABILITY.—This section shall apply to any  
18 injury occurring after the date of the enactment of this  
19 Act.

20 **SEC. 102. HEALTH CARE SPECIALIST AFFIDAVIT.**

21 (a) REQUIRING SUBMISSION WITH COMPLAINT.—No  
22 medical malpractice action may be brought by any indi-  
23 vidual unless, at the time the individual brings the action  
24 (except as provided in subsection (b)(1)), it is accom-  
25 panied by the affidavit of a qualified specialist that in-

1 cludes the specialist’s statement of belief that, based on  
2 a review of the available medical record and other relevant  
3 material, there is a reasonable and meritorious cause for  
4 the filing of the action against the defendant.

5 (b) EXTENSION IN CERTAIN INSTANCES.—

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

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

22 (c) QUALIFIED SPECIALIST DEFINED.—In sub-  
23 section (a), a “qualified specialist” means, with respect  
24 to a medical malpractice action, a health care professional

1 who is reasonably believed by the individual bringing the  
2 action (or the individual's attorney)—

3 (1) to be knowledgeable in the relevant issues  
4 involved in the action;

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

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

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

15 **SEC. 103. SANCTIONS FOR FRIVOLOUS ACTIONS AND**  
16 **PLEADINGS.**

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

1 (b) CERTIFICATE OF MERIT.—(1) A medical mal-  
2 practice action shall be dismissed unless the attorney or  
3 unrepresented party presenting the complaint certifies  
4 that, to the best of the person’s knowledge, information,  
5 and belief, formed after an inquiry reasonable under the  
6 circumstances—

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

10 (B) the claims and other legal contentions  
11 therein are warranted by existing law or by a non-  
12 frivolous argument for the extension, modification,  
13 or reversal of existing law or the establishment of  
14 new law; and

15 (C) the allegations and other factual conten-  
16 tions have evidentiary support or, if specifically so  
17 identified, are likely to have evidentiary support  
18 after a reasonable opportunity for further investiga-  
19 tion and discovery.

20 (2) By presenting to the court (whether by signing,  
21 filing, submitting, or later advocating) a pleading, written  
22 motion, or other paper, an attorney or unrepresented  
23 party is certifying that to the best of the person’s knowl-  
24 edge, information and belief, formed after an inquiry rea-  
25 sonable under the circumstances—

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

4           (B) the claims, defenses, and other legal con-  
5           tentions therein are warranted by existing law or by  
6           a nonfrivolous argument for the extension, modifica-  
7           tion, or reversal of existing law or the establishment  
8           of new law; and

9           (C) the allegations and other factual conten-  
10          tions have evidentiary support or, if specifically so  
11          identified, are reasonable based on a lack of infor-  
12          mation or belief.

13          (c) MANDATORY SANCTIONS.—

14           (1) FIRST VIOLATION.—If, after notice and a  
15           reasonable opportunity to respond, a court, upon  
16           motion or upon its own initiative, determines that  
17           subsection (b) has been violated, the court shall find  
18           each attorney or party in violation in contempt of  
19           court and shall require the payment of costs and at-  
20           torneys fees. The court may also impose additional  
21           appropriate sanctions, such as striking the plead-  
22           ings, dismissing the suit, and sanctions plus interest,  
23           upon the person in violation, or upon both such per-  
24           son and such person's attorney or client (as the case  
25           may be).

1           (2) SECOND VIOLATION.—If, after notice and a  
2 reasonable opportunity to respond, a court, upon  
3 motion or upon its own initiative, determines that  
4 subsection (b) has been violated and that the attor-  
5 ney or party with respect to which the determination  
6 was made has committed one previous violation of  
7 subsection (b) before this or any other court, the  
8 court shall find each such attorney or party in con-  
9 tempt of court and shall 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, upon  
16 such person in violation, or upon both such person  
17 and such person’s attorney or client (as the case  
18 may be).

19           (3) THIRD 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 and that the attor-  
23 ney or party with respect to which the determination  
24 was made has committed more than one previous  
25 violation of subsection (b) before this or any other

1 court, the court shall find each such attorney or  
2 party in contempt of court, refer each such attorney  
3 to one or more appropriate State bar associations  
4 for disciplinary proceedings, require the payment of  
5 costs and attorneys fees, and require such person in  
6 violation (or both such person and such person's at-  
7 torney or client (as the case may be)) to pay a mon-  
8 etary fine. The court may also impose additional ap-  
9 propriate sanctions, such as striking the pleadings,  
10 dismissing the suit, and sanctions plus interest,  
11 upon such person in violation, or upon both such  
12 person and such person's attorney or client (as the  
13 case may be).

14 **SEC. 104. MANDATORY MEDIATION.**

15 (a) IN GENERAL.—In any medical malpractice ac-  
16 tion, before such action comes to trial, mediation shall be  
17 required. Such mediation shall be conducted by one or  
18 more mediators who are selected by agreement of the par-  
19 ties or, if the parties do not agree, who are qualified under  
20 applicable State law and selected by the court.

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

24 (1) Participation in such mediation shall be in  
25 lieu of any alternative dispute resolution method re-

1       required by any other law or by any contractual ar-  
2       rangement made by or on behalf of the parties be-  
3       fore the commencement of the action.

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

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

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

18                      (A) is affordable for the parties involved;

19                      (B) encourages timely resolution of claims;

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

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

24              (c) FURTHER REDRESS AND ADMISSIBILITY.—Any  
25      party dissatisfied with a determination reached with re-

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

8 **SEC. 105. LIMITATION ON PUNITIVE DAMAGES.**

9 (a) IN GENERAL.—Punitive damages may not be  
10 awarded in a medical malpractice action, except upon  
11 proof of—

12 (1) gross negligence;

13 (2) reckless indifference to life; or

14 (3) an intentional act, such as voluntary intoxi-  
15 cation or impairment by a physician, sexual abuse or  
16 misconduct, assault and battery, or falsification of  
17 records.

18 (b) ALLOCATION.—In such a case, the award of puni-  
19 tive damages shall be allocated 50 percent to the claimant  
20 and 50 percent to a trustee appointed by the court, to  
21 be used by such trustee in the manner specified in sub-  
22 section (d). The court shall appoint the Secretary of  
23 Health and Human Services as such trustee.

24 (c) EXCEPTION.—This section shall not apply with  
25 respect to an action if the applicable State law provides

1 (or has been construed to provide) for damages in such  
2 an action that are only punitive or exemplary in nature.

3 (d) TRUST FUND.—

4 (1) IN GENERAL.—This subsection applies to  
5 amounts allocated to the Secretary of Health and  
6 Human Services as trustee under subsection (b).

7 (2) AVAILABILITY.—Such amounts shall be  
8 available for use by the Secretary of Health and  
9 Human Services under paragraph (3) and shall re-  
10 main so available until expended.

11 (3) USE.—

12 (A) Subject to subparagraph (B), the Sec-  
13 retary of Health and Human Services, acting  
14 through the Director of the Agency for  
15 Healthcare Research and Quality, shall use the  
16 amounts to which this subsection applies for ac-  
17 tivities to reduce medical errors and improve  
18 patient safety.

19 (B) The Secretary of Health and Human  
20 Services may not use any part of such amounts  
21 to establish or maintain any system that re-  
22 quires mandatory reporting of medical errors.

23 (C) The Secretary of Health and Human  
24 Services shall promulgate regulations to estab-

1           lish programs and procedures for carrying out  
2           this paragraph.

3           (4) INVESTMENT.—

4                   (A) The Secretary of Health and Human  
5           Services shall invest the amounts to which this  
6           subsection applies in such amounts as such Sec-  
7           retary determines are not required to meet cur-  
8           rent withdrawals. Such investments may be  
9           made only in interest-bearing obligations of the  
10          United States. For such purpose, such obliga-  
11          tions may be acquired on original issue at the  
12          issue price, or by purchase of outstanding obli-  
13          gations at the market price.

14                   (B) Any obligation acquired by the Sec-  
15          retary in such Secretary's capacity as trustee of  
16          such amounts may be sold by the Secretary at  
17          the market price.

18   **SEC. 106. REDUCTION IN PREMIUMS PAID BY PHYSICIANS**  
19                   **FOR MEDICAL MALPRACTICE INSURANCE**  
20                   **COVERAGE.**

21           (a) IN GENERAL.—Not later than 180 days after the  
22          date of the enactment of this Act, each medical mal-  
23          practice liability insurance company shall—

1           (1) develop a reasonable estimate of the annual  
2 amount of financial savings that will be achieved by  
3 the company as a result of this title;

4           (2) develop and implement a plan to annually  
5 dedicate at least 50 percent of such annual savings  
6 to reduce the amount of premiums that the company  
7 charges physicians for medical malpractice liability  
8 coverage; and

9           (3) submit to the Secretary of Health and  
10 Human Services (hereinafter referred to in this sec-  
11 tion as the “Secretary”) a written certification that  
12 the company has complied with paragraphs (1) and  
13 (2).

14       (b) REPORTS.—Not later than one year after the date  
15 of the enactment of this Act and annually thereafter, each  
16 medical malpractice liability insurance company shall sub-  
17 mit to the Secretary a report that identifies the percentage  
18 by which the company has reduced medical malpractice  
19 coverage premiums relative to the date of the enactment  
20 of this Act.

21       (c) ENFORCEMENT.—A medical malpractice liability  
22 insurance company that violates a provision of this section  
23 is liable to the United States for a civil penalty in an  
24 amount assessed by the Secretary, not to exceed \$11,000  
25 for each such violation. The provisions of paragraphs (3)

1 through (5) of section 303(g) of the Federal Food, Drug,  
2 and Cosmetic Act apply to such a civil penalty to the same  
3 extent and in the same manner as such paragraphs apply  
4 to a civil penalty under such section.

5 (d) DEFINITION.—For purposes of this section, the  
6 term “medical malpractice liability insurance company”  
7 means an entity in the business of providing an insurance  
8 policy under which the entity makes payment in settlement  
9 (or partial settlement) of, or in satisfaction of a judgment  
10 in, a medical malpractice action or claim.

11 **SEC. 107. DEFINITIONS.**

12 In this title, the following definitions apply:

13 (1) ALTERNATIVE DISPUTE RESOLUTION METH-  
14 OD.—The term “alternative dispute resolution meth-  
15 od” means a method that provides for the resolution  
16 of medical malpractice claims in a manner other  
17 than through medical malpractice actions.

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

23 (3) HEALTH CARE PROFESSIONAL.—The term  
24 “health care professional” means any individual who  
25 provides health care services in a State and who is

1 required by the laws or regulations of the State to  
2 be licensed or certified by the State to provide such  
3 services in the State.

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

11 (5) INJURY.—The term “injury” means any ill-  
12 ness, disease, or other harm that is the subject of  
13 a medical malpractice action or a medical mal-  
14 practice claim.

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

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

24 (8) MEDICAL MALPRACTICE ACTION.—The term  
25 “medical malpractice action” means an action in any

1 State or Federal court against a physician, or other  
2 health professional, who is licensed in accordance  
3 with the requirements of the State involved that—

4 (A) arises under the law of the State in-  
5 volved;

6 (B) alleges the failure of such physician or  
7 other health professional to adhere to the rel-  
8 evant professional standard of care for the serv-  
9 ice and specialty involved;

10 (C) alleges death or injury proximately  
11 caused by such failure; and

12 (D) seeks monetary damages, whether  
13 compensatory or punitive, as relief for such  
14 death or injury.

15 (9) MEDICAL MALPRACTICE CLAIM.—The term  
16 “medical malpractice claim” means a claim forming  
17 the basis of a medical malpractice action.

18 (10) STATE.—The term “State” means each of  
19 the several States, the District of Columbia, the  
20 Commonwealth of Puerto Rico, American Samoa,  
21 Guam, the Commonwealth of the Northern Mariana  
22 Islands, the Virgin Islands, and any other territory  
23 or possession of the United States.

1 **SEC. 108. APPLICABILITY.**

2 (a) IN GENERAL.—Except as provided in section 104,  
3 this title shall apply with respect to any medical mal-  
4 practice action brought on or after the date of the enact-  
5 ment of this Act.

6 (b) 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 actions on the basis of section 1331 or 1337  
11 of title 28, United States Code.

12 **TITLE II—MEDICAL MAL-**  
13 **PRACTICE INSURANCE RE-**  
14 **FORM**

15 **SEC. 201. PROHIBITION ON ANTICOMPETITIVE ACTIVITIES**  
16 **BY MEDICAL MALPRACTICE INSURERS.**

17 Notwithstanding any other provision of law, nothing  
18 in the Act of March 9, 1945 (15 U.S.C. 1011 et seq., com-  
19 monly known as the “McCarran-Ferguson Act”) shall be  
20 construed to permit commercial insurers to engage in any  
21 form of price fixing, bid rigging, or market allocations in  
22 connection with the conduct of the business of providing  
23 medical malpractice insurance. This section does not apply  
24 to the information-gathering and rate-setting activities of  
25 any State commissions of insurance, or any other State  
26 regulatory body with authority to set insurance rates.

1 **SEC. 202. MEDICAL MALPRACTICE INSURANCE PRICE COM-**  
2 **PARISON.**

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

11 (b) ONLINE FORMS.—

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

21 (2) PROTECTION OF CONFIDENTIALITY OF IN-  
22 FORMATION DISCLOSED.—All information provided  
23 by a health care provider for purposes of generating  
24 a quote through the internet site shall be used only  
25 for that purpose.

1           (c) INTEGRATION OF RATING CRITERIA.—The Sec-  
2 retary shall integrate the rating criteria of each insurer  
3 into its online form after consultation with each insurer.  
4 The Secretary shall integrate such criteria using one of  
5 the following methods:

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

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

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

12          (4) Any other method agreed on between the  
13 Secretary and the insurer.

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

19          (e) ACCURACY OF QUOTES.—Quotes provided at the  
20 internet site shall at all times be accurate. Whenever any  
21 insurer changes its rates, such rate changes shall be imple-  
22 mented at the internet site by the Secretary, in consulta-  
23 tion with the insurer, as soon as practicable, but in no  
24 event later than 10 days after such changes take effect.  
25 During any period during which an insurer has changed

1 its rates but the Secretary has not yet implemented such  
2 changed rates on the internet site, quotes for that insurer  
3 shall not be obtainable at the internet site.

4 (f) USER-FRIENDLY FEATURES.—The Secretary  
5 shall design the internet site to incorporate user-friendly  
6 formats and self-help guidance materials, and shall de-  
7 velop a user-friendly internet user-interface.

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

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

16 (1) the Secretary's consultation with health  
17 care providers, medical malpractice insurers, State  
18 insurance commissioners, and other interested par-  
19 ties; and

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

22 The report shall describe the Secretary's views concerning  
23 the extent to which this section has contributed to increas-  
24 ing the availability of medical malpractice insurance, and

1 the effect this section has had on the cost of medical mal-  
2 practice insurance.

3 **TITLE III—ENHANCING PATIENT**  
4 **ACCESS TO CARE THROUGH**  
5 **DIRECT ASSISTANCE**

6 **SEC. 301. GRANTS AND CONTRACTS REGARDING HEALTH**  
7 **PROVIDER SHORTAGES.**

8 Subpart I of part D of title III of the Public Health  
9 Service Act (42 U.S.C. 254b et seq.) is amended by adding  
10 at the end the following section.

11 **“SEC. 330L. HEALTH PROVIDER SHORTAGES RESULTING**  
12 **FROM COSTS OF MEDICAL MALPRACTICE IN-**  
13 **SURANCE.**

14 “(a) IN GENERAL.—The Secretary, acting through  
15 the Administrator of the Health Resources and Services  
16 Administration, may make awards of grants or contracts  
17 in accordance with this section for geographic areas that,  
18 as determined by the Secretary, have a shortage of one  
19 or more types of health providers as a result of the pro-  
20 viders making the decision to cease or curtail providing  
21 health services in the geographic areas because of the costs  
22 of maintaining malpractice insurance.

23 “(b) RECIPIENTS OF AWARDS; EXPENDITURE.—In  
24 accordance with such criteria as the Secretary may estab-  
25 lish:



1       “(d) TRAUMA CENTERS; SEPARATE AUTHORIZATION  
2 REGARDING SHORTAGES RESULTING FROM COSTS OF  
3 MEDICAL MALPRACTICE INSURANCE.—

4           “(1) IN GENERAL.—For the purpose of assign-  
5 ing Corps surgeons, obstetricians/gynecologists, and  
6 other health professionals to trauma centers in  
7 health professional shortage areas described in para-  
8 graph (2), there are authorized to be appropriated  
9 such sums as may be necessary for each of the fiscal  
10 years 2003 through 2006. Such authorization is in  
11 addition to any other authorization of appropriations  
12 that is available for such purpose.

13           “(2) DESCRIPTION OF AREAS.—A health pro-  
14 fessional shortage area referred to in paragraph (1)  
15 is such an area in which, as determined by the Sec-  
16 retary, a medical facility in the area has lost its des-  
17 ignation as a trauma center or as a particular level  
18 of trauma center, or is at significant risk of losing  
19 such a designation, as a result of one or more sur-  
20 geons, obstetricians/gynecologists, or other health  
21 professionals making the decision to cease or curtail  
22 practicing at the facility because of the costs of  
23 maintaining malpractice insurance. For purposes of  
24 paragraph (1), (A) the term ‘trauma center’ includes  
25 such a medical facility; and (B) the Secretary may

1       adjust the criteria for designation as a health profes-  
2       sional shortage area to the extent necessary to make  
3       funds appropriated under paragraph (1) available  
4       with respect to any medical facility to ensure that  
5       the facility does not lose any such designation as a  
6       result of such decisions by health professionals.”.

7       **TITLE IV—INDEPENDENT ADVI-**  
8       **SORY COMMISSION ON MED-**  
9       **ICAL MALPRACTICE INSUR-**  
10      **ANCE**

11      **SEC. 401. ESTABLISHMENT.**

12      (a) FINDINGS.—The Congress finds as follows:

13           (1) The sudden rise in medical malpractice pre-  
14           miums in regions of the United States can threaten  
15           patient access to doctors and other health providers.

16           (2) Improving patient access to doctors and  
17           other health providers is a national priority.

18      (b) ESTABLISHMENT.—There is established a na-  
19      tional commission to be known as the “Independent Advi-  
20      sory Commission on Medical Malpractice Insurance” (in  
21      this title referred to as the “Commission”).

22      **SEC. 402. DUTIES.**

23      (a) IN GENERAL.—The Commission shall evaluate  
24      the causes and scope of the recent and dramatic increases  
25      in medical malpractice insurance premiums and formulate

1 additional proposals to reduce such medical malpractice  
2 premiums and make recommendations to avoid any dra-  
3 matic increases in medical malpractice premiums in the  
4 future, in light of proposals for tort reform regarding med-  
5 ical malpractice.

6 (b) CONSIDERATIONS.—In formulating proposals  
7 under this section, the Commission shall, at a minimum,  
8 consider the following:

9 (1) Alternatives to the current medical mal-  
10 practice tort system that would ensure adequate  
11 compensation for patients, preserve access to pro-  
12 viders, and improve health care safety and quality.

13 (2) Modifications of, and alternatives to, the ex-  
14 isting State and Federal regulations and oversight  
15 that affect, or could affect, medical malpractice lines  
16 of insurance.

17 (3) State and Federal reforms that would dis-  
18 tribute the risk of medical malpractice more equi-  
19 tably among health care providers.

20 (4) State and Federal reforms that would more  
21 evenly distribute the risk of medical malpractice  
22 across various categories of providers.

23 (5) The effect of a Federal medical malpractice  
24 reinsurance program administered by the Depart-  
25 ment of Health and Human Services.

1           (6) The effect of a Federal medical malpractice  
2 insurance program, administered by the Department  
3 of Health and Human Services, to provide medical  
4 malpractice insurance based on customary coverage  
5 terms and liability amounts in States where such in-  
6 surance is unavailable or is unavailable at reasonable  
7 and customary terms.

8           (7) Programs that would reduce medical errors  
9 and increase patient safety, including new innova-  
10 tions in technology and management.

11          (8) The effect of State policies under which—

12           (A) any health care professional licensed  
13 by the State has standing in any State adminis-  
14 trative proceeding to challenge a proposed rate  
15 increase in medical malpractice insurance; and

16           (B) a provider of medical malpractice in-  
17 surance in the State may not implement a rate  
18 increase in such insurance unless the provider,  
19 at minimum, first submits to the appropriate  
20 State agency a description of the rate increase  
21 and a substantial justification for the rate in-  
22 crease.

23 **SEC. 403. REPORT.**

24          (a) IN GENERAL.—The Commission shall transmit to  
25 Congress—

1           (1) an initial report not later than 180 days  
2           after the date of the initial meeting of the Commis-  
3           sion; and

4           (2) a report not less than each year thereafter  
5           until the Commission terminates.

6           (b) CONTENTS.—Each report transmitted under this  
7           section shall contain a detailed statement of the findings  
8           and conclusions of the Commission, including proposals  
9           for addressing the current dramatic increases in medical  
10          malpractice insurance rates and recommendations for  
11          avoiding any such dramatic increases in the future.

12          (c) VOTING AND REPORTING REQUIREMENTS.—With  
13          respect to each proposal or recommendation contained in  
14          the report submitted under subsection (a), each member  
15          of the Commission shall vote on the proposal or rec-  
16          ommendation, and the Commission shall include, by mem-  
17          ber, the results of that vote in the report.

18          **SEC. 404. MEMBERSHIP.**

19          (a) NUMBER AND APPOINTMENT.—The Commission  
20          shall be composed of 15 members appointed by the Comp-  
21          troller General of the United States.

22          (b) MEMBERSHIP.—

23                  (1) IN GENERAL.—The membership of the  
24          Commission shall include individuals with national  
25          recognition for their expertise in health finance and

1 economics, actuarial science, medical malpractice in-  
2 surance, insurance regulation, health care law,  
3 health care policy, health care access, allopathic and  
4 osteopathic physicians, other providers of health care  
5 services, patient advocacy, and other related fields,  
6 who provide a mix of different professionals, broad  
7 geographic representations, and a balance between  
8 urban and rural representatives.

9 (2) INCLUSION.—The membership of the Com-  
10 mission shall include the following:

11 (A) Two individuals with expertise in  
12 health finance and economics, including one  
13 with expertise in consumer protections in the  
14 area of health finance and economics.

15 (B) Two individuals with expertise in med-  
16 ical malpractice insurance, representing both  
17 commercial insurance carriers and physician-  
18 sponsored insurance carriers.

19 (C) An individual with expertise in State  
20 insurance regulation and State insurance mar-  
21 kets.

22 (D) An individual representing physicians.

23 (E) An individual with expertise in issues  
24 affecting hospitals, nursing homes, nurses, and  
25 other providers.

1 (F) Two individuals representing patient  
2 interests.

3 (G) Two individuals with expertise in  
4 health care law or health care policy.

5 (H) An individual with expertise in rep-  
6 resenting patients in malpractice lawsuits.

7 (3) MAJORITY.—The total number of individ-  
8 uals who are directly involved with the provision or  
9 management of malpractice insurance, representing  
10 physicians or other providers, or representing physi-  
11 cians or other providers in malpractice lawsuits,  
12 shall not constitute a majority of the membership of  
13 the Commission.

14 (4) ETHICAL DISCLOSURE.—The Comptroller  
15 General of the United States shall establish a system  
16 for public disclosure by members of the Commission  
17 of financial or other potential conflicts of interest re-  
18 lating to such members.

19 (c) TERMS.—

20 (1) IN GENERAL.—The terms of the members  
21 of the Commission shall be for 3 years except that  
22 the Comptroller General of the United States shall  
23 designate staggered terms for the members first ap-  
24 pointed.

1           (2) VACANCIES.—Any member appointed to fill  
2 a vacancy occurring before the expiration of the  
3 term for which the member’s predecessor was ap-  
4 pointed shall be appointed only for the remainder of  
5 that term. A member may serve after the expiration  
6 of that member’s term until a successor has taken  
7 office. A vacancy in the Commission shall be filled  
8 in the manner in which the original appointment was  
9 made.

10           (3) COMPENSATION.—Members of the Commis-  
11 sion shall be compensated in accordance with section  
12 1805(c)(4) of the Social Security Act.

13           (4) CHAIRMAN; VICE CHAIRMAN.—The Comp-  
14 troller General of the United States shall designate  
15 at the time of appointment a member of the Com-  
16 mission as Chairman and a member as Vice Chair-  
17 man. In the case of vacancy of the Chairmanship or  
18 Vice Chairmanship, the Comptroller General may  
19 designate another member for the remainder of that  
20 member’s term.

21           (5) MEETINGS.—

22           (A) IN GENERAL.—The Commission shall  
23 meet at the call of the Chairman.

24           (B) INITIAL MEETING.—The Commission  
25 shall hold an initial meeting not later than the

1 date that is 1 year after the date of the enact-  
2 ment of this title, or the date that is 3 months  
3 after the appointment of all the members of the  
4 Commission, whichever occurs earlier.

5 **SEC. 405. DIRECTOR AND STAFF; EXPERTS AND CONSULT-**  
6 **ANTS.**

7 Subject to such review as the Comptroller General of  
8 the United States deems necessary to assure the efficient  
9 administration of the Commission, the Commission may—

10 (1) employ and fix the compensation of an Ex-  
11 ecutive Director (subject to the approval of the  
12 Comptroller General) and such other personnel as  
13 may be necessary to carry out its duties (without re-  
14 gard to the provisions of title 5, United States Code,  
15 governing appointments in the competitive service);

16 (2) seek such assistance and support as may be  
17 required in the performance of its duties from ap-  
18 propriate Federal departments and agencies;

19 (3) enter into contracts or make other arrange-  
20 ments, as may be necessary for the conduct of the  
21 work of the Commission (without regard to section  
22 3709 of the Revised Statutes (41 U.S.C. 5));

23 (4) make advance, progress, and other pay-  
24 ments which relate to the work of the Commission;

1           (5) provide transportation and subsistence for  
2 persons serving without compensation; and

3           (6) prescribe such rules and regulations as it  
4 deems necessary with respect to the internal organi-  
5 zation and operation of the Commission.

6 **SEC. 406. POWERS.**

7           (a) **OBTAINING OFFICIAL DATA.**—The Commission  
8 may secure directly from any department or agency of the  
9 United States information necessary to enable it to carry  
10 out this section. Upon request of the Chairman, the head  
11 of that department or agency shall furnish that informa-  
12 tion to the Commission on an agreed upon schedule.

13           (b) **DATA COLLECTION.**—In order to carry out its  
14 functions, the Commission shall—

15           (1) utilize existing information, both published  
16 and unpublished, where possible, collected and as-  
17 sessed either by its own staff or under other ar-  
18 rangements made in accordance with this section;

19           (2) carry out, or award grants or contracts for,  
20 original research and experimentation, where exist-  
21 ing information is inadequate; and

22           (3) adopt procedures allowing any interested  
23 party to submit information for the Commission's  
24 use in making reports and recommendations.

1           (c) ACCESS OF GENERAL ACCOUNTING OFFICE TO  
2 INFORMATION.—The Comptroller General of the United  
3 States shall have unrestricted access to all deliberations,  
4 records, and nonproprietary data of the Commission, im-  
5 mediately upon request.

6           (d) PERIODIC AUDIT.—The Commission shall be sub-  
7 ject to periodic audit by the Comptroller General of the  
8 United States.

9 **SEC. 407. AUTHORIZATION OF APPROPRIATIONS.**

10          (a) IN GENERAL.—There are authorized to be appro-  
11 priated such sums as may be necessary to carry out this  
12 title for each of fiscal years 2004 through 2008.

13          (b) REQUESTS FOR APPROPRIATIONS.—The Commis-  
14 sion shall submit requests for appropriations in the same  
15 manner as the Comptroller General of the United States  
16 submits requests for appropriations, but amounts appro-  
17 priated for the Commission shall be separate from  
18 amounts appropriated for the Comptroller General.

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