

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2399

To establish an Office of Health Care Competition within the Department of Health and Human Services to administer the National Practitioner Data Base and to collect and make available to the public more information on medical malpractice insurance under that Data Base.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 17, 2005

Mr. DEFAZIO (for himself, Mrs. CHRISTENSEN, Mr. CROWLEY, and Mr. HINCHEY) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To establish an Office of Health Care Competition within the Department of Health and Human Services to administer the National Practitioner Data Base and to collect and make available to the public more information on medical malpractice insurance under that Data Base.

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 “Improved Medical Mal-  
5       practice Information Reporting and Competition Act of  
6       2005”.

1 **SEC. 2. ESTABLISHMENT OF OFFICE OF HEALTH CARE**  
2 **COMPETITION WITHIN THE DEPARTMENT OF**  
3 **HEALTH AND HUMAN SERVICES.**

4 (a) IN GENERAL.—There is established within the  
5 Department of Health and Human Services an Office to  
6 be known as the Office of Health Care Competition Policy  
7 (in this section referred to as the “Office”). The Office  
8 shall be headed by a Director, who shall be appointed by  
9 the Secretary of such Department.

10 (b) DUTIES.—

11 (1) RESPONSIBILITY FOR NATIONAL PRACTI-  
12 TIONER DATA BASE.—The Office shall be responsible  
13 for activities of the Secretary under part B of title  
14 IV of the Health Care Quality Improvement Act of  
15 1986 (title IV of Public Law 99–660), including the  
16 National Practitioner Data Base under such part.

17 (2) ANNUAL REPORT.—The Director of the Of-  
18 fice shall submit a report each year to the Secretary  
19 of Health and Human Services on activities con-  
20 ducted under such part.

21 **SEC. 3. CHANGES IN NATIONAL PRACTITIONER DATA BASE**  
22 **PROVISIONS.**

23 (a) REQUIRING ADDITIONAL REPORTS ON MEDICAL  
24 MALPRACTICE INSURANCE AND CLAIMS.—Part B of title  
25 IV of the Health Care Quality Improvement Act of 1986

1 (title IV of Public Law 99–660) is amended by inserting  
2 after section 421 the following new section:

3 **“SEC. 421A. REQUIRING REPORTS ON MEDICAL MAL-**  
4 **PRACTICE INSURANCE AND CLAIMS.**

5 “(a) IN GENERAL.—Each entity (including an insur-  
6 ance company) which underwrites a policy of insurance for  
7 medical malpractice actions or claims shall report, in ac-  
8 cordance with section 424, information respecting such in-  
9 surance and claims for payment under such policy. Such  
10 information shall be in addition to, and may be coordi-  
11 nated with, the information required to be reported under  
12 section 421.

13 “(b) INFORMATION TO BE REPORTED.—

14 “(1) IN GENERAL.—The information to be re-  
15 ported under subsection (a) by an entity with re-  
16 spect to a medical malpractice insurance policy in-  
17 cludes the following:

18 “(A) Direct premiums written.

19 “(B) Direct premiums earned.

20 “(C) Net investment income, including net  
21 realized capital gains and losses, using appro-  
22 priate estimates where necessary.

23 “(D) Incurred claims, developed as the  
24 sum of the following (the report shall include  
25 data for each of the following):

1           “(i) Dollar amount of claims closed  
2           with payment; plus.

3           “(ii) Reserves for reported claims at  
4           the end of the current year; minus.

5           “(iii) Reserves for reported claims at  
6           the end of the previous year; plus.

7           “(iv) Reserves for incurred but not re-  
8           ported claims at the end of the current  
9           year; minus.

10          “(v) Reserves for incurred but not re-  
11          ported claims at the end of the previous  
12          year; plus.

13          “(vi) Loss adjustment expenses for  
14          claims closed; plus.

15          “(vii) Reserves for loss adjustment ex-  
16          pense at the end of the current year;  
17          minus.

18          “(viii) Reserves for loss adjustment  
19          expense at the end of the previous year.

20          “(E) Actual incurred expenses allocated  
21          separately to loss adjustment, commissions,  
22          other acquisition costs, advertising, general of-  
23          fice expenses, taxes, licenses and fees, and all  
24          other expenses.

25          “(F) Net underwriting gain or loss.

1           “(G) Net operation gain or loss, including  
2 net investment income.

3           “(H) The number and dollar amount of  
4 claims closed with payment by year incurred,  
5 the amount reserved for each claim, the year(s)  
6 in which the reserves were set, and the amounts  
7 set in each year.

8           “(I) The number of claims closed without  
9 payment, the dollar amount reserved for each  
10 claim, the years in which reserves were set, and  
11 the amounts set in each.

12           “(J) The number of claims pending at the  
13 end of each year, the amount of reserve[d] for  
14 each claim, the year(s) in which the reserves  
15 were set, and the amounts set in each year.

16           “(2) CLAIMS PAID.—Such report shall also in-  
17 clude the following:

18           “(A) For claims paid by the insurer during  
19 the calendar year, in which a verdict had at any  
20 time been rendered.

21           “(i) The dollar amount paid by the in-  
22 surance company; and

23           “(ii) The dollar amount of the original  
24 verdict.

1           “(B) For claims paid by the insurer during  
2 the calendar year, in which a verdict had at any  
3 time been rendered.

4           “(i) The dollar amount of the original  
5 verdict, broken out as follows:

6                   “(I) The total amount of past  
7 economic damages assessed by the  
8 trier of fact.

9                   “(II) The total amount of future  
10 economic damages assessed by the  
11 trier of fact.

12                   “(III) The total amount of com-  
13 pensatory non-economic damages as-  
14 sessed by the trier of fact.

15                   “(IV) The total amount of puni-  
16 tive damages assessed by the trier of  
17 fact.

18           “(ii) The dollar amount paid by all  
19 parties.

20                   “(iii) The dollar amount paid by the  
21 insurer.

22                   “(iv) The number of claims paid by  
23 the insurer.

1           “(C) For claims paid by the insurer during  
2 the calendar year, in which a verdict had never  
3 been rendered.

4           “(i) The total amount paid by the in-  
5 surer broken out as follows:

6                   “(I) The amount of the plaintiff’s  
7 past economic damages, as submitted  
8 by the plaintiff.

9                   “(II) The amount of the plain-  
10 tiff’s future economic damages, as es-  
11 timated by the insurer.

12                   “(III) The amount paid by the  
13 insurer for other damages.

14           “(ii) The number of claims paid by  
15 the insurer.

16           “(D) The number of claims in which the  
17 insurer paid—

18                   “(i) more than \$250,000 in non-eco-  
19 nomic damages; and

20                   “(ii) more than \$500,000 in non-eco-  
21 nomic damages.

22           “(E) For claims paid by the insurer during  
23 the calendar year, the number of claims in  
24 which—

1           “(i) punitive damages were assessed  
2           by the trier of fact;

3           “(ii) punitive damages were paid by  
4           any party; and

5           “(iii) punitive damages were paid by  
6           the insurer.

7           “(F) For claims paid by the insurer during  
8           the calendar year—

9           “(i) the dollar amount of punitive  
10          damages assessed by the trier of fact;

11          “(ii) the dollar amount of punitive  
12          damages paid by all parties; and

13          “(iii) the dollar amount of punitive  
14          damages paid by the insurer.

15          “(G) The number and dollar amount of  
16          claims paid by the insurer during the calendar  
17          year in which parties other than the insured—

18          “(i) had at any time been found liable  
19          by the trier of fact; or

20          “(ii) had been estimated by the insur-  
21          ance company to have some liability.

22          “(H) For those claims identified in para-  
23          graph (7), the amount by which the amount  
24          paid by the insurer exceeds the amount propor-

1           tional to the insured's percentage of responsi-  
2           bility.

3           “(I) Such other information as the Sec-  
4           retary determines is required for appropriate  
5           interpretation of information reported under  
6           this section.

7           “(c) SANCTIONS FOR FAILURE TO REPORT.—The  
8           provisions of section 421(c) shall apply to information re-  
9           quired to be reported under this section in the same man-  
10          ner as they apply to the reporting of information on a pay-  
11          ment required to be reported under section 421.

12          “(d) COORDINATION OF INFORMATION REPORT-  
13          ING.—The Secretary shall provide for the coordination of  
14          reporting of information under this section with the re-  
15          porting of related information under section 421.”.

16          (b) INCLUSION AND AVAILABILITY OF INFORMA-  
17          TION.—Section 427(b) of such Act (42 U.S.C. 11137(b))  
18          is amended by adding at the end the following new para-  
19          graph:

20                 “(4) AVAILABILITY OF PUBLIC FILE DATA.—  
21                 Notwithstanding the previous provisions of this sub-  
22                 section, the Secretary shall make available, for free  
23                 from the website maintained in connection with the  
24                 data base established to carry out this part, informa-  
25                 tion reported under sections 421 and 421A which

1 does not provide for individually identifiable infor-  
2 mation.”.

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall take effect 6 months after the date of  
5 the enactment of this Act.

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