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109TH CONGRESS
1ST SESSION

H. R. 3359

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.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2005

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Medical Malpractice and Insurance Reform Act of 2005''.

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

TITLE I—LIMITING FRIVOLOUS MEDICAL MALPRACTICE LAWSUITS

SEC. 101. STATUTE OF LIMITATIONS.

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

(b) ACCRUAL.—A right of action referred to in subsection (a) accrues upon the last to occur of the following dates:

(1) The date of the injury.

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

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

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

SEC. 102. HEALTH CARE SPECIALIST AFFIDAVIT.

(a) REQUIRING SUBMISSION WITH COMPLAINT.—No medical malpractice 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 in-

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

(b) EXTENSION IN CERTAIN INSTANCES.—

(1) IN GENERAL.—Subject to paragraph (2), subsection (a) shall not apply with respect to an individual who brings a medical malpractice action without submitting an affidavit described in such subsection if, as of the time the individual brings the action, the individual has been unable to obtain adequate medical records or other information necessary to prepare the affidavit.

(2) DEADLINE FOR SUBMISSION WHERE EXTENSION APPLIES.—In the case of an individual who brings an action for which paragraph (1) applies, the action shall be dismissed unless the individual (or the individual's attorney) submits the affidavit described in subsection (a) not later than 90 days after obtaining the information described in such paragraph.

(c) QUALIFIED SPECIALIST DEFINED.—In subsection (a), a ''qualified specialist'' means, with respect to a medical malpractice action, a health care professional

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

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

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

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

(d) CONFIDENTIALITY OF SPECIALIST.—Upon a showing of good cause by a defendant, the court may ascertain the identity of a specialist referred to in subsection (a) while preserving confidentiality.

SEC. 103. SANCTIONS FOR FRIVOLOUS ACTIONS AND PLEADINGS.

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

(b) CERTIFICATE OF MERIT.—A medical malpractice action shall be dismissed unless the attorney or unrepresented party presenting the complaint certifies that, to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

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

(2) the claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

(c) MANDATORY SANCTIONS.—

(1) FIRST VIOLATION.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated, the court shall find each attorney or party in violation in contempt of

court and shall require the payment of costs and attorneys fees. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit, and sanctions plus interest, upon the person in violation, or upon both such person and such person's attorney or client (as the case may be).

(2) SECOND VIOLATION.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated and that the attorney or party with respect to which the determination was made has committed one previous violation of subsection (b) before this or any other court, the court shall find each such attorney or party in contempt of court and shall require the payment of costs and attorneys fees, and require such person in violation (or both such person and such person's attorney or client (as the case may be)) to pay a monetary fine. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit and sanctions plus interest, upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

(3) THIRD VIOLATION.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated and that the attorney or party with respect to which the determination was made has committed more than one previous violation of subsection (b) before this or any other court, the court shall find each such attorney or party in contempt of court, refer each such attorney to one or more appropriate State bar associations for disciplinary proceedings, require the payment of costs and attorneys fees, and require such person in violation (or both such person and such person's attorney or client (as the case may be)) to pay a monetary fine. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit, and sanctions plus interest, upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

SEC. 104. MANDATORY MEDIATION.

(a) IN GENERAL.—In any medical malpractice action, before such action comes to trial, mediation shall be required. Such mediation shall be conducted by one or more mediators who are selected by agreement of the par-

ties or, if the parties do not agree, who are qualified under applicable State law and selected by the court.

(b) STATE OPTION TO ALLOW ARBITRATION.—In addition to mediation under subsection (a), in any medical malpractice action, arbitration shall be available to the parties if the State so provides and, if so, shall be available to the parties to the extent the parties so agree.

(c) REQUIREMENTS.—Mediation under subsection (a) shall be made available by a State subject to the following requirements:

(1) Participation in such mediation shall be in lieu of any alternative dispute resolution method required by any other law or by any contractual arrangement made by or on behalf of the parties before the commencement of the action.

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

(3) Each State shall provide that such mediation may begin before or after, at the option of the claimant, the commencement of a medical malpractice action.

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

(A) is affordable for the parties involved;

(B) encourages timely resolution of claims;

(C) encourages the consistent and fair resolution of claims; and

(D) provides for reasonably convenient access to dispute resolution.

(d) FURTHER REDRESS AND ADMISSIBILITY.—Any party dissatisfied with a determination reached with respect to a medical malpractice claim as a result of an alternative dispute resolution method applied under this section shall not be bound by such determination. The results of any alternative dispute resolution method applied under this section, and all statements, offers, and communications made during the application of such method, shall be inadmissible for purposes of adjudicating the claim.

SEC. 105. LIMITATION ON PUNITIVE DAMAGES.

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

(1) gross negligence;

(2) reckless indifference to life; or

(3) an intentional act, such as voluntary intoxication or impairment by a physician, sexual abuse or misconduct, assault and battery, or falsification of records.

(b) ALLOCATION.—In such a case, the award of punitive damages shall be allocated 50 percent to the claimant and 50 percent to a trustee appointed by the court, to be used by such trustee in the manner specified in subsection (d). The court shall appoint the Secretary of Health and Human Services as such trustee.

(c) EXCEPTION.—This section shall not apply with respect to an action if the applicable State law provides (or has been construed to provide) for damages in such an action that are only punitive or exemplary in nature.

(d) TRUST FUND.—

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

(2) AVAILABILITY.—Such amounts shall be available for use by the Secretary of Health and Human Services under paragraph (3) and shall remain so available until expended.

(3) USE.—

(A) Subject to subparagraph (B), the Secretary of Health and Human Services, acting through the Director of the Agency for Healthcare Research and Quality, shall use the amounts to which this subsection applies for activities to reduce medical errors and improve patient safety.

(B) The Secretary of Health and Human Services may not use any part of such amounts to establish or maintain any system that requires mandatory reporting of medical errors.

(C) The Secretary of Health and Human Services shall promulgate regulations to establish programs and procedures for carrying out this paragraph.

(4) INVESTMENT.—

(A) The Secretary of Health and Human Services shall invest the amounts to which this subsection applies in such amounts as such Secretary determines are not required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired on original issue at the

issue price, or by purchase of outstanding obligations at the market price.

(B) Any obligation acquired by the Secretary in such Secretary's capacity as trustee of such amounts may be sold by the Secretary at the market price.

SEC. 106. REDUCTION IN PREMIUMS PAID BY PHYSICIANS FOR MEDICAL MALPRACTICE INSURANCE COVERAGE.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, each medical malpractice liability insurance company shall—

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

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

(3) submit to the Secretary of Health and Human Services (hereinafter referred to in this section as the ''Secretary'') a written certification that the company has complied with paragraphs (1) and (2).

(b) REPORTS.—Not later than one year after the date of the enactment of this Act and annually thereafter, each medical malpractice liability insurance company shall submit to the Secretary a report that identifies the percentage by which the company has reduced medical malpractice coverage premiums relative to the date of the enactment of this Act.

(c) ENFORCEMENT.—A medical malpractice liability insurance company that violates a provision of this section is liable to the United States for a civil penalty in an amount assessed by the Secretary, not to exceed $11,000 for each such violation. The provisions of paragraphs (3) through (5) of section 303(g) of the Federal Food, Drug, and Cosmetic Act apply to such a civil penalty to the same extent and in the same manner as such paragraphs apply to a civil penalty under such section.

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

SEC. 107. DEFINITIONS.

In this title, the following definitions apply:

(1) ALTERNATIVE DISPUTE RESOLUTION METHOD.—The term ''alternative dispute resolution method'' means a method that provides for the resolution of medical malpractice claims in a manner other than through medical malpractice actions.

(2) CLAIMANT.—The term ''claimant'' means any person who alleges a medical malpractice claim, and any person on whose behalf such a claim is alleged, including the decedent in the case of an action brought through or on behalf of an estate.

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

(4) HEALTH CARE PROVIDER.—The term ''health care provider'' means any organization or institution that is engaged in the delivery of health care services in a State and that is required by the laws or regulations of the State to be licensed or certified by the State to engage in the delivery of such services in the State.

(5) INJURY.—The term ''injury'' means any illness, disease, or other harm that is the subject of

a medical malpractice action or a medical malpractice claim.

(6) MANDATORY.—The term ''mandatory'' means required to be used by the parties to attempt to resolve a medical malpractice claim notwithstanding any other provision of an agreement, State law, or Federal law.

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

(8) MEDICAL MALPRACTICE ACTION.—The term ''medical malpractice action'' means an action in any State or Federal court against a physician, or other health professional, who is licensed in accordance with the requirements of the State involved that—

(A) arises under the law of the State involved;

(B) alleges the failure of such physician or other health professional to adhere to the relevant professional standard of care for the service and specialty involved;

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

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

(9) MEDICAL MALPRACTICE CLAIM.—The term ''medical malpractice claim'' means a claim forming the basis of a medical malpractice action.

(10) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and any other territory or possession of the United States.

SEC. 108. APPLICABILITY.

(a) IN GENERAL.—Except as provided in section 104, this title shall apply with respect to any medical malpractice action brought on or after the date of the enactment of this Act.

(b) FEDERAL COURT JURISDICTION NOT ESTABLISHED ON FEDERAL QUESTION GROUNDS.—Nothing in this title shall be construed to establish any jurisdiction in the district courts of the United States over medical malpractice actions on the basis of section 1331 or 1337 of title 28, United States Code.

TITLE II—MEDICAL MALPRACTICE INSURANCE REFORM

SEC. 201. PROHIBITION ON ANTICOMPETITIVE ACTIVITIES BY MEDICAL MALPRACTICE INSURERS.

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

SEC. 202. MEDICAL MALPRACTICE INSURANCE PRICE COMPARISON.

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

(b) ONLINE FORMS.—

(1) IN GENERAL.—The internet site shall enable health care providers to complete an online form that shall capture a comprehensive set of information sufficient to generate a quote for each insurer. The Secretary shall develop transmission software components which allow such information to be formatted for delivery to each medical malpractice insurer based on the requirements of the computer system of the insurer.

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

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

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

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

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

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

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

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

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

(g) CONTACT INFORMATION.—The internet site shall also provide contact information, including address and

telephone number, for each medical malpractice insurer for which a provider obtains a quote at the site.

(h) REPORT.—Not later than December 31, 2005, the Secretary shall submit a report to the Congress on the development, implementation and effects of the internet site. Such report shall be based on—

(1) the Secretary's consultation with health care providers, medical malpractice insurers, State insurance commissioners, and other interested parties; and

(2) the Secretary's analysis of other information available to the Secretary.

The report shall describe the Secretary's views concerning the extent to which this section has contributed to increasing the availability of medical malpractice insurance, and the effect this section has had on the cost of medical malpractice insurance.

SEC. 203. PROCEDURAL REQUIREMENTS FOR MEDICAL MALPRACTICE INSURERS' PROPOSED RATE INCREASES.

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

(1) any health care professional (as defined in title I of this Act) licensed by the State has standing in any State administrative proceeding to challenge

a proposed rate increase in medical malpractice insurance; and

(2) a provider of medical malpractice insurance in the State may not implement a rate increase in such insurance unless the provider, at minimum, first submits to the appropriate State agency a description of the rate increase and a substantial justification for the rate increase.

(b) RULEMAKING.—The Attorney General shall promulgate rules to carry out this section.

(c) EFFECTIVE DATE.—The requirements of this section shall take effect 1 year after the date of the enactment of this Act.

TITLE III—ENHANCING PATIENT ACCESS TO CARE THROUGH DIRECT ASSISTANCE

SEC. 301. GRANTS AND CONTRACTS REGARDING HEALTH PROVIDER SHORTAGES.

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

"SEC. 330L. HEALTH PROVIDER SHORTAGES RESULTING FROM COSTS OF MEDICAL MALPRACTICE INSURANCE.

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

"(b) RECIPIENTS OF AWARDS; EXPENDITURE.—In accordance with such criteria as the Secretary may establish:

"(1) Awards under subsection (a) may be made to health providers who agree to provide health services (or to continue providing health services, as the case may be) in geographic areas described in such subsection for the period during which payments under the awards are made to the health providers.

"(2) Health providers who receive such awards may expend the awards to assist the providers with the costs of maintaining medical malpractice insurance for providing health services in the geographic area for which the award is made.

''(c) DEFINITION.—For purposes of this section, the term 'health providers' means physicians and other health professionals, and organizations that provide health services (including hospitals, clinics, and group practices), that meet applicable legal requirements to provide the health services involved.''.

SEC. 302. HEALTH PROFESSIONAL ASSIGNMENTS TO TRAUMA CENTERS THROUGH NATIONAL HEALTH SERVICE CORPS.

Section 338H of the Public Health Service Act (42 U.S.C. 254q) is amended by adding at the end the following subsection:

''(d) TRAUMA CENTERS; SEPARATE AUTHORIZATION REGARDING SHORTAGES RESULTING FROM COSTS OF MEDICAL MALPRACTICE INSURANCE.—

''(1) IN GENERAL.—For the purpose of assigning Corps surgeons, obstetricians/gynecologists, and other health professionals to trauma centers in health professional shortage areas described in paragraph (2), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2005 through 2008. Such authorization is in addition to any other authorization of appropriations that is available for such purpose.

''(2) DESCRIPTION OF AREAS.—A health professional shortage area referred to in paragraph (1) is such an area in which, as determined by the Secretary, a medical facility in the area has lost its designation as a trauma center or as a particular level of trauma center, or is at significant risk of losing such a designation, as a result of one or more surgeons, obstetricians/gynecologists, or other health professionals making the decision to cease or curtail practicing at the facility because of the costs of maintaining malpractice insurance. For purposes of paragraph (1), (A) the term 'trauma center' includes such a medical facility; and (B) the Secretary may adjust the criteria for designation as a health professional shortage area to the extent necessary to make funds appropriated under paragraph (1) available with respect to any medical facility to ensure that the facility does not lose any such designation as a result of such decisions by health professionals.''.

TITLE IV—INDEPENDENT ADVISORY COMMISSION ON MEDICAL MALPRACTICE INSURANCE

SEC. 401. ESTABLISHMENT.

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

(1) The sudden rise in medical malpractice premiums in regions of the United States can threaten patient access to doctors and other health providers.

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

(b) ESTABLISHMENT.—There is established a national commission to be known as the ''Independent Advisory Commission on Medical Malpractice Insurance'' (in this title referred to as the ''Commission'').

SEC. 402. DUTIES.

(a) IN GENERAL.—The Commission shall evaluate the causes and scope of the recent and dramatic increases in medical malpractice insurance premiums and formulate additional proposals to reduce such medical malpractice premiums and make recommendations to avoid any dramatic increases in medical malpractice premiums in the future, in light of proposals for tort reform regarding medical malpractice.

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

(1) Alternatives to the current medical malpractice tort system that would ensure adequate compensation for patients, preserve access to providers, and improve health care safety and quality.

(2) Modifications of, and alternatives to, the existing State and Federal regulations and oversight that affect, or could affect, medical malpractice lines of insurance.

(3) State and Federal reforms that would distribute the risk of medical malpractice more equitably among health care providers.

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

(5) The effect of a Federal medical malpractice reinsurance program administered by the Department of Health and Human Services.

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

(7) Programs that would reduce medical errors and increase patient safety, including new innovations in technology and management.

SEC. 403. REPORT.

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

(1) an initial report not later than 180 days after the date of the initial meeting of the Commission; and

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

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

(c) VOTING AND REPORTING REQUIREMENTS.—With respect to each proposal or recommendation contained in the report submitted under subsection (a), each member of the Commission shall vote on the proposal or recommendation, and the Commission shall include, by member, the results of that vote in the report.

SEC. 404. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 15 members appointed by the Secretary of Health and Human Services.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The membership of the Commission shall include individuals with national recognition for their expertise in health finance and economics, actuarial science, medical malpractice insurance, insurance regulation, health care law, health care policy, health care access, allopathic and osteopathic physicians, other providers of health care services, patient advocacy, and other related fields, who provide a mix of different professionals, broad geographic representations, and a balance between urban and rural representatives.

(2) INCLUSION.—The membership of the Commission shall include the following:

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

(B) Two individuals with expertise in medical malpractice insurance, representing both commercial insurance carriers and physician-sponsored insurance carriers.

(C) An individual with expertise in State insurance regulation and State insurance markets.

(D) An individual representing physicians.

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

(F) Two individuals representing patient interests.

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

(H) An individual with expertise in representing patients in malpractice lawsuits.

(3) MAJORITY.—The total number of individuals who are directly involved with the provision or management of malpractice insurance, representing physicians or other providers, or representing physicians or other providers in malpractice lawsuits, shall not constitute a majority of the membership of the Commission.

(4) ETHICAL DISCLOSURE.—The Secretary of Health and Human Services shall establish a system for public disclosure by members of the Commission of financial or other potential conflicts of interest relating to such members.

(c) TERMS.—

(1) IN GENERAL.—The terms of the members of the Commission shall be for 3 years except that the Secretary of Health and Human Services shall

designate staggered terms for the members first appointed.

(2) VACANCIES.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(3) COMPENSATION.—Members of the Commission shall be compensated in accordance with section 1805(c)(4) of the Social Security Act.

(4) CHAIRMAN; VICE CHAIRMAN.—The Secretary of Health and Human Services shall designate at the time of appointment a member of the Commission as Chairman and a member as Vice Chairman. In the case of vacancy of the Chairmanship or Vice Chairmanship, the Secretary may designate another member for the remainder of that member's term.

(5) MEETINGS.—

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

(B) INITIAL MEETING.—The Commission shall hold an initial meeting not later than the date that is 1 year after the date of the enactment of this title, or the date that is 3 months after the appointment of all the members of the Commission, whichever occurs earlier.

SEC. 405. DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.

Subject to such review as the Secretary of Health and Human Services deems necessary to assure the efficient administration of the Commission, the Commission may—

(1) employ and fix the compensation of an Executive Director (subject to the approval of the Secretary) and such other personnel as may be necessary to carry out its duties (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service);

(2) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

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

(4) make advance, progress, and other payments which relate to the work of the Commission;

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

(6) prescribe such rules and regulations as it deems necessary with respect to the internal organization and operation of the Commission.

SEC. 406. POWERS.

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

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

(1) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in accordance with this section, including data collected by the Administrator of the Medical Malpractice Insurance Information Administration under section 501;

(2) carry out, or award grants or contracts for, original research and experimentation, where existing information is inadequate; and

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

(c) ACCESS OF GENERAL ACCOUNTING OFFICE TO INFORMATION.—The Comptroller General of the United States shall have unrestricted access to all deliberations, records, and nonproprietary data of the Commission, immediately upon request.

(d) PERIODIC AUDIT.—The Commission shall be subject to periodic audit by the Comptroller General of the United States.

SEC. 407. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out this title for each of fiscal years 2005 through 2009.

(b) REQUESTS FOR APPROPRIATIONS.—The Commission shall submit requests for appropriations in the same manner as the Secretary of Health and Human Services submits requests for appropriations, but amounts appropriated for the Commission shall be separate from amounts appropriated for the Secretary.

TITLE V—MEDICAL MALPRACTICE INSURANCE INFORMATION ADMINISTRATION

SEC. 501. ESTABLISHMENT.

(a) IN GENERAL.—Within the Department of Health and Human Services there is established the Medical Malpractice Insurance Information Administration to be headed by an Administrator (in this title referred to as the ''Administration''), appointed by the Secretary of Health and Human Services.

(b) DUTIES.—Not later than 180 days after the date of the enactment of this Act the Administrator shall, by regulation, identify the types of data that are necessary to properly evaluate the medical malpractice insurance market. Such types of data shall include at least the following:

(1) The frequency of medical malpractice claims paid.

(2) The severity of medical malpractice claims paid.

(3) The portion of losses for medical malpractice claims as part of settlements.

(4) The portion of losses for medical malpractice claims both awarded and paid as the result of trial verdicts.

(5) The division of losses for medical malpractice claims between economic and noneconomic damages.

(c) REQUIREMENT FOR REPORTING.—In order to collect the types of data identified under subsection (b), the Administrator shall require any person issuing medical malpractice insurance policies, or paying claims pursuant to such a policy, to submit the data of the types described in subsection (b) in a manner and a frequency that would allow for analysis to identify local, State, regional and national trends in the medical malpractice insurance markets.

(d) COMPLIANCE.—

(1) INJUNCTIVE RELIEF.—The Administrator may seek such injunctive and remedial relief as may be necessary to compel the submittal of data under subsection (c).

(2) CIVIL MONEY PENALTY.—In addition to the authority provided under paragraph (1), the Administrator is authorized to impose for each for the failure of a person to submit data under subsection (c) a civil money penalty of not to exceed $10,000. The

provisions of section 1128A of the Social Security Act (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a civil money penalty under subsection (a) of such section except that for purposes of this paragraph, any reference to the Secretary is deemed a reference to the Admnistrator.

(e) AVAILABILITY OF INFORMATION.—

(1) TO INDEPENDENT COMMISSION.—Information submitted to the Administrator under this section shall be available to the Independent Advisory Commission on Medical Malpractice Insurance, established under section 401(b).

(2) TO PUBLIC.—Information submitted to the Administrator under this section shall be made available to the public in a form that does not disclose the identity of the person who submitted the information.

SEC. 502. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this section such sums as may be necessary.

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