

111TH CONGRESS
1ST SESSION

H. R. 4007

To authorize the Secretary of Health and Human Services to make grants to 5 States to establish medical malpractice tribunal pilot programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 2009

Mr. LEE of New York (for himself and Mr. HUNTER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To authorize the Secretary of Health and Human Services to make grants to 5 States to establish medical malpractice tribunal pilot programs, 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. MEDICAL TRIBUNAL PILOT PROGRAMS.**

4 (a) AUTHORIZATION.—The Secretary of Health and
5 Human Services is authorized to make grants to 5 States
6 to establish pilot programs under which each medical mal-
7 practice case is heard in the first instance by a medical
8 tribunal composed of a State trial court judge, a physician,
9 and a lawyer.

1 (b) ELIGIBILITY.—The Secretary may only award a
2 grant under this section to a State that—

3 (1) has an average cost of medical malpractice
4 insurance that exceeds the national average of such
5 cost;

6 (2) has not—

7 (A) placed a limit on noneconomic dam-
8 ages in medical malpractice cases; or

9 (B) established or begun to establish a
10 medical tribunal program similar to that de-
11 scribed in subsection (e); and

12 (3) submits an application at such time, in such
13 form, and accompanied by such information and as-
14 surances as the Secretary may require.

15 (c) DURATION OF GRANT.—A grant under this sec-
16 tion shall be awarded over 3 fiscal years.

17 (d) USE OF FUNDS.—A State that receives a grant
18 under this section shall use grant funds to establish and
19 administer a medical tribunal pilot program in accordance
20 with subsection (e).

21 (e) REQUIREMENTS FOR MEDICAL TRIBUNAL PILOT
22 PROGRAM.—The medical tribunal pilot program required
23 by subsection (d) shall include the following elements:

24 (1) HEARING OF CASE IN FIRST INSTANCE.—

25 Each medical malpractice case filed in the courts of

1 the State shall be heard in the first instance by a
2 medical tribunal.

3 (2) DETERMINATION BY MEDICAL TRIBUNAL.—

4 The medical tribunal shall hear all evidence that
5 would be admissible in the courts of the State and
6 determine whether such evidence would be sufficient
7 to support a finding for the plaintiff.

8 (3) EFFECT OF MEDICAL TRIBUNAL'S DETER-
9 MINATION.—

10 (A) If the medical tribunal determines that
11 the evidence would be sufficient to support a
12 finding for the plaintiff, the plaintiff may pur-
13 sue the case through the State's usual judicial
14 process.

15 (B) If the medical tribunal determines that
16 the evidence would be insufficient to support a
17 finding for the plaintiff, the plaintiff may pur-
18 sue the case through the State's usual judicial
19 process only after filing with the clerk of the
20 court in which the case is pending a bond in an
21 amount determined to be appropriate by the
22 State trial court judge serving on the tribunal.

23 (4) COMPOSITION OF MEDICAL TRIBUNAL.—

24 (A) IN GENERAL.—A medical tribunal
25 shall be composed of a State trial court judge,

1 a physician licensed to practice medicine in the
2 State, and a lawyer licensed to practice law in
3 the State.

4 (B) SELECTION OF PHYSICIAN AND LAW-
5 YER.—The State trial court judge who will
6 serve on a medical tribunal shall select the phy-
7 sician from a list provided by the State medical
8 society or association and the lawyer from a list
9 provided by the State bar association.

10 (C) DEFENDANT OTHER THAN PHYSI-
11 CIAN.—If the defendant in a medical mal-
12 practice case is a health care provider other
13 than a physician, then a practitioner in such
14 other field of health care shall serve on the
15 medical tribunal instead of a physician. The
16 State trial court judge who will serve on the tri-
17 bunal shall select such practitioner in a manner
18 the judge considers appropriate.

19 (f) STUDY OF EFFECTIVENESS OF MEDICAL TRIBU-
20 NALS AND REPORT TO CONGRESS.—

21 (1) STUDY.—After the end of the 3rd fiscal
22 year in which grant funds are paid under this sec-
23 tion, the Secretary shall collect from each State that
24 received grant funds the following data:

1 (A) Any change between the 3-year period
2 preceding the State's receipt of grant funds and
3 the period during which it received grant funds,
4 and between the 1st and 2nd and the 2nd and
5 3rd years in which the State received grant
6 funds, in—

7 (i) the average cost of medical mal-
8 practice insurance;

9 (ii) the number of physicians actively
10 practicing medicine;

11 (iii) the number of medical mal-
12 practice liability insurance carriers; and

13 (iv) the amounts paid by medical mal-
14 practice liability insurance carriers pursu-
15 ant to settlements or judgments in cases
16 against their insureds.

17 (B) The percentage of medical malpractice
18 cases considered meritorious by the medical tri-
19 bunal that were settled prior to trial, compared
20 to the percentage of all medical malpractice
21 cases filed in the 3-year period preceding the
22 State's receipt of grant funds that were settled
23 prior to trial.

24 (C) The number of medical malpractice
25 cases considered meritorious by the medical tri-

1 bunal that were tried to a judgment, and the
2 number of such judgments that were for the
3 plaintiff.

4 (D) The number of medical malpractice
5 cases considered nonmeritorious by the medical
6 tribunal that were tried to a judgment, and the
7 number of such judgments that were for the
8 plaintiff.

9 (2) REPORT TO CONGRESS.—Not later than 18
10 months after the end of the 3rd fiscal year in which
11 grant funds are paid under this section, the Sec-
12 retary shall submit to Congress a report setting
13 forth the data collected under paragraph (1).

14 (3) CASES CONSIDERED MERITORIOUS.—For
15 purposes of paragraph (1), a case is considered mer-
16 itorious by the medical tribunal if the tribunal found
17 that the evidence would be sufficient to support a
18 finding for the plaintiff, and a case is considered
19 nonmeritorious by the medical tribunal if the tri-
20 bunal found that the evidence would be insufficient
21 to support a finding for the plaintiff.

22 (g) MEDICAL MALPRACTICE CASE DEFINED.—In
23 this section, the term “medical malpractice case” means
24 a civil action against a health care provider in which the
25 plaintiff alleges harm arising from an error or breach of

1 the standard of care by the health care provider in treating
2 the plaintiff.

3 (h) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated such sums as are nec-
5 essary to carry out this section for fiscal years 2011
6 through 2013.

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