

103^D CONGRESS
2^D SESSION

H. R. 4791

To establish Federal standards for the resolution of health care malpractice claims, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 19, 1994

Mr. GRAMS (for himself, Mr. GINGRICH, Mr. ARMEY, Mr. DELAY, Mr. SOLOMON, Mr. STENHOLM, Mr. HASTERT, Mr. DEAL, Mr. STEARNS, Mr. TALENT, Mr. DREIER, Mr. SAXTON, Mr. KNOLLENBERG, Mr. INHOFE, Mr. ZIMMER, Mr. CALVERT, Mr. STUMP, Mr. TORKILDSSEN, Mr. HEFLEY, Mr. DOOLITTLE, Mr. BAKER of California, Mr. HORN, Mr. KING, Mr. LEWIS of Florida, Mrs. FOWLER, Mr. HANCOCK, Mr. LINDER, Mr. BARCIA of Michigan, and Mr. SMITH of Oregon), introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish Federal standards for the resolution of health care malpractice claims, 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 Fairness Act of 1994”.

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

Sec. 1. Short title; table of contents.

TITLE I—GENERAL PROVISIONS

- Sec. 101. Findings.
- Sec. 102. Definitions.
- Sec. 103. Period of applicability.

TITLE II—FEDERAL REFORM OF HEALTH CARE MALPRACTICE

- Sec. 201. Requirement for initial resolution of action through alternative dispute resolution.
- Sec. 202. Liability of multiple defendants several only.
- Sec. 203. Treatment of noneconomic and punitive damages.
- Sec. 204. General restrictions on payment of damages.
- Sec. 205. Uniform statute of limitations.
- Sec. 206. Treatment of attorney's fees and other costs.
- Sec. 207. Qualifications for expert witnesses.
- Sec. 208. Preemption; effect on sovereign immunity.

TITLE III—REQUIREMENTS FOR ADR

- Sec. 301. Basic requirements for State alternative dispute resolution systems.
- Sec. 302. Certification of State systems; applicability of alternative Federal system.

1 **TITLE I—GENERAL PROVISIONS**2 **SEC. 101. FINDINGS.**

3 Congress finds that—

4 (1) the health care and insurance industries are
 5 industries affecting interstate commerce and the
 6 health care malpractice litigation systems existing
 7 throughout the United States affect interstate com-
 8 merce by contributing to the high cost of health care
 9 and premiums for malpractice insurance purchased
 10 by health care providers; and

11 (2) the Federal Government has a major inter-
 12 est in health care as a direct provider of health care
 13 and as a source of payment for health care, and has
 14 a demonstrated interest in assessing the quality of

1 care, access to care, and the costs of care through
2 the evaluative activities of several Federal agencies.

3 **SEC. 102. DEFINITIONS.**

4 In this Act:

5 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-
6 TEM; ADR.—The term “alternative dispute resolu-
7 tion system” or “ADR” means a system established
8 under this Act that provides for the resolution of
9 health care malpractice claims in a manner other
10 than through health care malpractice actions.

11 (2) CLAIMANT.—The term “claimant” means
12 any person who alleges a health care malpractice
13 claim, and any person on whose behalf such a claim
14 is alleged, including the decedent in the case of an
15 action brought through or on behalf of an estate.

16 (3) ECONOMIC LOSSES.—The term “economic
17 losses” means losses for hospital and medical ex-
18 penses, lost wages, lost employment, and other pecu-
19 niary losses.

20 (4) HEALTH CARE MALPRACTICE ACTION.—The
21 term “health care malpractice action” means a civil
22 action alleging a health care malpractice claim
23 against a health care provider or health care profes-
24 sional or a manufacturer of a medical product.

1 (5) HEALTH CARE MALPRACTICE CLAIM.—The
2 term “health care malpractice claim” means any
3 claim relating to the provision of (or the failure to
4 provide) health care services or the use of a medical
5 product, if the claim is based on negligence or gross
6 negligence, breach of express or implied warranty or
7 contract, or failure to discharge a duty to warn or
8 instruct to obtain consent.

9 (6) HEALTH CARE PROFESSIONAL.—The term
10 “health care professional” means any individual who
11 provides health care services in a State and who is
12 required by State law or regulation to be licensed or
13 certified by the State to provide such services in the
14 State, including (but not limited to) a physician,
15 nurse, chiropractor, nurse midwife, physical thera-
16 apist, social worker, or physician assistant.

17 (7) HEALTH CARE PROVIDER.—The term
18 “health care provider” means any organization or
19 institution that is engaged in the delivery of health
20 care services in a State and that is required by State
21 law or regulation to be licensed or certified by the
22 State to engage in the delivery of such services in
23 the State.

1 (8) INJURY.—The term “injury” means any in-
2 jury, illness, disease, or other harm that is the sub-
3 ject of a health care malpractice claim.

4 (9) MEDICAL PRODUCT.—

5 (A) IN GENERAL.—The term “medical
6 product” means a drug (as defined in section
7 201(g)(1) of the Federal Food, Drug, and Cos-
8 metic Act (21 U.S.C. 321(g)(1)) or a medical
9 device (as defined in section 201(h) of the Fed-
10 eral Food, Drug, and Cosmetic Act (21 U.S.C.
11 321(h)) if—

12 (i) such drug or device was subject to
13 premarket approval under section 505,
14 507, or 515 of the Federal Food, Drug,
15 and Cosmetic Act (21 U.S.C. 355, 357, or
16 360e) or section 351 of the Public Health
17 Service Act (42 U.S.C. 262) with respect
18 to the safety of the formulation or per-
19 formance of the aspect of such drug or de-
20 vice which is the subject of the claimant’s
21 allegation or the adequacy of the packag-
22 ing or labeling of such drug or device, and
23 such drug or device is approved by the
24 Food and Drug Administration; or

1 (ii) the drug or device is generally rec-
2 ognized as safe and effective under regula-
3 tions issued by the Secretary of Health
4 and Human Services under section 201(p)
5 of the Federal Food, Drug, and Cosmetic
6 Act (21 U.S.C. 321(p)).

7 (B) EXCEPTION IN CASE OF MISREPRE-
8 SENTATION OR FRAUD.—Notwithstanding sub-
9 paragraph (A), the term “medical product”
10 shall not include any product described in such
11 subparagraph if it is shown that the product is
12 approved by the Food and Drug Administration
13 for marketing as a result of withheld informa-
14 tion, misrepresentation, or an illegal payment
15 by the manufacturer of the product.

16 (10) NONECONOMIC DAMAGES.—The term
17 “noneconomic damages” means losses for physical
18 and emotional pain, suffering, inconvenience, phys-
19 ical impairment, mental anguish, disfigurement, loss
20 of enjoyment of life, and other nonpecuniary losses,
21 but does not include punitive or exemplary damages.

22 (11) PUNITIVE DAMAGES; EXEMPLARY DAM-
23 AGES.—The terms “punitive damages” and “exem-
24 plary damages” mean compensation, in addition to
25 compensation for actual harm suffered, that is

1 awarded for the purpose of punishing a person for
 2 conduct deemed to be malicious, wanton, willful, or
 3 excessively reckless.

4 (12) SECRETARY.—The term “Secretary”
 5 means the Secretary of Health and Human Services.

6 (13) STATE.—Except as otherwise provided, the
 7 term “State” means each of the several States, the
 8 District of Columbia, Puerto Rico, the Virgin Is-
 9 lands, Guam, American Samoa, and the Northern
 10 Mariana Islands.

11 **SEC. 103. PERIOD OF APPLICABILITY.**

12 The provisions of this Act shall apply to claims initi-
 13 ated during the 5-year period beginning upon the expira-
 14 tion of the 1-year period that begins on the date of the
 15 enactment of this Act.

16 **TITLE II—FEDERAL REFORM OF**
 17 **HEALTH CARE MALPRACTICE**

18 **SEC. 201. REQUIREMENT FOR INITIAL RESOLUTION OF AC-**
 19 **TION THROUGH ALTERNATIVE DISPUTE RES-**
 20 **OLUTION.**

21 (a) IN GENERAL.—

22 (1) STATE CASES.—A health care malpractice
 23 action may not be brought in any State court during
 24 a calendar year unless the health care malpractice
 25 claim that is the subject of the action has been ini-

1 tially resolved under an alternative dispute resolu-
2 tion system certified for the year by the Secretary
3 under section 302(a), or, in the case of a State in
4 which such a system is not in effect for the year,
5 under the alternative Federal system established
6 under section 302(b).

7 (2) FEDERAL DIVERSITY ACTIONS.—A health
8 care malpractice action may not be brought in any
9 Federal court under section 1332 of title 28, United
10 States Code, during a calendar year unless the
11 health care malpractice claim that is the subject of
12 the action has been initially resolved under the alter-
13 native dispute resolution system referred to in para-
14 graph (1) that applied in the State whose law ap-
15 plies in such action.

16 (3) CLAIMS AGAINST UNITED STATES.—

17 (A) ESTABLISHMENT OF PROCESS FOR
18 CLAIMS.—The Attorney General shall establish
19 an alternative dispute resolution process for the
20 resolution of tort claims consisting of health
21 care malpractice claims brought against the
22 United States under chapter 171 of title 28,
23 United States Code. Under such process, the
24 resolution of a claim shall occur after the com-
25 pletion of the administrative claim process ap-

1 plicable to the claim under section 2675 of such
2 title.

3 (B) REQUIREMENT FOR INITIAL RESOLU-
4 TION UNDER PROCESS.—A health care mal-
5 practice action based on a health care mal-
6 practice claim described in subparagraph (A)
7 may not be brought in any Federal court unless
8 the claim has been initially resolved under the
9 alternative dispute resolution process estab-
10 lished by the Attorney General under such sub-
11 paragraph.

12 (b) INITIAL RESOLUTION OF CLAIMS UNDER
13 ADR.—For purposes of subsection (a), an action is “ini-
14 tially resolved” under an alternative dispute resolution
15 system if—

16 (A) the ADR reaches a decision on wheth-
17 er the defendant is liable to the plaintiff for
18 damages; and

19 (B) if the ADR determines that the de-
20 fendant is liable, the ADR reaches a decision on
21 the amount of damages assessed against the de-
22 fendant.

23 (c) PROCEDURES FOR FILING ACTIONS.—

24 (1) NOTICE OF INTENT TO CONTEST DECI-
25 SION.—Not later than 60 days after a decision is is-

1 sued with respect to a health care malpractice claim
2 under an alternative dispute resolution system, each
3 party affected by the decision shall submit a sealed
4 statement to a court of competent jurisdiction indi-
5 cating whether or not the party intends to contest
6 the decision.

7 (2) DEADLINE FOR FILING ACTION.—A health
8 care malpractice action may not be brought by a
9 party unless—

10 (A) the party has filed the notice of intent
11 required by paragraph (1); and

12 (B) the party files the action in a court of
13 competent jurisdiction not later than 90 days
14 after the decision resolving the health care mal-
15 practice claim that is the subject of the action
16 is issued under the applicable alternative dis-
17 pute resolution system.

18 (3) COURT OF COMPETENT JURISDICTION.—
19 For purposes of this subsection, the term “court of
20 competent jurisdiction” means—

21 (A) with respect to actions filed in a State
22 court, the appropriate State trial court; and

23 (B) with respect to actions filed in a Fed-
24 eral court, the appropriate United States dis-
25 trict court.

1 (d) LEGAL EFFECT OF UNCONTESTED ADR DECI-
2 SION.—The decision reached under an alternative dispute
3 resolution system shall, for purposes of enforcement by a
4 court of competent jurisdiction, have the same status in
5 the court as the verdict of a health care malpractice action
6 adjudicated in a State or Federal trial court. The previous
7 sentence shall not apply to a decision that is contested
8 by a party affected by the decision pursuant to subsection
9 (c)(1).

10 **SEC. 202. LIABILITY OF MULTIPLE DEFENDANTS SEVERAL**
11 **ONLY.**

12 The liability of each defendant in a health care mal-
13 practice action shall be several only and shall not be joint,
14 and each defendant's fault shall be determined on the
15 basis of a percentage allocated to the defendant in direct
16 proportion to the defendant's percentage of responsibility
17 (as determined by the trier of fact).

18 **SEC. 203. TREATMENT OF NONECONOMIC AND PUNITIVE**
19 **DAMAGES.**

20 (a) LIMITATION ON AMOUNT OF NONECONOMIC
21 DAMAGES.—The total amount of noneconomic damages
22 that may be awarded to a claimant and the members of
23 the claimant's family for losses resulting from the injury
24 which is the subject of a health care malpractice action
25 may not exceed \$250,000, regardless of the number of

1 parties against whom the action is brought or the number
2 of actions brought with respect to the injury.

3 (b) TREATMENT OF PUNITIVE DAMAGES.—

4 (1) PROHIBITING PUNITIVE DAMAGES EXCEPT
5 IN CASES OF GROSS OR CRIMINAL NEGLIGENCE.—No
6 punitive or exemplary damages may be awarded
7 against any individual with respect to a health care
8 malpractice claim unless the claimant establishes by
9 clear and convincing evidence that the harm suffered
10 by the claimant was the result of conduct manifest-
11 ing deliberate disregard for the health and safety of
12 the claimant or (in the case of a claim arising from
13 the use of a medical product) to the health and safe-
14 ty of those persons who might be harmed by the
15 medical product.

16 (2) LIMITATION CONCERNING CERTAIN
17 AWARDS.—In the case of a health care malpractice
18 claim in which the plaintiff alleges an injury result-
19 ing from the use of a medical product, no punitive
20 or exemplary damages may be awarded against the
21 manufacturer or seller of such product.

22 (3) PAYMENTS TO STATE FOR MEDICAL QUAL-
23 ITY ASSURANCE ACTIVITIES.—

24 (A) IN GENERAL.—Any punitive damages
25 awarded with respect to a health care mal-

1 practice claim shall be paid to the State in
2 which the action is brought or, in a case
3 brought in Federal court, in the State in which
4 the health care services that caused the injury
5 that is the subject of the claim were provided.

6 (B) ACTIVITIES DESCRIBED.—A State
7 shall use amounts paid pursuant to subpara-
8 graph (A) to carry out activities to assure the
9 safety and quality of health care services pro-
10 vided in the State, including (but not limited
11 to)—

12 (i) licensing or certifying health care
13 professionals and health care providers in
14 the State;

15 (ii) operating alternative dispute reso-
16 lution systems;

17 (iii) carrying out public education pro-
18 grams relating to health care malpractice
19 and the availability of alternative dispute
20 resolution systems in the State; and

21 (iv) carrying out programs to reduce
22 malpractice-related costs for retired provid-
23 ers or other providers volunteering to pro-
24 vide services in medically underserved
25 areas.

1 (C) MAINTENANCE OF EFFORT.—A State
2 shall use any amounts paid pursuant to sub-
3 paragraph (A) to supplement and not to replace
4 amounts spent by the State for the activities
5 described in subparagraph (B).

6 **SEC. 204. GENERAL RESTRICTIONS ON PAYMENT OF DAM-**
7 **AGES.**

8 (a) REDUCTIONS FOR CONTRIBUTIONS FROM COL-
9 LATERAL SOURCES.—

10 (1) IN GENERAL.—The total amount of dam-
11 ages received by an individual shall be reduced by
12 any other payment which has been made or which
13 will be made to such individual to compensate such
14 individual for an injury, including payments under—

15 (A) Federal or State disability or sickness
16 programs;

17 (B) Federal, State, or private health insur-
18 ance programs;

19 (C) private disability insurance programs;

20 (D) employer wage continuation programs;

21 and

22 (E) any other source of payment intended
23 to compensate such individual for such injury.

1 (2) ADMISSION AS EVIDENCE.—The availability
2 of a payment described in paragraph (1) shall be
3 made known to the trier of fact.

4 (b) PERIODIC PAYMENT OF DAMAGES FOR FUTURE
5 EXPENSES.—No individual may be required to pay more
6 than \$100,000 in a single payment in damages for ex-
7 penses to be incurred in the future, but shall be permitted
8 to make such payments on a periodic basis. The periods
9 for such payments shall be determined by the court, based
10 on projections of when expenses are likely to be incurred.

11 **SEC. 205. UNIFORM STATUTE OF LIMITATIONS.**

12 (a) IN GENERAL.—Except as provided in subsection
13 (b), no health care malpractice claim may be initiated
14 after the expiration of the 2-year period that begins on
15 the date the alleged injury should reasonably have been
16 discovered, or the expiration of the 4-year period that be-
17 gins on the date the alleged injury occurred, whichever is
18 later.

19 (b) EXCEPTION FOR MINORS UNDER AGE 6.—In the
20 case of an alleged injury suffered by a minor who has not
21 attained 6 years of age, no health care malpractice claim
22 may be initiated after the expiration of the 2-year period
23 that begins on the date the alleged injury should reason-
24 ably have been discovered, but in no event later than 4
25 years after the date the alleged injury occurred or the date

1 on which the minor attains 8 years of age, whichever is
2 later.

3 **SEC. 206. TREATMENT OF ATTORNEY'S FEES AND OTHER**
4 **COSTS.**

5 (a) LIMITATION ON CONTINGENCY FEES.—An attor-
6 ney shall not contract for or collect a contingency fee for
7 representing a claimant in the resolution of a health care
8 malpractice claim in excess of the following:

9 (1) 50 percent of the first \$50,000 (or portion
10 thereof) of the amount recovered by the claimant.

11 (2) 33 $\frac{1}{3}$ percent of the next \$50,000 (or por-
12 tion thereof) of the amount recovered by the claim-
13 ant.

14 (3) 25 percent of the next \$100,000 (or portion
15 thereof) of the amount recovered by the claimant.

16 (4) 10 percent of any additional amounts recov-
17 ered by the claimant in excess of \$200,000.

18 (b) REQUIRING PARTY CONTESTING ADR RULING
19 TO PAY ATTORNEY'S FEES AND OTHER COSTS.—

20 (1) IN GENERAL.—The court in a health care
21 malpractice action shall require the party that (pur-
22 suant to section 201(c)(1)) contested the ruling of
23 the alternative dispute resolution system with re-
24 spect to the health care malpractice claim that is the
25 subject of the action to pay to the opposing party

1 the costs incurred by the opposing party under the
2 action, including attorney's fees, fees paid to expert
3 witnesses, and other litigation expenses (but not in-
4 cluding court costs, filing fees, or other expenses
5 paid directly by the party to the court, or any fees
6 or costs associated with the resolution of the claim
7 under the alternative dispute resolution system), but
8 only if—

9 (A) in the case of an action in which the
10 party that contested the ruling is the claimant,
11 the amount of damages awarded to the party
12 under the action does not exceed the amount of
13 damages awarded to the party under the ADR
14 system by at least 15 percent; and

15 (B) in the case of an action in which the
16 party that contested the ruling is the defendant,
17 the amount of damages assessed against the
18 party under the action is not at least 15 per-
19 cent less than the amount of damages assessed
20 under the ADR system.

21 (2) EXCEPTIONS.—Paragraph (1) shall not
22 apply if—

23 (A) the party contesting the ruling made
24 under the previous alternative dispute resolu-
25 tion system shows that—

1 (i) the ruling was procured by corrup-
2 tion, fraud, or undue means,

3 (ii) there was partiality or corruption
4 under the system,

5 (iii) there was other misconduct under
6 the system that materially prejudiced the
7 party's rights, or

8 (iv) the ruling was based on an error
9 of law;

10 (B) the party contesting the ruling made
11 under the alternative dispute resolution system
12 presents new evidence before the trier of fact
13 that was not available for presentation under
14 the ADR system;

15 (C) the health care malpractice action
16 raised a novel issue of law; or

17 (D) the court finds that the application of
18 such paragraph to a party would constitute an
19 undue hardship, and issues an order waiving or
20 modifying the application of such paragraph
21 that specifies the grounds for the court's deci-
22 sion.

23 (3) REQUIREMENT FOR PERFORMANCE
24 BOND.—The court in a health care malpractice ac-
25 tion shall require the party that (pursuant to section

1 201(c)(1)) contested the ruling of the alternative
2 dispute resolution system with respect to the health
3 care malpractice claim that is the subject of the ac-
4 tion to post a performance bond (in such amount
5 and consisting of such funds and assets as the court
6 determines to be appropriate), except that the court
7 may waive the application of such requirement to a
8 party if the court determines that the posting of
9 such a bond is not necessary to ensure that the
10 party shall meet the requirements of this subsection
11 to pay the opposing party the costs incurred by the
12 opposing party under the action.

13 (4) LIMIT ON ATTORNEY'S FEES PAID.—Attor-
14 neys' fees that are required to be paid under para-
15 graph (1) by the contesting party shall not exceed
16 the amount of the attorneys' fees incurred by the
17 contesting party in the action. If the attorneys' fees
18 of the contesting party are based on a contingency
19 fee agreement, the amount of attorneys' fees for
20 purposes of the preceding sentence shall not exceed
21 the reasonable value of those services.

22 (5) RECORDS.—In order to receive attorneys'
23 fees under paragraph (1), counsel of record in the
24 health care malpractice action involved shall main-
25 tain accurate, complete records of hours worked on

1 the action, regardless of the fee arrangement with
2 the client involved.

3 (c) CONTINGENCY FEE DEFINED.—As used in this
4 section, the term “contingency fee” means any fee for pro-
5 fessional services which is, in whole or in part, contingent
6 upon the recovery of any amount of damages, whether
7 through judgment or settlement.

8 **SEC. 207. QUALIFICATIONS FOR EXPERT WITNESSES.**

9 (a) MEDICAL EXPERTISE.—No individual may testify
10 as an expert witness with respect to a health care mal-
11 practice claim unless the individual has expertise in the
12 relevant issues of medical practice involved in the claim.

13 (b) PAYMENT OF CONTINGENCY FEE PROHIBITED.—
14 The payment made to an expert witness for testimony with
15 respect to a health care malpractice claim may not vary
16 on the basis of the disposition of the claim.

17 **SEC. 208. PREEMPTION; EFFECT ON SOVEREIGN IMMUNITY.**

18 (a) PREEMPTION.—The standards established by this
19 title shall supersede any State law only to the extent that
20 State law establishes higher payment limits, permits the
21 recovery of a greater amount of damages or the awarding
22 of a greater amount of attorney’s fees, or establishes a
23 longer period during which a health care malpractice claim
24 may be initiated.

1 (b) EFFECT ON SOVEREIGN IMMUNITY AND CHOICE
2 OF LAW OR VENUE.—Nothing in this Act shall be con-
3 strued to—

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

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

9 (3) affect the applicability of any provision of
10 the Foreign Sovereign Immunities Act of 1976;

11 (4) preempt State choice-of-law rules with re-
12 spect to claims brought by a foreign nation or a citi-
13 zen of a foreign nation; or

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

19 **TITLE III—REQUIREMENTS FOR** 20 **ADR**

21 **SEC. 301. BASIC REQUIREMENTS FOR STATE ALTERNATIVE** 22 **DISPUTE RESOLUTION SYSTEMS.**

23 (a) IN GENERAL.—A State’s alternative dispute reso-
24 lution system meets the requirements of this section if the
25 system—

1 (1) applies to all health care malpractice claims
2 under the jurisdiction of the courts of that State;

3 (2) requires that a written opinion resolving the
4 dispute be issued not later than 6 months after the
5 date by which each party against whom the claim is
6 filed has received notice of the claim (other than in
7 exceptional cases for which a longer period is re-
8 quired for the issuance of such an opinion), and that
9 the opinion contain—

10 (A) findings of fact relating to the dispute,
11 and

12 (B) a description of the costs incurred in
13 resolving the dispute under the system (includ-
14 ing any fees paid to the individuals hearing and
15 resolving the claim), together with an appro-
16 priate assessment of the costs against any of
17 the parties;

18 (3) requires individuals who hear and resolve
19 claims under the system to meet such qualifications
20 as the State may require (in accordance with regula-
21 tions of the Secretary);

22 (4) is approved by the State or by local govern-
23 ments in the State;

24 (5) with respect to a State system that consists
25 of multiple dispute resolution procedures—

1 (A) permits the parties to a dispute to se-
2 lect the procedure to be used for the resolution
3 of the dispute under the system, and

4 (B) if the parties do not agree on the pro-
5 cedure to be used for the resolution of the dis-
6 pute, assigns a particular procedure to the par-
7 ties;

8 (6) provides for the transmittal to the State
9 agency responsible for monitoring or disciplining
10 health care professionals and health care providers
11 of any findings made under the system that such a
12 professional or provider committed malpractice, un-
13 less, during the 90-day period beginning on the date
14 the system resolves the claim against the profes-
15 sional or provider, the professional or provider
16 brings an action contesting the decision made under
17 the system; and

18 (7) provides for the regular transmittal to the
19 Administrator for Health Care Policy and Research
20 of information on disputes resolved under the sys-
21 tem, in a manner that assures that the identity of
22 the parties to a dispute shall not be revealed.

23 (b) APPLICATION OF STANDARDS TO ALTERNATIVE
24 DISPUTE RESOLUTION.—The provisions of title II shall
25 apply with respect to claims brought under a State alter-

1 native dispute resolution system or the alternative Federal
2 system in the same manner as such provisions apply with
3 respect to health care malpractice actions brought in the
4 State.

5 **SEC. 302. CERTIFICATION OF STATE SYSTEMS; APPLICABIL-**
6 **ITY OF ALTERNATIVE FEDERAL SYSTEM.**

7 (a) CERTIFICATION.—

8 (1) IN GENERAL.—Not later than 9 months
9 after the date of the enactment of this Act and peri-
10 odically thereafter, the Secretary, in consultation
11 with the Attorney General, shall determine whether
12 a State's alternative dispute resolution system meets
13 the requirements of this part for the following cal-
14 endar year.

15 (2) BASIS FOR CERTIFICATION.—The Secretary
16 shall certify a State's alternative dispute resolution
17 system under this subsection for a calendar year if
18 the Secretary determines under paragraph (1) that
19 the system meets the requirements of section 301.

20 (b) APPLICABILITY OF ALTERNATIVE FEDERAL SYS-
21 TEM.—

22 (1) ESTABLISHMENT AND APPLICABILITY.—
23 Not later than 9 months after the date of the enact-
24 ment of this Act, the Secretary, in consultation with
25 the Attorney General, shall establish by rule an al-

1 ternative Federal ADR system for the resolution of
2 health care malpractice claims during a calendar
3 year in States that do not have in effect an alter-
4 native dispute resolution system certified under sub-
5 section (a) for the year.

6 (2) REQUIREMENTS FOR SYSTEM.—Under the
7 alternative Federal ADR system established under
8 paragraph (1)—

9 (A) paragraphs (1), (2), (6), and (7) of
10 section 301(a) shall apply to claims brought
11 under the system;

12 (B) if the system provides for the resolu-
13 tion of claims through arbitration, the claims
14 brought under the system shall be heard and
15 resolved by arbitrators appointed by the Sec-
16 retary in consultation with the Attorney Gen-
17 eral; and

18 (C) with respect to a State in which the
19 system is in effect, the Secretary may (at the
20 State's request) modify the system to take into
21 account the existence of dispute resolution pro-
22 cedures in the State that affect the resolution
23 of health care malpractice claims.

24 (3) TREATMENT OF STATES WITH ALTER-
25 NATIVE SYSTEM IN EFFECT.—If the alternative Fed-

1 eral ADR system established under this subsection is
2 applied with respect to a State for a calendar year—

3 (A) the State shall reimburse the United
4 States (at such time and in such manner as the
5 Secretary may require) for the costs incurred
6 by the United States during the year as a result
7 of the application of the system with respect to
8 the State; and

9 (B) notwithstanding any other provision of
10 law, no funds may be paid to the State (or to
11 any unit of local government in the State) or to
12 any entity in the State pursuant to the Public
13 Health Service Act.

○

HR 4791 IH——2