H. R. 1124

To reduce the cost of medical malpractice insurance, to enhance patient access to medical care, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2003

Mr. Dingell (for himself, Mr. Brown of Ohio, Mr. Towns, Mr. Pallone, Mr. Deutch, Mr. Rush, Ms. Eshoo, Mr. Engel, Mr. Green of Texas, Ms. McCarthy of Missouri, Ms. DeGette, Mrs. Capps, Ms. Solis, Mr. Andrews, and Mr. DeFazio) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, 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

A BILL

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.
4 This Act may be cited as the “Medical Malpractice
5 Reform Act of 2003”. 
TITLE I—HEALTH PROVIDER SHORTAGES RESULTING FROM COSTS OF MEDICAL MALPRACTICE INSURANCE

SEC. 101. 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. 102. 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 2003 through 2006. 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 II—TORT REFORM REGARDING MEDICAL MALPRACTICE
Subtitle A—Medical Malpractice Litigation Reform

SEC. 201. STATUTE OF LIMITATIONS.

(a) In General.—In any State or Federal court, 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 became 18 years of age.
(c) APPLICABILITY.—This section shall apply to any injury occurring after the date of the enactment of this Act.

SEC. 202. ATTORNEY CERTIFICATE OF MERIT.

(a) IN GENERAL.—In any State or Federal court, 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 non-frivolous 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.

(b) SANCTIONS.—If, after notice and a reasonable opportunity to respond, the court determines that a person,
in certifying under subsection (a), has violated that subsection, the court shall impose an appropriate sanction upon the attorneys, law firms, or parties that have violated that subsection or are responsible for the violation. Any sanction or relief available under Rule 11 of the Federal Rules of Civil Procedure shall be available under this section.

(c) Coordination With Other Sanctions.—A sanction imposed under this section shall be in addition to any other sanction available under any other law.

(d) Applicability.—This section shall apply to any complaint filed after the date of the enactment of this Act.

SEC. 203. LIMITATION ON PUNITIVE DAMAGES.

(a) In General.—In any State or Federal court, punitive damages may not be awarded on 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 subtitle B. The court shall appoint the Secretary of Health and Human Services as such trustee.

(c) Exception.—This subsection 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.

SEC. 204. 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 subtitle;

(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 (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. 205. DEFINITIONS.

In this subtitle:

(1) 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.

(2) The term “medical malpractice action” means an action 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.
Subtitle B—Use of Amounts Recovered as Punitive Damages in Medical Malpractice Actions

SEC. 221. AMOUNTS COVERED.

(a) In General.—This subtitle applies to amounts allocated to the Secretary of Health and Human Services as trustee under section 203.

(b) Availability.—Such amounts shall be available for use by the Secretary of Health and Human Services under section 222 and shall remain so available until expended.

SEC. 222. USE OF AMOUNTS.

(a) In General.—Subject to subsection (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 subtitle applies for activities to reduce medical errors and improve patient safety.

(b) No Funds for Mandatory Reporting System.—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) Regulations.—The Secretary of Health and Human Services shall promulgate regulations to establish programs and procedures for carrying out this section.

SEC. 223. INVESTMENT.

(a) In General.—The Secretary of Health and Human Services shall invest the amounts to which this subtitle 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) Sale of Obligations.—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.

TITLE III—INDEPENDENT ADVISORY COMMISSION ON MEDICAL MALPRACTICE INSURANCE

SEC. 301. 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. 302. 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) The effect of Federal laws on the pricing of medical malpractice insurance.

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

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

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

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

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

SEC. 303. 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.

(e) 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. 304. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 15 members appointed by the Comptroller General of the United States.

(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
dservices, patient advocacy, and other related fields,
who provide a mix of different professionals, broad
gеographic representations, and a balance between
urban and rural representatives.

(2) INCLUSION.—The membership of the Com-
mission 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 med-
icial malpractice insurance, representing both
commercial insurance carriers and physician-
sponsored insurance carriers.

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

(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 Comptroller General of the United States 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 Comptroller General of the United States 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 ap-
pointed 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 Comptroller General of the United States 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 Comptroller General 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. 305. DIRECTOR AND STAFF; EXPERTS AND CONSULT-
ANTS.
Subject to such review as the Comptroller General of
the United States deems necessary to assure the efficient
administration of the Commission, the Commission may—

(1) employ and fix the compensation of an Ex-
cecutive Director (subject to the approval of the
Comptroller General) and such other personnel as
may be necessary to carry out its duties (without re-
gard 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 ap-
propriate Federal departments and agencies;

(3) enter into contracts or make other arrange-
ments, 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 pay-
ments 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. 306. 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;

(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.

(e) 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, im-
mediately upon request.

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

SEC. 307. AUTHORIZATION OF APPROPRIATIONS.

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

(b) Requests for Appropriations.—The Commis-
sion shall submit requests for appropriations in the same
manner as the Comptroller General of the United States
submits requests for appropriations, but amounts appro-
piated for the Commission shall be separate from
amounts appropriated for the Comptroller General.