

104TH CONGRESS
1ST SESSION

H. R. 352

To establish uniform national standards for the resolution of medical malpractice claims, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1995

Mr. PORTER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish uniform national standards for the resolution of medical 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”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings; purpose.

TITLE I—UNIFORM STANDARDS FOR MALPRACTICE CLAIMS

Sec. 101. Applicability.

- Sec. 102. Requirement for initial resolution of action through alternative dispute resolution.
- Sec. 103. Procedural requirements for filing of actions.
- Sec. 104. Treatment of noneconomic and punitive damages.
- Sec. 105. Periodic payments for future losses.
- Sec. 106. Treatment of attorney's fees and other costs.
- Sec. 107. Uniform statute of limitations.
- Sec. 108. Special provision for certain obstetric services.
- Sec. 109. Optional application of practice guidelines.
- Sec. 110. Jurisdiction of Federal courts.
- Sec. 111. Preemption.

TITLE II—REQUIREMENTS FOR STATE ALTERNATIVE DISPUTE
RESOLUTION SYSTEMS (ADR)

- Sec. 201. Basic requirements.
- Sec. 202. Certification of State systems; applicability of alternative Federal system.
- Sec. 203. Reports on implementation and effectiveness of alternative dispute resolution systems.

TITLE III—DEFINITIONS

- Sec. 301. Definitions.

1 SEC. 2. FINDINGS; PURPOSE.

2 (a) FINDINGS.—Congress finds that—

3 (1) the costs of health care consume more than
4 14 percent of the Gross Domestic Product of the
5 United States, significantly affecting interstate com-
6 merce and the budget of the Federal Government;

7 (2) claims for medical malpractice are a signifi-
8 cant factor in the cost of health care and cause phy-
9 sicians, hospitals, and other health care providers to
10 undertake diagnostic tests and procedures partly as
11 defensive measures against the possibility of mal-
12 practice claims;

13 (3) the health care and insurance industries are
14 industries affecting interstate commerce and the

1 medical malpractice litigation systems existing
2 throughout the United States affect interstate com-
3 merce by contributing to the high cost of health care
4 and premiums for malpractice insurance purchased
5 by health care providers; and

6 (4) the Federal Government has a major inter-
7 est in health care as a direct provider of health care
8 and as a source of payment for health care, and has
9 a demonstrated interest in assessing the quality of
10 care, access to care, and the costs of care through
11 the evaluative activities of several Federal agencies.

12 (b) PURPOSE.—It is the purpose of this Act to—

13 (1) develop alternative dispute resolution proce-
14 dures to attain a more efficient, expeditious, and eq-
15 uitable resolution of health care malpractice dis-
16 putes;

17 (2) enhance general knowledge concerning the
18 benefits of different forms of alternative dispute res-
19 olution mechanisms; and

20 (3) establish uniformity and curb excesses in
21 the State-based medical liability systems through
22 Federally mandated reforms.

1 **TITLE I—UNIFORM STANDARDS**
2 **FOR MALPRACTICE CLAIMS**

3 **SEC. 101. APPLICABILITY.**

4 Except as provided in section 111, this Act shall
5 apply to any medical malpractice liability action brought
6 in a Federal or State court, and to any medical mal-
7 practice claim subject to an alternative dispute resolution
8 system, that is initiated on or after January 1, 1997.

9 **SEC. 102. REQUIREMENT FOR INITIAL RESOLUTION OF AC-**
10 **TION THROUGH ALTERNATIVE DISPUTE RES-**
11 **OLUTION.**

12 (a) IN GENERAL.—

13 (1) STATE CASES.—A medical malpractice li-
14 ability action may not be brought in any State court
15 during a calendar year unless the medical mal-
16 practice claim that is the subject of the action has
17 been initially resolved under an alternative dispute
18 resolution system certified for the year by the Sec-
19 retary under section 202(a), or, in the case of a
20 State in which such a system is not in effect for the
21 year, under the alternative Federal system estab-
22 lished under section 202(b).

23 (2) FEDERAL DIVERSITY ACTIONS.—A medical
24 malpractice liability action may not be brought in
25 any Federal court under section 1332 of title 28,

1 United States Code, during a calendar year unless
2 the medical malpractice claim that is the subject of
3 the action has been initially resolved under the alter-
4 native dispute resolution system referred to in para-
5 graph (1) that applied in the State whose law ap-
6 plies in such action.

7 (3) CLAIMS AGAINST UNITED STATES.—

8 (A) ESTABLISHMENT OF PROCESS FOR
9 CLAIMS.—The Attorney General shall establish
10 an alternative dispute resolution process for the
11 resolution of tort claims consisting of medical
12 malpractice claims brought against the United
13 States under chapter 171 of title 28, United
14 States Code. Under such process, the resolution
15 of a claim shall occur after the completion of
16 the administrative claim process applicable to
17 the claim under section 2675 of such title.

18 (B) REQUIREMENT FOR INITIAL RESOLU-
19 TION UNDER PROCESS.—A medical malpractice
20 liability action based on a medical malpractice
21 claim described in subparagraph (A) may not
22 be brought in any Federal court unless the
23 claim has been initially resolved under the alter-
24 native dispute resolution process established by
25 the Attorney General under such subparagraph.

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

5 (1) the ADR reaches a decision on whether the
6 defendant is liable to the plaintiff for damages; and

7 (2) if the ADR determines that the defendant
8 is liable, the ADR reaches a decision on the amount
9 of damages assessed against the defendant.

10 (c) LEGAL EFFECT OF UNCONTESTED ADR DECI-
11 SION.—If no party files a notice of intent to contest a deci-
12 sion reached under an alternative dispute resolution sys-
13 tem pursuant to section 103(a)(1), the decision shall be
14 enforced by a court of competent jurisdiction in the same
15 manner as the verdict of a medical malpractice liability
16 action adjudicated in a State or Federal trial court.

17 **SEC. 103. PROCEDURAL REQUIREMENTS FOR FILING OF**
18 **ACTIONS.**

19 (a) PROCEDURES FOR FILING ACTIONS AFTER DECI-
20 SION.—

21 (1) NOTICE OF INTENT TO CONTEST DECI-
22 SION.—Not later than 60 days after a decision is is-
23 sued with respect to a medical malpractice claim
24 under an alternative dispute resolution system, each
25 party affected by the decision shall submit a sealed

1 statement to a court of competent jurisdiction indi-
2 cating whether or not the party intends to contest
3 the decision.

4 (2) DEADLINE FOR FILING ACTION.—A medical
5 malpractice liability action may not be brought by a
6 party unless—

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

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

15 (3) COURT OF COMPETENT JURISDICTION.—
16 For purposes of this subsection, the term “court of
17 competent jurisdiction” means—

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

20 (B) with respect to actions filed in a Fed-
21 eral court, the appropriate United States dis-
22 trict court.

23 (b) CERTIFICATE OF MERIT.—

24 (1) IN GENERAL.—Each individual who files a
25 notice of intent to contest a decision under the alter-

1 native dispute resolution system pursuant to sub-
2 section (a)(1) shall, not later than 90 days after the
3 applicable medical malpractice liability action is
4 filed—

5 (A) submit a certificate of merit described
6 in subsection (b); or

7 (B) post a surety (or equivalent security)
8 bond of \$4,000 (or, during the 45-day period
9 that begins on the date the action is filed, a
10 cost bond of \$2,000) with the court.

11 (2) EXTENSION OF DEADLINE.—On the motion
12 of any party to the action or upon a written agree-
13 ment of the parties filed with the court, the court
14 may extend the deadline specified in paragraph (1)
15 for a period not to exceed 30 days.

16 (3) WAIVER FOR GOOD CAUSE.—The court may
17 waive the application of paragraph (1) to a plaintiff
18 if the plaintiff shows good cause that such para-
19 graph should not apply.

20 (4) CERTIFICATE OF MERIT DESCRIBED.—In
21 this subsection, a “certificate of merit” means—

22 (A) with respect to a plaintiff, an affidavit
23 declaring that the individual (or the individual’s
24 attorney) has obtained a written opinion from a
25 medical expert who is knowledgeable of the rel-

1 evant medical issues involved in the action that
2 the defendant was negligent and the defend-
3 ant's conduct was a proximate cause of the al-
4 leged injury that is the subject of the action;
5 and

6 (B) with respect to a defendant, an affida-
7 vit declaring that the individual (or the individ-
8 ual's attorney) has obtained a written opinion
9 from a medical expert who is knowledgeable of
10 the relevant medical issues involved in the ac-
11 tion that the defendant followed the appropriate
12 standards or procedures and exercised due care,
13 and that the defendant's conduct was not the
14 proximate cause of the alleged injury that is the
15 subject of the action.

16 (c) EFFECT OF FAILURE TO MEET REQUIREMENT
17 TO FILE CERTIFICATE.—If an individual fails to file a cer-
18 tificate of merit with respect to a medical malpractice li-
19 ability action under subsection (b)—

20 (1) if the individual is a plaintiff, the court
21 shall dismiss the action without prejudice to the
22 refiling of the action by the individual;

23 (2) if the individual is a defendant, the court
24 shall award judgment to the plaintiff based on the
25 plaintiff's pleadings; and

1 (3) the court shall require the individual to pay
2 any court costs incurred by the opposing parties as
3 a result of the filing of the action.

4 (d) JUDICIAL NOTICE OF DECISION UNDER ADR
5 SYSTEM.—A medical malpractice liability action brought
6 after a decision on the claim that is the subject of the
7 action has been reached under an alternative dispute reso-
8 lution system shall be tried de novo, except that the court
9 shall take judicial notice of such decision and (in the case
10 of an action tried by a jury) shall read the decision to
11 the jury prior to any opening statements and make the
12 decision available to the jury during the trial.

13 **SEC. 104. TREATMENT OF NONECONOMIC AND PUNITIVE**
14 **DAMAGES.**

15 (a) LIMITATION ON NONECONOMIC DAMAGES.—The
16 total amount of noneconomic damages that may be award-
17 ed to a claimant and the members of the claimant's family
18 for losses resulting from the injury which is the subject
19 of a medical malpractice liability action may not exceed
20 \$250,000, regardless of the number of parties against
21 whom the action is brought or the number of actions
22 brought with respect to the injury.

23 (b) TREATMENT OF PUNITIVE DAMAGES AWARDED
24 AGAINST MANUFACTURER OF MEDICAL PRODUCT.—

1 (1) LIMITATION ON AMOUNT OF AWARD.—The
2 total amount of punitive or exemplary damages that
3 may be awarded with respect to an injury which is
4 the subject of a medical malpractice liability action
5 may not exceed twice the total amount of other dam-
6 ages awarded with respect to the injury.

7 (2) DISTRIBUTION OF AWARD.—Of the total
8 amount of any punitive damages awarded in a medi-
9 cal malpractice liability action, 50 percent shall be
10 paid to the claimant and 50 percent shall be paid to
11 the State in which the action is brought (or, in a
12 case brought in Federal court, in the State in which
13 the health care services that caused the injury that
14 is the subject of the action were provided) for the
15 purposes of carrying out the activities described in
16 paragraph (3).

17 (3) ACTIVITIES DESCRIBED.—A State shall use
18 amounts paid pursuant to paragraph (2) to carry
19 out activities to assure the safety and quality of
20 health care services provided in the State, including
21 (but not limited to)—

22 (A) implementing health care quality as-
23 surance programs;

24 (B) carrying out programs to reduce mal-
25 practice-related costs for providers volunteering

1 to provide services in medically underserved
2 areas; and

3 (C) implementing and operating a State al-
4 ternative dispute resolution system certified by
5 the Secretary under section 203.

6 (4) MAINTENANCE OF EFFORT.—A State shall
7 use any amounts paid pursuant to paragraph (2) to
8 supplement and not to replace amounts spent by the
9 State for the activities described in paragraph (3).

10 (c) SEVERAL LIABILITY FOR NONECONOMIC DAM-
11 AGES.—The liability of each defendant for noneconomic
12 damages shall be several only and shall not be joint, and
13 each defendant shall be liable only for the amount of non-
14 economic damages allocated to the defendant in direct pro-
15 portion to the defendant's percentage of responsibility (as
16 determined by the trier of fact).

17 **SEC. 105. PERIODIC PAYMENTS FOR FUTURE LOSSES.**

18 (a) PERIODIC PAYMENTS PERMITTED.—

19 (1) IN GENERAL.—In any medical malpractice
20 liability action in which the damages awarded for fu-
21 ture economic loss exceeds \$100,000, a defendant
22 may not be required to pay such damages in a sin-
23 gle, lump-sum payment, but may be permitted to
24 make such payments on a periodic basis if the
25 court—

1 (A) determines that economic damages in-
2 curred through the date of the award shall be
3 paid;

4 (B) bases the periods for such payments
5 upon projections of when such expenses are
6 likely to be incurred; and

7 (C) determines that the periodic payments
8 are adequately secured.

9 (b) WAIVER.—A court may waive the application of
10 subsection (a) with respect to a defendant if the court de-
11 termines that it is not in the best interests of the plaintiff
12 to receive payments for damages on such a periodic basis.

13 **SEC. 106. TREATMENT OF ATTORNEY'S FEES AND OTHER**
14 **COSTS.**

15 (a) REQUIRING PARTY CONTESTING ADR RULING
16 TO PAY ATTORNEY'S FEES AND OTHER COSTS.—

17 (1) IN GENERAL.—The court in a medical mal-
18 practice liability action shall require the party that
19 (pursuant to section 103(a)(1)) contested the ruling
20 of the alternative dispute resolution system with re-
21 spect to the medical malpractice claim that is the
22 subject of the action to pay to the opposing party
23 the costs incurred by the opposing party under the
24 action, including attorney's fees, fees paid to expert
25 witnesses, and other litigation expenses (but not in-

1 cluding court costs, filing fees, or other expenses
2 paid directly by the party to the court, or any fees
3 or costs associated with the resolution of the claim
4 under the alternative dispute resolution system), but
5 only if—

6 (A) in the case of an action in which the
7 party that contested the ruling is the claimant,
8 the amount of damages awarded to the party
9 under the action is less than the amount of
10 damages awarded to the party under the ADR
11 system; and

12 (B) in the case of an action in which the
13 party that contested the ruling is the defendant,
14 the amount of damages assessed against the
15 party under the action is greater than the
16 amount of damages assessed under the ADR
17 system.

18 (2) EXCEPTIONS.—Paragraph (1) shall not
19 apply if—

20 (A) the party contesting the ruling made
21 under the previous alternative dispute resolu-
22 tion system shows that—

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

1 (ii) there was partiality or corruption
2 under the system,

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

6 (iv) the ruling was based on an error
7 of law;

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

13 (C) the medical malpractice liability action
14 raised a novel issue of law; or

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

21 (3) LIMIT ON ATTORNEY'S FEES PAID.—Attor-
22 neys' fees that are required to be paid under para-
23 graph (1) by the contesting party shall not exceed
24 the amount of the attorneys' fees incurred by the
25 contesting party in the action. If the attorneys' fees

1 of the contesting party are based on a contingency
2 fee agreement, the amount of attorneys' fees for
3 purposes of the preceding sentence shall not exceed
4 the reasonable value of those services.

5 (4) RECORDS.—In order to receive attorneys'
6 fees under paragraph (1), counsel of record in the
7 medical malpractice liability action involved shall
8 maintain accurate, complete records of hours worked
9 on the action, regardless of the fee arrangement
10 with the client involved.

11 (b) CONTINGENCY FEE DEFINED.—As used in this
12 section, the term “contingency fee” means any fee for pro-
13 fessional legal services which is, in whole or in part, con-
14 tingent upon the recovery of any amount of damages,
15 whether through judgment or settlement.

16 **SEC. 107. UNIFORM STATUTE OF LIMITATIONS.**

17 (a) IN GENERAL.—Except as provided in subsection
18 (b), no medical malpractice claim may be initiated after
19 the expiration of the 2-year period that begins on the date
20 on which the alleged injury that is the subject of such
21 claim was discovered, but in no event may such a claim
22 be initiated after the expiration of the 4-year period that
23 begins on the date on which the alleged injury that is the
24 subject of such claim occurred.

1 (b) EXCEPTION FOR MINORS.—In the case of an al-
2 leged injury suffered by a minor who has not attained 6
3 years of age, a medical malpractice claim may not be initi-
4 ated after the expiration of the 2-year period that begins
5 on the date on which the alleged injury that is the subject
6 of such claim was discovered or should reasonably have
7 been discovered, but in no event may such a claim be initi-
8 ated after the date on which the minor attains 12 years
9 of age.

10 **SEC. 108. SPECIAL PROVISION FOR CERTAIN OBSTETRIC**
11 **SERVICES.**

12 (a) IN GENERAL.—In the case of a medical mal-
13 practice claim relating to services provided during labor
14 or the delivery of a baby, if the health care professional
15 or health care provider against whom the claim is brought
16 did not previously treat the claimant for the pregnancy,
17 the trier of fact may not find that such professional or
18 provider committed malpractice and may not assess dam-
19 ages against such professional or provider unless the mal-
20 practice is proven by clear and convincing evidence.

21 (b) APPLICABILITY TO GROUP PRACTICES OR
22 AGREEMENTS AMONG PROVIDERS.—For purposes of sub-
23 section (a), a health care professional shall be considered
24 to have previously treated an individual for a pregnancy
25 if the professional is a member of a group practice whose

1 members previously treated the individual for the preg-
2 nancy or is providing services to the individual during
3 labor or the delivery of a baby pursuant to an agreement
4 with another professional.

5 **SEC. 109. OPTIONAL APPLICATION OF PRACTICE GUIDE-**
6 **LINES.**

7 (a) DEVELOPMENT AND CERTIFICATION OF GUIDE-
8 LINES.—Each State may develop, for certification by the
9 Secretary, a set of specialty clinical practice guidelines,
10 based on recommended guidelines from national specialty
11 societies, to be updated annually. In the absence of rec-
12 ommended guidelines from such societies, each State may
13 develop such guidelines based on such criteria as the State
14 considers appropriate (including based on recommended
15 guidelines developed by the Agency for Health Care Policy
16 and Research).

17 (b) PROVISION OF HEALTH CARE UNDER GUIDE-
18 LINES.—Notwithstanding any other provision of law, in
19 any medical malpractice liability action arising from the
20 conduct of a health care provider or health care profes-
21 sional, if such conduct was in accordance with a guideline
22 developed by the State in which the conduct occurred and
23 certified by the Secretary under subsection (a), the guide-
24 line—

1 (1) may be introduced by any party to the ac-
2 tion (including a health care provider, health care
3 professional, or patient); and

4 (2) if introduced, shall establish a rebuttable
5 presumption that the conduct was in accordance
6 with the appropriate standard of medical care, which
7 may only be overcome by the presentation of clear
8 and convincing evidence on behalf of the party
9 against whom the presumption operates.

10 **SEC. 110. JURISDICTION OF FEDERAL COURTS.**

11 Nothing in this Act shall be construed to establish
12 jurisdiction over any medical malpractice liability action
13 in the district courts of the United States on the basis
14 of sections 1331 or 1337 of title 28, United States Code.

15 **SEC. 111. PREEMPTION.**

16 (a) **IN GENERAL.**—This Act supersedes any State
17 law only to the extent that the State law permits the recov-
18 ery by a claimant or the assessment against a defendant
19 of a greater amount of damages or establishes a less strict
20 standard of proof for determining whether a defendant has
21 committed malpractice, than the provisions of this Act.

22 (b) **EFFECT ON SOVEREIGN IMMUNITY AND CHOICE**
23 **OF LAW OR VENUE.**—Nothing in this Act shall be con-
24 strued to—

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

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

6 (3) affect the applicability of any provision of
7 the Foreign Sovereign Immunities Act of 1976;

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

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

16 **TITLE II—REQUIREMENTS FOR**
17 **STATE ALTERNATIVE DIS-**
18 **PUTE RESOLUTION SYSTEMS**
19 **(ADR)**

20 **SEC. 201. BASIC REQUIREMENTS.**

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

24 (1) applies to all medical malpractice claims
25 under the jurisdiction of the courts of that State;

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

8 (A) findings of fact relating to the dispute,

9 and

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

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

20 (4) is approved by the State or by local govern-
21 ments in the State;

22 (5) with respect to a State system that consists
23 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 MALPRACTICE LIABILITY
24 STANDARDS TO ALTERNATIVE DISPUTE RESOLUTION.—
25 The provisions of part 1 (other than section 102) shall

1 apply with respect to claims brought under a State alter-
2 native dispute resolution system or the alternative Federal
3 system in the same manner as such provisions apply with
4 respect to medical malpractice liability actions brought in
5 the State.

6 **SEC. 202. CERTIFICATION OF STATE SYSTEMS; APPLICABIL-**
7 **ITY OF ALTERNATIVE FEDERAL SYSTEM.**

8 (a) CERTIFICATION.—

9 (1) IN GENERAL.—Not later than October 1 of
10 each year (beginning with 1996), the Secretary, in
11 consultation with the Attorney General, shall deter-
12 mine whether a State’s alternative dispute resolution
13 system meets the requirements of this title for the
14 following calendar 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 201,
20 including the requirement described in section 104
21 that punitive damages awarded under the system are
22 paid to the State for the uses described in such sec-
23 tion.

24 (b) APPLICABILITY OF ALTERNATIVE FEDERAL SYS-
25 TEM.—

1 (1) ESTABLISHMENT AND APPLICABILITY.—
2 Not later than October 1, 1996, the Secretary, in
3 consultation with the Attorney General, shall estab-
4 lish by rule an alternative Federal ADR system for
5 the resolution of medical malpractice claims during
6 a calendar year in States that do not have in effect
7 an alternative dispute resolution system certified
8 under subsection (a) for the year.

9 (2) REQUIREMENTS FOR SYSTEM.—Under the
10 alternative Federal ADR system established under
11 paragraph (1)—

12 (A) paragraphs (1), (2), (6), and (7) of
13 section 201(a) shall apply to claims brought
14 under the system;

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

21 (C) with respect to a State in which the
22 system is in effect, the Secretary may (at the
23 State's request) modify the system to take into
24 account the existence of dispute resolution pro-

1 cedures in the State that affect the resolution
2 of medical malpractice claims.

3 (3) TREATMENT OF STATES WITH ALTERNATIVE SYSTEM IN EFFECT.—If the alternative Federal ADR system established under this subsection is applied with respect to a State for a calendar year, the State shall make a payment to the United States (at such time and in such manner as the Secretary may require) in an amount equal to 110 percent of the costs incurred by the United States during the year as a result of the application of the system with respect to the State.

13 **SEC. 203. REPORTS ON IMPLEMENTATION AND EFFECTIVENESS OF ALTERNATIVE DISPUTE RESOLUTION SYSTEMS.**

16 (a) IN GENERAL.—Not later than 5 years after the date of the enactment of this Act, the Secretary shall prepare and submit to the Congress a report describing and evaluating State alternative dispute resolution systems operated pursuant to this title and the alternative Federal system established under section 202(b).

22 (b) CONTENTS OF REPORT.—The Secretary shall include in the report prepared and submitted under subsection (a)—

25 (1) information on—

1 (A) the effect of the alternative dispute
2 resolution systems on the cost of health care
3 within each State,

4 (B) the impact of such systems on the ac-
5 cess of individuals to health care within the
6 State, and

7 (C) the effect of such systems on the qual-
8 ity of health care provided within the State; and

9 (2) to the extent that such report does not pro-
10 vide information on no-fault systems operated by
11 States as alternative dispute resolution systems pur-
12 suant to this title, an analysis of the feasibility and
13 desirability of establishing a system under which
14 medical malpractice claims shall be resolved on a no-
15 fault basis.

16 **TITLE III—DEFINITIONS**

17 **SEC. 301. DEFINITIONS.**

18 As used in this Act:

19 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-
20 TEM.—The term “alternative dispute resolution sys-
21 tem” means a system that is enacted or adopted by
22 a State to resolve medical malpractice claims other
23 than through a medical malpractice liability action.

24 (2) CLAIMANT.—The term “claimant” means
25 any person who brings a health care liability action

1 and, in the case of an individual who is deceased, in-
2 competent, or a minor, the person on whose behalf
3 such an action is brought.

4 (3) CLEAR AND CONVINCING EVIDENCE.—The
5 term “clear and convincing evidence” is that meas-
6 ure or degree of proof that will produce in the mind
7 of the trier of fact a firm belief or conviction as to
8 the truth of the allegations sought to be established,
9 except that such measure or degree of proof is more
10 than that required under preponderance of the evi-
11 dence, but less than that required for proof beyond
12 a reasonable doubt.

13 (4) ECONOMIC DAMAGES.—The term “economic
14 damages” means damages paid to compensate an in-
15 dividual for losses for hospital and other medical ex-
16 penses, lost wages, lost employment, and other pecu-
17 niary losses.

18 (5) HEALTH CARE PROFESSIONAL.—The term
19 “health care professional” means any individual who
20 provides health care services in a State and who is
21 required by State law or regulation to be licensed or
22 certified by the State to provide such services in the
23 State.

24 (6) HEALTH CARE PROVIDER.—The term
25 “health care provider” means any organization or

1 institution that is engaged in the delivery of health
2 care services in a State that is required by State law
3 or regulation to be licensed or certified by the State
4 to engage in the delivery of such services in the
5 State.

6 (7) INJURY.—The term “injury” means any ill-
7 ness, disease, or other harm that is the subject of
8 a medical malpractice claim.

9 (8) MEDICAL MALPRACTICE LIABILITY AC-
10 TION.—The term “medical malpractice liability ac-
11 tion” means any civil action brought pursuant to
12 State law in which a plaintiff alleges a medical mal-
13 practice claim against a health care provider or
14 health care professional, but does not include any
15 action in which the plaintiff’s sole allegation is an al-
16 legation of an intentional tort.

17 (9) MEDICAL MALPRACTICE CLAIM.—The term
18 “medical malpractice claim” means any claim relat-
19 ing to the provision of (or the failure to provide)
20 health care services or the use of a medical product,
21 without regard to the theory of liability asserted,
22 and includes any third-party claim, cross-claim,
23 counterclaim, or contribution claim in a medical
24 malpractice liability action.

25 (10) MEDICAL PRODUCT.—

1 (A) IN GENERAL.—The term “medical
2 product” means, with respect to the allegation
3 of a claimant, a drug (as defined in section
4 201(g)(1) of the Federal Food, Drug, and Cos-
5 metic Act (21 U.S.C. 321(g)(1)) or a medical
6 device (as defined in section 201(h) of the Fed-
7 eral Food, Drug, and Cosmetic Act (21 U.S.C.
8 321(h)) if—

9 (i) such drug or device was subject to
10 premarket approval under section 505,
11 507, or 515 of the Federal Food, Drug,
12 and Cosmetic Act (21 U.S.C. 355, 357, or
13 360e) or section 351 of the Public Health
14 Service Act (42 U.S.C. 262) with respect
15 to the safety of the formulation or per-
16 formance of the aspect of such drug or de-
17 vice which is the subject of the claimant’s
18 allegation or the adequacy of the packag-
19 ing or labeling of such drug or device, and
20 such drug or device is approved by the
21 Food and Drug Administration; or

22 (ii) the drug or device is generally rec-
23 ognized as safe and effective under regula-
24 tions issued by the Secretary of Health
25 and Human Services under section 201(p)

1 of the Federal Food, Drug, and Cosmetic
2 Act (21 U.S.C. 321(p)).

3 (B) EXCEPTION IN CASE OF MISREPRE-
4 SENTATION OR FRAUD.—Notwithstanding sub-
5 paragraph (A), the term “medical product”
6 shall not include any product described in such
7 subparagraph if the claimant shows that the
8 product is approved by the Food and Drug Ad-
9 ministration for marketing as a result of with-
10 held information, misrepresentation, or an ille-
11 gal payment by manufacturer of the product.

12 (11) NONECONOMIC DAMAGES.—The term
13 “noneconomic damages” means damages paid to
14 compensate an individual for losses for physical and
15 emotional pain, suffering, inconvenience, physical
16 impairment, mental anguish, disfigurement, loss of
17 enjoyment of life, loss of consortium, and other
18 nonpecuniary losses, but does not include punitive
19 damages.

20 (12) PUNITIVE DAMAGES.—The term “punitive
21 damages” means compensation, in addition to com-
22 pensation for actual harm suffered, that is awarded
23 for the purpose of punishing a person for conduct

1 deemed to be malicious, wanton, willful, or exces-
2 sively reckless.

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