

108TH CONGRESS
1ST SESSION

S. 1055

To amend the Internal Revenue Code of 1986 to provide physicians and other health care professionals with a tax credit for qualified expenditures for medical professional malpractice insurance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 13, 2003

Mr. DURBIN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide physicians and other health care professionals with a tax credit for qualified expenditures for medical professional malpractice insurance, 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. CREDIT FOR QUALIFIED EXPENDITURES FOR**
4 **MEDICAL PROFESSIONAL MALPRACTICE IN-**
5 **SURANCE.**

6 (a) IN GENERAL.—Subpart D of part IV of sub-
7 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 (relating to business tax credits) is amended by add-
 2 ing at the end the following:

3 **“SEC. 45G. CREDIT FOR EXPENDITURES FOR MEDICAL PRO-**
 4 **FESSIONAL MALPRACTICE INSURANCE.**

5 “(a) GENERAL RULE.—For purposes of section 38,
 6 in the case of a taxpayer which is an eligible person, the
 7 medical malpractice insurance expenditure tax credit de-
 8 termined under this section for a covered year shall equal
 9 the applicable percentage of the qualified medical mal-
 10 practice insurance expenditures incurred by an eligible
 11 person during the covered year.

12 “(b) APPLICABLE PERCENTAGE.—For purposes of
 13 subsection (a), the applicable percentage is—

14 “(1) in the case of an eligible person described
 15 in subsection (c)(2)(A), 20 percent,

16 “(2) in the case of an eligible person described
 17 in subsection (c)(2)(B), 10 percent, and

18 “(3) in the case of an eligible person described
 19 in subsection (c)(2)(C), 15 percent.

20 “(c) DEFINITIONS.—In this section:

21 “(1) COVERED YEAR.—The term ‘covered year’
 22 means taxable years beginning in 2003 and 2004.

23 “(2) ELIGIBLE PERSON.—The term ‘eligible
 24 person’ means—

1 “(A) any physician (as defined in section
2 213(d)(4)) who practices in any surgical spe-
3 cialty or subspecialty, emergency medicine, ob-
4 stetrics, anesthesiology or who does intervention
5 work which is reflected in medical malpractice
6 insurance expenditures,

7 “(B) any physician (as so defined) who
8 practices in general medicine, allergy, derma-
9 tology, or pathology, and

10 “(C) any hospital or clinic,
11 which meets applicable legal requirements to provide
12 the health care services involved.

13 “(3) QUALIFIED MEDICAL MALPRACTICE INSUR-
14 ANCE EXPENDITURE.—The term ‘qualified medical
15 malpractice insurance expenditure’ means so much
16 of any professional insurance premium, surcharge,
17 payment or other cost or expense required as a con-
18 dition of State licensure which is incurred by an eli-
19 gible person in a covered year for the sole purpose
20 of providing or furnishing general medical mal-
21 practice liability insurance for such eligible person as
22 does not exceed twice the Statewide average of such
23 costs for similarly situated eligible persons.

24 “(d) SPECIAL RULES.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), the credit determined under this section
3 shall be claimed by the eligible person incurring the
4 qualified medical malpractice insurance expenditure.

5 “(2) CERTIFICATION.—Each State, through its
6 board of medical licensure and State board (or agen-
7 cy) regulating insurance, annually shall provide such
8 information to the Secretary of Health and Human
9 Services as is necessary to permit the Secretary to
10 calculate average costs for purposes of subsection
11 (c)(3) and to certify such average costs (rounded to
12 the nearest whole dollar) to the Secretary of the
13 Treasury on or before the 15th day of November of
14 each year.

15 “(e) EFFECTIVE DATE.—This section shall apply to
16 qualified medical malpractice expenditures incurred after
17 December 31, 2002.”.

18 (b) CREDIT MADE PART OF GENERAL BUSINESS
19 CREDIT.—Section 38(b) of the Internal Revenue Code of
20 1986 (relating to current year business credit) is amended
21 by striking “plus” at the end of paragraph (14), by strik-
22 ing the period at the end of paragraph (15) and inserting
23 “, plus”, and by adding at the end the following new para-
24 graph:

1 “(16) the medical malpractice insurance ex-
2 penditure tax credit determined under section
3 45G(a).”.

4 (c) LIMITATION ON CARRYBACK.—Section 39(d) of
5 the Internal Revenue Code of 1986 (relating to transition
6 rules) is amended by adding at the end the following new
7 paragraph:

8 “(11) NO CARRYBACK OF MEDICAL MAL-
9 PRACTICE INSURANCE EXPENDITURE TAX CREDIT
10 BEFORE EFFECTIVE DATE.—No portion of the un-
11 used business credit for any taxable year which is
12 attributable to the credit determined under section
13 45G may be carried back to any taxable year begin-
14 ning before 2003.”.

15 (d) DENIAL OF DOUBLE BENEFIT.—Section 280C of
16 the Internal Revenue Code of 1986 (relating to certain
17 expenses for which credits are allowable) is amended by
18 adding at the end the following new subsection:

19 “(d) CREDIT FOR MEDICAL MALPRACTICE LIABILITY
20 INSURANCE PREMIUMS.—

21 “(1) IN GENERAL.—No deduction shall be al-
22 lowed for that portion of the qualified medical mal-
23 practice insurance expenditures otherwise allowable
24 as a deduction for the taxable year which is equal
25 to the amount of the credit allowable for the taxable

1 year under section 45G (determined without regard
2 to section 38(c)).

3 “(2) CONTROLLED GROUPS.—In the case of a
4 corporation which is a member of a controlled group
5 of corporations (within the meaning of section
6 41(f)(5)) or a trade or business which is treated as
7 being under common control with other trades or
8 business (within the meaning of section
9 41(f)(1)(B)), this subsection shall be applied under
10 rules prescribed by the Secretary similar to the rules
11 applicable under subparagraphs (A) and (B) of sec-
12 tion 41(f)(1).”.

13 (e) GRANTS TO NON-PROFIT HOSPITALS AND CLIN-
14 ICS.—

15 (1) IN GENERAL.—The Secretary of Health and
16 Human Services, acting through the Administrator
17 of the Health Resources and Services Administra-
18 tion, shall award grants to eligible non-profit hos-
19 pitals and clinics to assist such hospitals and clinics
20 in defraying qualified medical malpractice insurance
21 expenditures.

22 (2) ELIGIBLE NON-PROFIT HOSPITAL OR CLIN-
23 IC.—To be eligible to receive a grant under para-
24 graph (1) an entity shall—

25 (A) be a non-profit hospital or clinic;

1 (B) be unable to claim the tax credit de-
2 scribed in section 45G of the Internal Revenue
3 Code of 1986 for the year for which an applica-
4 tion is submitted under subparagraph (C); and

5 (C) prepare and submit to the Secretary of
6 Health and Human Services an application at
7 such time, in such manner, and containing such
8 information as the Secretary may require.

9 (3) AMOUNT OF GRANT.—The amount of a
10 grant to a non-profit hospital or clinic under para-
11 graph (1) shall equal 15 percent of the amount of
12 the qualified medical malpractice insurance expendi-
13 tures of the hospital or clinic for the year involved.

14 (4) QUALIFIED MEDICAL MALPRACTICE INSUR-
15 ANCE EXPENDITURE.—In this subsection, the term
16 “qualified medical malpractice insurance expendi-
17 ture” means so much of any professional insurance
18 premium, surcharge, payment or other cost or ex-
19 pense required as a condition of State licensure
20 which is incurred by a non-profit hospital or clinic
21 in a year for the sole purpose of providing or fur-
22 nishing general medical malpractice liability insur-
23 ance for such hospital or clinic as does not exceed
24 twice the Statewide average of such costs for simi-
25 larly situated hospitals or clinics.

1 (5) AUTHORIZATION OF APPROPRIATIONS.—

2 There are authorized to be appropriated to carry out
3 this subsection, such sums as may be necessary for
4 each of fiscal years 2004 and 2005.

5 (f) CLERICAL AMENDMENT.—The table of sections
6 for subpart D of part IV of subchapter A of chapter 1
7 of the Internal Revenue Code of 1986 is amended by add-
8 ing at the end the following new item:

“Sec. 45G. Credit for expenditures for medical professional mal-
practice insurance.”.

9 (g) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to expenditures incurred after De-
11 cember 31, 2002.

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