

110TH CONGRESS  
1ST SESSION

# S. 1481

To restore fairness and reliability to the medical justice system and promote patient safety by fostering alternatives to current medical tort litigation, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

MAY 24, 2007

Mr. BAUCUS (for himself and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

---

## A BILL

To restore fairness and reliability to the medical justice system and promote patient safety by fostering alternatives to current medical tort litigation, 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 “Fair and Reliable Med-  
5 ical Justice Act”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to restore fairness and reliability to the  
9 medical justice system by fostering alternatives to

1 current medical tort litigation that promote early  
2 disclosure of health care errors and provide prompt,  
3 fair, and reasonable compensation to patients who  
4 are injured by health care errors;

5 (2) to promote patient safety through disclosure  
6 of health care errors; and

7 (3) to support and assist States in developing  
8 such alternatives.

9 **SEC. 3. STATE DEMONSTRATION PROGRAMS TO EVALUATE**  
10 **ALTERNATIVES TO CURRENT MEDICAL TORT**  
11 **LITIGATION.**

12 Part P of title III of the Public Health Service Act  
13 (42 U.S.C. 280g et seq.) is amended by adding at the end  
14 the following:

15 **“SEC. 399R. STATE DEMONSTRATION PROGRAMS TO EVALU-**  
16 **ATE ALTERNATIVES TO CURRENT MEDICAL**  
17 **TORT LITIGATION.**

18 “(a) IN GENERAL.—The Secretary is authorized to  
19 award demonstration grants to States for the develop-  
20 ment, implementation, and evaluation of alternatives to  
21 current tort litigation for resolving disputes over injuries  
22 allegedly caused by health care providers or health care  
23 organizations. In awarding such grants, the Secretary  
24 shall ensure the diversity of the alternatives so funded.

1       “(b) DURATION.—The Secretary may award up to 10  
2 grants under subsection (a) and each grant awarded under  
3 such subsection may not exceed a period of 5 years.

4       “(c) CONDITIONS FOR DEMONSTRATION GRANTS.—

5           “(1) REQUIREMENTS.—Each State desiring a  
6 grant under subsection (a) shall—

7               “(A) develop an alternative to current tort  
8 litigation for resolving disputes over injuries al-  
9 legedly caused by health care providers or  
10 health care organizations; and

11               “(B) promote a reduction of health care  
12 errors by allowing for patient safety data re-  
13 lated to disputes resolved under subparagraph  
14 (A) to be collected and analyzed by organiza-  
15 tions that engage in efforts to improve patient  
16 safety and the quality of health care.

17           “(2) ALTERNATIVE TO CURRENT TORT LITIGA-  
18 TION.—Each State desiring a grant under sub-  
19 section (a) shall demonstrate how the proposed al-  
20 ternative described in paragraph (1)(A)—

21               “(A) makes the medical liability system  
22 more reliable through prompt and fair resolu-  
23 tion of disputes;

24               “(B) encourages the disclosure of health  
25 care errors;

1           “(C) enhances patient safety by detecting,  
2           analyzing, and reducing medical errors and ad-  
3           verse events;

4           “(D) maintains access to liability insur-  
5           ance; and

6           “(E) provides patients the opportunity to  
7           opt out of or voluntarily withdraw from partici-  
8           pating in the alternative.

9           “(3) SOURCES OF COMPENSATION.—Each State  
10          desiring a grant under subsection (a) shall identify  
11          the sources from and methods by which compensa-  
12          tion would be paid for claims resolved under the pro-  
13          posed alternative to current tort litigation, which  
14          may include public or private funding sources, or a  
15          combination of such sources. Funding methods shall  
16          to the extent practicable provide financial incentives  
17          for activities that improve patient safety.

18          “(4) SCOPE.—

19                 “(A) IN GENERAL.—Each State desiring a  
20                 grant under subsection (a) may establish a  
21                 scope of jurisdiction (such as a designated geo-  
22                 graphic region, a designated area of health care  
23                 practice, or a designated group of health care  
24                 providers or health care organizations) for the  
25                 proposed alternative to current tort litigation

1           that is sufficient to evaluate the effects of the  
2           alternative.

3           “(B) NOTIFICATION OF PATIENTS.—A  
4           State proposing a scope of jurisdiction under  
5           subparagraph (A) shall demonstrate how pa-  
6           tients would be notified that they are receiving  
7           health care services that fall within such scope,  
8           and that they may opt out of or voluntarily  
9           withdraw from participating in the alternative.

10          “(5) PREFERENCE IN AWARDING DEMONSTRA-  
11          TION GRANTS.—In awarding grants under sub-  
12          section (a), the Secretary shall give preference to  
13          States—

14                 “(A) that have developed the proposed al-  
15                 ternative through substantive consultation with  
16                 relevant stakeholders, including patient advo-  
17                 cates, health care providers and health care or-  
18                 ganizations, attorneys with expertise in rep-  
19                 resenting patients and health care providers,  
20                 medical malpractice insurers, and patient safety  
21                 experts;

22                 “(B) that make proposals that are likely to  
23                 enhance patient safety by detecting, analyzing,  
24                 and reducing medical errors and adverse events;  
25                 and

1           “(C) in which State law at the time of the  
2           application would not prohibit the adoption of  
3           an alternative to current tort litigation.

4           “(d) APPLICATION.—

5           “(1) IN GENERAL.—Each State desiring a  
6           grant under subsection (a) shall submit to the Sec-  
7           retary an application, at such time, in such manner,  
8           and containing such information as the Secretary  
9           may require.

10          “(2) REVIEW PANEL.—

11          “(A) IN GENERAL.—In reviewing applica-  
12          tions under paragraph (1), the Secretary shall  
13          consult with a review panel composed of rel-  
14          evant experts appointed by the Comptroller  
15          General.

16          “(B) COMPOSITION.—

17          “(i) NOMINATIONS.—The Comptroller  
18          General shall solicit nominations from the  
19          public for individuals to serve on the re-  
20          view panel.

21          “(ii) APPOINTMENT.—The Comp-  
22          troller General shall appoint, at least 14  
23          but not more than 19, highly qualified and  
24          knowledgeable individuals to serve on the  
25          review panel and shall ensure that the fol-

1           lowing entities receive fair representation  
2           on such panel:

3                   “(I) Patient advocates.

4                   “(II) Health care providers and  
5                   health care organizations.

6                   “(III) Attorneys with expertise in  
7                   representing patients and health care  
8                   providers.

9                   “(IV) Medical malpractice insur-  
10                  ers.

11                  “(V) State officials.

12                  “(VI) Patient safety experts.

13                  “(C) CHAIRPERSON.—The Comptroller  
14                  General, or an individual within the Govern-  
15                  ment Accountability Office designated by the  
16                  Comptroller General, shall be the chairperson of  
17                  the review panel.

18                  “(D) AVAILABILITY OF INFORMATION.—  
19                  The Comptroller General shall make available  
20                  to the review panel such information, personnel,  
21                  and administrative services and assistance as  
22                  the review panel may reasonably require to  
23                  carry out its duties.

24                  “(E) INFORMATION FROM AGENCIES.—The  
25                  review panel may request directly from any de-

1           partment or agency of the United States any  
2           information that such panel considers necessary  
3           to carry out its duties. To the extent consistent  
4           with applicable laws and regulations, the head  
5           of such department or agency shall furnish the  
6           requested information to the review panel.

7           “(e) REPORTS.—

8           “(1) BY STATE.—Each State receiving a grant  
9           under subsection (a) shall submit to the Secretary  
10          an annual report evaluating the effectiveness of ac-  
11          tivities funded with grants awarded under such sub-  
12          section.

13          “(2) BY SECRETARY.—The Secretary shall sub-  
14          mit to Congress an annual compendium of the re-  
15          ports submitted under paragraph (1).

16          “(f) TECHNICAL ASSISTANCE.—

17          “(1) IN GENERAL.—The Secretary shall provide  
18          technical assistance to the States applying for or  
19          awarded grants under subsection (a).

20          “(2) REQUIREMENTS.—Technical assistance  
21          under paragraph (1) shall include—

22                  “(A) guidance on non-economic damages,  
23                  including the consideration of individual facts  
24                  and circumstances in determining appropriate  
25                  payment, guidance on identifying avoidable in-

1           juries, and guidance on disclosure to patients of  
2           health care errors and adverse events; and

3                   “(B) the development, in consultation with  
4           States, of common definitions, formats, and  
5           data collection infrastructure for States receiv-  
6           ing grants under this section to use in reporting  
7           to facilitate aggregation and analysis of data  
8           both within and between States.

9                   “(3) USE OF COMMON DEFINITIONS, FORMATS,  
10          AND DATA COLLECTION INFRASTRUCTURE.—States  
11          not receiving grants under this section may also use  
12          the common definitions, formats, and data collection  
13          infrastructure developed under paragraph (2)(B).

14                   “(g) EVALUATION.—

15                   “(1) IN GENERAL.—The Secretary, in consulta-  
16          tion with the review panel established under sub-  
17          section (d)(2), shall enter into a contract with an ap-  
18          propriate research organization to conduct an overall  
19          evaluation of the effectiveness of grants awarded  
20          under subsection (a) and to annually prepare and  
21          submit a report to Congress. Such an evaluation  
22          shall begin not later than 18 months following the  
23          date of implementation of the first program funded  
24          by a grant under subsection (a).

1           “(2) CONTENTS.—The evaluation under para-  
2 graph (1) shall include—

3           “(A) an analysis of the effects of the  
4 grants awarded under subsection (a) on the  
5 measures described in paragraph (3);

6           “(B) a comparison between and among the  
7 alternatives approved under subsection (a) of  
8 the measures described in paragraph (3); and

9           “(C) a comparison between and among  
10 States receiving grants approved under sub-  
11 section (a) and similar States not receiving  
12 such grants of the measures described in para-  
13 graph (3).

14           “(3) MEASURES.—The evaluations under para-  
15 graph (2) shall analyze and make comparisons on  
16 the basis of—

17           “(A) the nature and number of disputes  
18 over injuries allegedly caused by health care  
19 providers or health care organizations;

20           “(B) the nature and number of claims in  
21 which tort litigation was pursued despite the ex-  
22 istence of an alternative under subsection (a);

23           “(C) the disposition of disputes and claims  
24 described in clauses (i) and (ii), including the

1 length of time and estimated costs to all par-  
2 ties;

3 “(D) the medical liability environment;

4 “(E) health care quality;

5 “(F) patient safety in terms of detecting,  
6 analyzing, and reducing medical errors and ad-  
7 verse events; and

8 “(G) patient and health care provider and  
9 organization satisfaction with the alternative  
10 under subsection (a) and with the medical li-  
11 ability environment.

12 “(4) FUNDING.—The Secretary shall reserve 5  
13 percent of the amount appropriated in each fiscal  
14 year under subsection (j) to carry out this sub-  
15 section.

16 “(h) OPTION TO PROVIDE FOR INITIAL PLANNING  
17 GRANTS.—Of the funds appropriated pursuant to sub-  
18 section (j), the Secretary may use a portion not to exceed  
19 \$500,000 per State to provide planning grants to such  
20 States for the development of demonstration project appli-  
21 cations meeting the criteria described in subsection (c).  
22 In selecting States to receive such planning grants, the  
23 Secretary shall give preference to those States in which  
24 State law at the time of the application would not prohibit  
25 the adoption of an alternative to current tort litigation.

1 “(i) DEFINITIONS.—In this section:

2 “(1) HEALTH CARE SERVICES.—The term  
3 ‘health care services’ means any services provided by  
4 a health care provider, or by any individual working  
5 under the supervision of a health care provider, that  
6 relate to—

7 “(A) the diagnosis, prevention, or treat-  
8 ment of any human disease or impairment; or

9 “(B) the assessment of the health of  
10 human beings.

11 “(2) HEALTH CARE ORGANIZATION.—The term  
12 ‘health care organization’ means any individual or  
13 entity which is obligated to provide, pay for, or ad-  
14 minister health benefits under any health plan.

15 “(3) HEALTH CARE PROVIDER.—The term  
16 ‘health care provider’ means any individual or enti-  
17 ty—

18 “(A) licensed, registered, or certified under  
19 Federal or State laws or regulations to provide  
20 health care services; or

21 “(B) required to be so licensed, registered,  
22 or certified but that is exempted by other stat-  
23 ute or regulation.

24 “(4) NET ECONOMIC LOSS.—The term ‘net eco-  
25 nomic loss’ means—

1           “(A) reasonable expenses incurred for  
2 products, services, and accommodations needed  
3 for health care, training, and other remedial  
4 treatment and care of an injured individual;

5           “(B) reasonable and appropriate expenses  
6 for rehabilitation treatment and occupational  
7 training;

8           “(C) 100 percent of the loss of income  
9 from work that an injured individual would  
10 have performed if not injured, reduced by any  
11 income from substitute work actually per-  
12 formed; and

13           “(D) reasonable expenses incurred in ob-  
14 taining ordinary and necessary services to re-  
15 place services an injured individual would have  
16 performed for the benefit of the individual or  
17 the family of such individual if the individual  
18 had not been injured.

19           “(5) NON-ECONOMIC DAMAGES.—The term  
20 ‘non-economic damages’ means losses for physical  
21 and emotional pain, suffering, inconvenience, phys-  
22 ical impairment, mental anguish, disfigurement, loss  
23 of enjoyment of life, loss of society and compan-  
24 ship, loss of consortium (other than loss of domestic  
25 service), injury to reputation, and all other non-pe-

1        cuniary losses of any kind or nature, to the extent  
2        permitted under State law.

3        “(j) AUTHORIZATION OF APPROPRIATIONS.—There  
4        are authorized to be appropriated to carry out this section  
5        such sums as may be necessary. Amounts appropriated  
6        pursuant to this subsection shall remain available until ex-  
7        pended.”.

○