111TH CONGRESS 1ST SESSION

H. R. 4007

To authorize the Secretary of Health and Human Services to make grants to 5 States to establish medical malpractice tribunal pilot programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 2009

Mr. Lee of New York (for himself and Mr. Hunter) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To authorize the Secretary of Health and Human Services to make grants to 5 States to establish medical malpractice tribunal pilot programs, 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. MEDICAL TRIBUNAL PILOT PROGRAMS.
- 4 (a) AUTHORIZATION.—The Secretary of Health and
- 5 Human Services is authorized to make grants to 5 States
- 6 to establish pilot programs under which each medical mal-
- 7 practice case is heard in the first instance by a medical
- 8 tribunal composed of a State trial court judge, a physician,
- 9 and a lawyer.

1	(b) Eligibility.—The Secretary may only award a
2	grant under this section to a State that—
3	(1) has an average cost of medical malpractice
4	insurance that exceeds the national average of such
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6	(2) has not—
7	(A) placed a limit on noneconomic dam-
8	ages in medical malpractice cases; or
9	(B) established or begun to establish a
10	medical tribunal program similar to that de-
11	scribed in subsection (e); and
12	(3) submits an application at such time, in such
13	form, and accompanied by such information and as-
14	surances as the Secretary may require.
15	(c) DURATION OF GRANT.—A grant under this sec-
16	tion shall be awarded over 3 fiscal years.
17	(d) Use of Funds.—A State that receives a grant
18	under this section shall use grant funds to establish and
19	administer a medical tribunal pilot program in accordance
20	with subsection (e).
21	(e) REQUIREMENTS FOR MEDICAL TRIBUNAL PILOT
22	Program.—The medical tribunal pilot program required
23	by subsection (d) shall include the following elements:
24	(1) Hearing of case in first instance.—
25	Each medical malpractice case filed in the courts of

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1	the State shall be heard in the first instance by a
2	medical tribunal.
3	(2) Determination by medical tribunal.—
4	The medical tribunal shall hear all evidence that
5	would be admissible in the courts of the State and
6	determine whether such evidence would be sufficient
7	to support a finding for the plaintiff.
8	(3) Effect of medical tribunal's deter
9	MINATION.—
10	(A) If the medical tribunal determines that
11	the evidence would be sufficient to support a
12	finding for the plaintiff, the plaintiff may pur
13	sue the case through the State's usual judicia
14	process.
15	(B) If the medical tribunal determines that
16	the evidence would be insufficient to support a
17	finding for the plaintiff, the plaintiff may pur
18	sue the case through the State's usual judicia
19	process only after filing with the clerk of the
20	court in which the case is pending a bond in ar
21	amount determined to be appropriate by the
22	State trial court judge serving on the tribunal
23	(4) Composition of medical tribunal.—

(A) IN GENERAL.—A medical tribunal

shall be composed of a State trial court judge,

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- a physician licensed to practice medicine in the State, and a lawyer licensed to practice law in the State.
 - (B) SELECTION OF PHYSICIAN AND LAW-YER.—The State trial court judge who will serve on a medical tribunal shall select the physician from a list provided by the State medical society or association and the lawyer from a list provided by the State bar association.
 - (C) DEFENDANT OTHER THAN PHYSICIAN.—If the defendant in a medical malpractice case is a health care provider other than a physician, then a practitioner in such other field of health care shall serve on the medical tribunal instead of a physician. The State trial court judge who will serve on the tribunal shall select such practitioner in a manner the judge considers appropriate.
- (f) Study of Effectiveness of Medical Tribu-Nals and Report to Congress.—
- 21 (1) STUDY.—After the end of the 3rd fiscal 22 year in which grant funds are paid under this sec-23 tion, the Secretary shall collect from each State that 24 received grant funds the following data:

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1	(A) Any change between the 3-year period
2	preceding the State's receipt of grant funds and
3	the period during which it received grant funds
4	and between the 1st and 2nd and the 2nd and
5	3rd years in which the State received grant
6	funds, in—
7	(i) the average cost of medical mal-
8	practice insurance;
9	(ii) the number of physicians actively
10	practicing medicine;
11	(iii) the number of medical mal-
12	practice liability insurance carriers; and
13	(iv) the amounts paid by medical mal-
14	practice liability insurance carriers pursu-
15	ant to settlements or judgments in cases
16	against their insureds.
17	(B) The percentage of medical malpractice
18	cases considered meritorious by the medical tri-
19	bunal that were settled prior to trial, compared
20	to the percentage of all medical malpractice
21	cases filed in the 3-year period preceding the
22	State's receipt of grant funds that were settled
23	prior to trial.
24	(C) The number of medical malpractice
25	cases considered meritorious by the medical tri-

- bunal that were tried to a judgment, and the number of such judgments that were for the plaintiff.
 - (D) The number of medical malpractice cases considered nonmeritorious by the medical tribunal that were tried to a judgment, and the number of such judgments that were for the plaintiff.
 - (2) REPORT TO CONGRESS.—Not later than 18 months after the end of the 3rd fiscal year in which grant funds are paid under this section, the Secretary shall submit to Congress a report setting forth the data collected under paragraph (1).
 - (3) Cases considered meritorious.—For purposes of paragraph (1), a case is considered meritorious by the medical tribunal if the tribunal found that the evidence would be sufficient to support a finding for the plaintiff, and a case is considered nonmeritorious by the medical tribunal if the tribunal found that the evidence would be insufficient to support a finding for the plaintiff.
- 22 (g) Medical Malpractice Case Defined.—In 23 this section, the term "medical malpractice case" means 24 a civil action against a health care provider in which the 25 plaintiff alleges harm arising from an error or breach of

- 1 the standard of care by the health care provider in treating
- 2 the plaintiff.
- 3 (h) AUTHORIZATION OF APPROPRIATIONS.—There
- 4 are authorized to be appropriated such sums as are nec-
- 5 essary to carry out this section for fiscal years 2011
- 6 through 2013.

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