

## **Medical Injury Compensation Act of 2013**

Section-by-Section Summary

May 21-22, 2013

### **FINDINGS**

The judicial system has failed in keeping up with the complexity and the appropriate standards of medical care. Decisions in one court as to what is determined to be the appropriate standard of care are irrelevant in another court. It is often these inconsistencies that contribute to a costly judicial system that does little to promote deterrence and to improve patient safety. To address this problem, health courts (also known as “medical courts” or “health care tribunals”) would be established that would utilize specialized judges with a specific background in medical malpractice, along with the assistance of independent experts, to guide decisions on appropriate standards of care. Under this expedited “no-fault” process, contested cases would be resolved without juries and patients could obtain fair compensation for injuries caused by medical care.

### **PURPOSE**

This bill would establish a national pilot of no-fault health courts to resolve medical liability claims. The Secretary of Health and Human Services would provide such funds as are necessary for a five-year pilot of health courts in all 50 states and the District of Columbia to include the following elements: the health court pilot would not super-cede any state laws including laws to cap non-economic damages, impose limits on contingency fees, or require other alternative dispute resolution processes; the health courts would be offered as a voluntary option for any person who has had a medical liability claim in lieu of traditional courts and juries.

### **SECTION 1**

#### **Establishing of Health Court Review Boards**

Health court review boards would be established to review patient claims and validate claims of medical negligence. These review boards shall be composed of 3 to 7 members, at least one-half shall be medical experts (physicians and other health care professionals) of the same or similar specialty as the case. The review board would review medical charts, interview patients, physicians, and nurses; and investigate other relevant evidence to determine medical negligence.

#### **Evidentiary Assessment**

If the evidence points to clear negligence, the patient would immediately be awarded compensation for actual economic damages and non-economic damages according to a predetermined schedule. At this point, if the patient accepts the determination, there would be no further legal proceeding. If the patient does not accept the ruling or the review board finds no clear evidence of medical negligence or that additional medical review is necessary, the patient would have the option to appeal to the health court.

### **SECTION 2**

#### **Option to Appeal to Health Court**

This optional phase would only be triggered if the patient appeals the ruling of the review board, or if the review board determines further inquiry is necessary. One of the desired goals of health courts would be to take the bias out of expert testimony by utilizing qualified, independent expert witnesses paid directly by the court. These experts would guide judges in determining the appropriate and accepted standard of care. Such independent experts should be qualified and have up-to-date training on quality measures and standards that could be set by agencies such as the Agency for Healthcare Research and Quality (AHRQ), the Ambulatory Care Quality Alliance (AQA), or other quality standard setting organizations.

### **SECTION 3**

#### **Structure of Health Court**

The court would be made up of specialized judges – similar to tax courts, bankruptcy courts, and family courts – with a specific background in medical malpractice to guide decisions on the appropriate standards of care, along with the assistance of independent experts.

### **SECTION 4**

#### **Rulings of the Health Court**

Decisions made by the health court would serve as precedent to other courts and act as guidance to the physician community in overall efforts to improve quality and patient safety.

### **SECTION 5**

#### **Report and Evaluation**

The Secretary of Health and Human Services would report to Congress, at the conclusion of the five year health court pilot, on the impact of health courts on reducing the cost of medical liability premiums, reducing health care costs associated with defensive medicine, on the predictability and fairness of compensation awarded by the health courts to injured persons, and how the experience of patients and physicians who participated in the health court alternative compared to those who brought a claim through a traditional court. The Secretary shall include recommendations on legislation to convert the health court pilot into a permanent program.