



Committee On Finance

Max Baucus, Ranking Member

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Baucus, Enzi Introduce Bill to Promote State Alternatives To Medical Tort Liability System

(WASHINGTON, D.C.) – Sen. Max Baucus (D-MT), ranking member of the Committee on Finance, and Sen. Mike Enzi (R-WY), chairman of the Committee on Health, Education, Labor, and Pensions, today introduced legislation to promote state-based demonstrations of alternatives to current medical tort liability litigation.

“This bill tackles the medical liability issue from a new perspective, through a set of pilot projects centered on improving patient safety,” Baucus said. “We need to think creatively to try to solve the problem of rising medical liability premiums.”

The Enzi/Baucus measure authorizes the Secretary of Health and Human Services to fund state demonstration projects to test alternatives to current health care-related dispute resolution systems.

“Our current medical justice system does not provide prompt or fair compensation to injured patients. It’s racked by inconsistencies and delays, and the majority of patients who sue recover little, if anything,” said Senator Mike Enzi, Chairman of the Senate Health, Education, Labor and Pensions Committee.

The bill will allow an increased number of patients to receive their payments for injuries in an accurate, timely manner. It also encourages patient safety by promoting disclosure of medical errors.

“I am deeply concerned about rising medical liability costs,” Baucus said. “This legislation strikes the right balance, giving states incentives to streamline the medical liability process.”

A brief summary of the bill follows:

The Fair and Reliable Medical Justice Act would establish state-based demonstration programs to help states test alternative systems of health care-related dispute resolution under three different models: early disclosure and compensation; administrative determination of compensation; and special health care courts. Under the bill, states may develop other plans for resolving health care related disputes as well.

The early disclosure and compensation model encourages health care providers to disclose medical errors that result in harm to patients and to offer just compensation for patients’ injuries. Under this model, disclosures and offers of compensation do not constitute admissions

of liability by providers. It assures patients of compensation for their net economic loss, non-economic losses, and attorney's fees, in a timely manner. It also maintains patients' access to the traditional legal system in the event that claims cannot be resolved by the early disclosure process. This model does not affect patients' rights to bring court cases that result from criminal or intentional harm or fraud.

Under the administrative determination of compensation model, a state would create an administrative board that would bring together patient advocates, providers, and attorneys. The board would establish classes of avoidable injuries and determine compensation rates for each, but patients would be assured of compensation for their net economic loss, non-economic losses, and attorney's fees.

The special health court model ensures that cases are adjudicated by judges with special health care expertise, assisted by independent expert witnesses. Judges who sit on the special health care court would be subject to all the same criteria as any other state judge and would sit on the health care court voluntarily. Under this model, states would have to provide an appeals process for reviewing decisions of the special health court.

A 2002 Institute of Medicine report entitled "Fostering Rapid Advances in Health Care: Learning from System Demonstrations," which suggested state-based demonstrations in the area of medical liability reform, helped shape *the Fair and Reliable Medical Justice Act*.

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