

AMENDMENT NO. _____ Calendar No. _____

Purpose: To require States to implement certain medical malpractice reforms.

IN THE SENATE OF THE UNITED STATES—111th Cong., 1st Sess.

H. R. 3590

AMENDMENT NO 2948

To : By SNOWE odify
To: Amdt. No. 2786 bers
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Ref Page(s) and

GPO: 2008 45-608 (mac)

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Ms. SNOWE to the amendment (No. 2786) proposed by Mr. REID

Viz:

1 Strike subtitle I of title VI and insert the following:

2 **Subtitle I—State Medical**
3 **Malpractice Programs**

4 **SEC. 6801. PRE-LITIGATION SCREENING AND MEDIATION**
5 **PANELS.**

6 (a) IN GENERAL.—As a condition for receiving Fed-
7 eral funds under the Medicaid program under title XIX
8 of the Social Security Act (42 U.S.C. 1396 et seq.), each

1 State and territory shall, not later than 3 years after the
2 date of enactment of this Act, create a pre-litigation
3 screening and mediation panel which shall provide timely
4 review of each medical malpractice claim before such claim
5 is filed in a State or Federal court in such State.

6 (b) REQUIREMENTS.—

7 (1) IN GENERAL.—Each medical malpractice
8 claim shall be heard by such panel before such claim
9 may be filed in a State or Federal court and before
10 litigation of such case may commence.

11 (2) REPORTS.—The panel shall issue a report
12 containing the findings and recommendations of
13 such panel, based on the evidence presented to the
14 panel. The report described in this paragraph shall
15 not affect a claimant's right to bring a medical mal-
16 practice claim in State or Federal court. Notwith-
17 standing any other provision of State or Federal
18 law, such report may be admissible in such court.

19 (c) DUTIES.—Each panel established under sub-
20 section (a) shall—

21 (1) review medical malpractice claims;

22 (2) assess the evidence offered by the parties;

23 and

24 (3) render professional judgment on the validity
25 of claims.

1 (d) MEMBERSHIP.—Each panel established under
2 subsection (a) shall be comprised of lawyers, retired
3 judges, doctors, and medical professionals. Members of the
4 panel shall serve on a volunteer basis, unless a State
5 chooses to arrange for compensation of, or reimbursement
6 of expenses for, such members.

7 (e) EXEMPTED STATES.—A State that, on the day
8 before the date of enactment of this Act, has enacted laws
9 that require medical malpractice claims to be heard by a
10 pre-litigation panel, in a manner similar to the require-
11 ments of this section, may, at the discretion of the Sec-
12 retary, be exempt from the requirements of this section
13 for as long as such State maintains such panel.

14 (f) RULE OF CONSTRUCTION.—Nothing in this sec-
15 tion shall be construed to interfere with or restrict an indi-
16 vidual's right to bring a lawsuit in civil courts.

17 **SEC. 6802. STANDARDS FOR MEDICAL LIABILITY EXPERT**
18 **WITNESSES.**

19 As a condition for receiving Federal funds under the
20 Medicaid program under title XIX of the Social Security
21 Act (42 U.S.C. 1396 et seq.), each State and territory
22 shall require that an individual wishing to present evidence
23 through an expert witness in a medical malpractice case
24 demonstrate that such expert witness—

1 (1) be credentialed or licensed in one or more
2 States to deliver health care services;

3 (2) typically treat the diagnosis or condition at
4 issue in the case, or provide the type of treatment
5 under review; and

6 (3) is substantially familiar with applicable
7 standards of care and practice as they relate to the
8 act or omission that is the subject of the lawsuit.

9 **SEC. 6803. ENCOURAGING SETTLEMENT OF MEDICAL MAL-**
10 **PRACTICE LAWSUITS.**

11 As a condition for receiving Federal funds under the
12 Medicaid program under title XIX of the Social Security
13 Act (42 U.S.C. 1396 et seq.), each State and territory
14 shall require that a party in a medical malpractice lawsuit
15 that refuses a settlement offer in an amount that is sig-
16 nificantly greater than the amount awarded by a jury after
17 trial reimburse the party that made such settlement offer
18 for the costs of the trial, including attorney's fees associ-
19 ated with the trial.