

**AMENDMENT****OFFERED BY MR. LEE OF NEW YORK**

(to text of H.R. 3962)

At the end of part 2 of subtitle B of title V of division C, add the following new section (and conform the table of contents accordingly):

**1 SEC. 2538. MEDICAL TRIBUNAL PILOT PROGRAMS.**

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

8 (b) ELIGIBILITY.—The Secretary may only award a  
9 grant under this section to a State that—

10 (1) has an average cost of medical malpractice  
11 insurance that exceeds the national average of such  
12 cost;

13 (2) has not—

14 (A) placed a limit on noneconomic dam-  
15 ages in medical malpractice cases; or

1 (B) established or begun to establish a  
2 medical tribunal program similar to that de-  
3 scribed in subsection (e); and

4 (3) submits an application at such time, in such  
5 form, and accompanied by such information and as-  
6 surances as the Secretary may require.

7 (c) DURATION OF GRANT.—A grant under this sec-  
8 tion shall be awarded over 3 fiscal years.

9 (d) USE OF FUNDS.—A State that receives a grant  
10 under this section shall use grant funds to establish and  
11 administer a medical tribunal pilot program in accordance  
12 with subsection (e).

13 (e) REQUIREMENTS FOR MEDICAL TRIBUNAL PILOT  
14 PROGRAM.—The medical tribunal pilot program required  
15 by subsection (d) shall include the following elements:

16 (1) HEARING OF CASE IN FIRST INSTANCE.—  
17 Each medical malpractice case filed in the courts of  
18 the State shall be heard in the first instance by a  
19 medical tribunal.

20 (2) DETERMINATION BY MEDICAL TRIBUNAL.—  
21 The medical tribunal shall hear all evidence that  
22 would be admissible in the courts of the State and  
23 determine whether such evidence would be sufficient  
24 to support a finding for the plaintiff.

1 (3) EFFECT OF MEDICAL TRIBUNAL'S DETER-  
2 MINATION.—

3 (A) If the medical tribunal determines that  
4 the evidence would be sufficient to support a  
5 finding for the plaintiff, the plaintiff may pur-  
6 sue the case through the State's usual judicial  
7 process.

8 (B) If the medical tribunal determines that  
9 the evidence would be insufficient to support a  
10 finding for the plaintiff, the plaintiff may pur-  
11 sue the case through the State's usual judicial  
12 process only after filing with the clerk of the  
13 court in which the case is pending a bond in an  
14 amount determined to be appropriate by the  
15 State trial court judge serving on the tribunal.

16 (4) COMPOSITION OF MEDICAL TRIBUNAL.—

17 (A) IN GENERAL.—A medical tribunal  
18 shall be composed of a State trial court judge,  
19 a physician licensed to practice medicine in the  
20 State, and a lawyer licensed to practice law in  
21 the State.

22 (B) SELECTION OF PHYSICIAN AND LAW-  
23 YER.—The State trial court judge who will  
24 serve on a medical tribunal shall select the phy-  
25 sician from a list provided by the State medical

1 society or association and the lawyer from a list  
2 provided by the State bar association.

3 (C) DEFENDANT OTHER THAN PHYSI-  
4 CIAN.—If the defendant in a medical mal-  
5 practice case is a health care provider other  
6 than a physician, then a practitioner in such  
7 other field of health care shall serve on the  
8 medical tribunal instead of a physician. The  
9 State trial court judge who will serve on the tri-  
10 bunal shall select such practitioner in a manner  
11 the judge considers appropriate.

12 (f) STUDY OF EFFECTIVENESS OF MEDICAL TRIBU-  
13 NALS AND REPORT TO CONGRESS.—

14 (1) STUDY.—After the end of the 3rd fiscal  
15 year in which grant funds are paid under this sec-  
16 tion, the Secretary shall collect from each State that  
17 received grant funds the following data:

18 (A) Any change between the 3-year period  
19 preceding the State's receipt of grant funds and  
20 the period during which it received grant funds,  
21 and between the 1st and 2nd and the 2nd and  
22 3rd years in which the State received grant  
23 funds, in—

24 (i) the average cost of medical mal-  
25 practice insurance;

1 (ii) the number of physicians actively  
2 practicing medicine;

3 (iii) the number of medical mal-  
4 practice liability insurance carriers; and

5 (iv) the amounts paid by medical mal-  
6 practice liability insurance carriers pursu-  
7 ant to settlements or judgments in cases  
8 against their insureds.

9 (B) The percentage of medical malpractice  
10 cases considered meritorious by the medical tri-  
11 bunal that were settled prior to trial, compared  
12 to the percentage of all medical malpractice  
13 cases filed in the 3-year period preceding the  
14 State's receipt of grant funds that were settled  
15 prior to trial.

16 (C) The number of medical malpractice  
17 cases considered meritorious by the medical tri-  
18 bunal that were tried to a judgment, and the  
19 number of such judgments that were for the  
20 plaintiff.

21 (D) The number of medical malpractice  
22 cases considered nonmeritorious by the medical  
23 tribunal that were tried to a judgment, and the  
24 number of such judgments that were for the  
25 plaintiff.

1           (2) REPORT TO CONGRESS.—Not later than 18  
2 months after the end of the 3rd fiscal year in which  
3 grant funds are paid under this section, the Sec-  
4 retary shall submit to Congress a report setting  
5 forth the data collected under paragraph (1).

6           (3) CASES CONSIDERED MERITORIOUS.—For  
7 purposes of paragraph (1), a case is considered mer-  
8 itorious by the medical tribunal if the tribunal found  
9 that the evidence would be sufficient to support a  
10 finding for the plaintiff, and a case is considered  
11 nonmeritorious by the medical tribunal if the tri-  
12 bunal found that the evidence would be insufficient  
13 to support a finding for the plaintiff.

14          (g) MEDICAL MALPRACTICE CASE DEFINED.—In  
15 this section, the term “medical malpractice case” means  
16 a civil action against a health care provider in which the  
17 plaintiff alleges harm arising from an error or breach of  
18 the standard of care by the health care provider in treating  
19 the plaintiff.

20          (h) AUTHORIZATION OF APPROPRIATIONS.—There  
21 are authorized to be appropriated such sums as are nec-  
22 essary to carry out this section for fiscal years 2011  
23 through 2013.

