

S. 1374
Better Health Act of 2003
A Bipartisan Solution That Works

On July 8, 2003 Senators Lindsey Graham (R-SC) and Richard Durbin (D-IL) introduced S.1374, The Better Health Act of 2003 to help address problems with our nation's medical malpractice insurance system. Having worked with her colleagues to address this issue and knowing that fixing the medical malpractice insurance market was a priority, Senator Murray co-sponsored this legislation the next day.

S.1374 offers a comprehensive approach to ensuring continued access to healthcare. Importantly, S.1374 provides immediate relief for doctors and hospitals, reduces frivolous lawsuits, protects doctors, and involves government in underwriting risk.

Immediate Relief

In an effort to help control the medical malpractice insurance market, many states have enacted caps on non-economic and punitive damages sought in medical malpractice cases. After years of experimentation, there is little real evidence to suggest caps reduce medical malpractice insurance premiums or prevent large premium increases from occurring. Providing immediate relief requires a better approach.

S.1374 would provide immediate relief – this year – to doctors and hospitals. Doctors in high-risk specialties would be eligible to receive a tax credit equivalent to 20% of their malpractice premiums. Doctors in lower-risk specialties would be eligible for a tax credit equivalent to 10% of their total malpractice premium. For-profit hospitals would be eligible for tax credits equivalent to 15% of their malpractice premiums, and non-profit hospitals would be provided relief through a newly established grant program.

Reduces Frivolous Lawsuits

S.1374 reduces frivolous lawsuits by requiring all plaintiff attorneys who file a medical malpractice action to certify that the case is meritorious by swearing that an expert doctor is ready to testify that real malpractice has occurred. S.1374 contains remedies for filers of frivolous lawsuits, including a “three strikes and you’re out” provision:

- First time violators will be required to pay costs and attorneys fees.
- Second time violators will be fined by the court.
- Third time violators will be forbidden from bringing another malpractice suit for 10 years.

These penalties will reduce frivolous lawsuits.

Protects Doctors

S.1374 protects health professionals from punitive damages if they provide greater than 25% of their services through Medicare, Medicaid, or the State Children's Health Insurance Program (CHIP). The only exceptions would be for cases involving sexual abuse, assault and battery, falsification of records, and intoxication.

Involves Government in Underwriting Risk

S.1374 instructs the U.S. Department of Treasury to consider establishing a Federal Reinsurance Fund (FRF) that would be used for paying non-economic damages. In the past, the federal government has gotten involved in helping to fix broken insurance markets, namely, flood and terrorism insurance. The federal government can bring relief to the broken medical malpractice insurance market, and this bill begins that process.