

State Demonstration Programs to Evaluate Alternatives to Current Medical Tort Litigation

Under the Patient Protection and Affordable Care Act, the Secretary of HHS is authorized to award demonstration grants to States for the development, implementation, and evaluation of alternatives to current tort litigation for resolving disputes over injuries allegedly caused by health care providers or health care organizations.

Amount and Duration: \$50 million for up to 5 years (beginning with FY 2011)

Requirements: Each State desiring a grant shall develop an alternative to current tort litigation that:

- a) Allows for the resolution of disputes over injuries allegedly caused by health care providers or health care organizations; and
- b) Promotes a reduction of health care errors by encouraging the collections and analysis of patient safety data related to such resolved disputes by organizations that engage in efforts to improve patient safety and the quality of health care.

Alternatives to Current Tort Litigation: Each State desiring a grant shall demonstrate how the proposed alternative:

- a) Makes the medical liability system more reliable by increasing the availability of prompt and fair resolution of disputes;
- b) Encourages the efficient resolution of disputes;
- c) Encourages the disclosure of health care error;
- d) Enhances patient safety by detecting, analyzing, and helping to reduce medical errors and adverse events;
- e) Improves access to liability insurance;
- f) Fully informs patients about the differences in the alternatives and current tort litigation;
- g) Provides patients the ability to opt out of or voluntarily withdraw from participating in the alternative at any time and to pursue other options, including litigation, outside the alternative;
- h) Would not conflict with State law at the time of the application in a way that would prohibit the adoption of an alternative to current tort litigations; and
- i) Would not limit or curtail a patient's existing legal rights, ability to file a claim in or access a State's legal system, or otherwise abrogate a patient's ability to file a medical malpractice claim.

Sources of Compensation: Each State desiring a grant shall identify the sources from and methods by which compensation would be paid for claims resolved under the proposed alternative to current tort litigation, which may include public or private funding sources, or a combination of such sources. Funding methods shall to the extent practicable provide financial incentives for activities that improve patient safety.

Scope:

- In general: Each State desiring a grant shall establish a scope of jurisdiction (such as Statewide, designated geographic region, a designated area of health care practice, or a designated group of health care providers or health care organizations) for the proposed alternative to current tort litigation that is sufficient to evaluate the effects of the alternative. No scope of jurisdiction shall be established that is based on a health care payer or patient population.
- Notification of patients: A State shall demonstrate how patients would be notified that they are receiving health care services that fall within such scope, and the process by which they may opt out of or voluntarily withdraw from participating in the alternative. The decision of the patient whether to participate or continue participating in the alternative process shall be made at any time and shall not be limited in any way.

Preference in Awarding Demonstration Grants: In awarding grants, the Secretary shall give preference to States:

- That have developed the proposed alternative through substantive consultation with relevant stakeholders, including patient advocates, health care providers and health care organizations, attorneys with expertise in representing patients and health care providers, medical malpractice insurers, and patient safety experts;
- That make proposals that are likely to enhance patient safety by detecting, analyzing, and helping to reduce medical errors and adverse events; and
- That make proposals that are likely to improve access to liability insurance.

Assistance: The Secretary *may* use a portion of the \$50 million, not to exceed \$500,000 per State, to provide planning grants to such States for the development of demonstration project applications meeting the criteria. The Secretary *shall* provide technical assistance to the States applying for or awarded grants.