



H.R. 4106, The Saving Lives, Saving Costs Act

Introduced by Congressmen Andy Barr (R-KY) & Ami Bera, M.D. (D-CA)

Problem:

- Today, more than 75% of physicians face a malpractice claim over the course of their career. This liability climate drives the care that physicians provide, encourages overutilization and adds billions of dollars in health costs each year without improving outcomes.

What This Legislation Does:

- This legislation allows doctors to focus on practicing medicine and improves the quality of patient care by encouraging the use of evidence-based guidelines.
- Physicians who can demonstrate they followed the recommended best practices will benefit from increased liability protection in the form of a legal safe harbor.
- The safe harbor would allow physicians the right of removal to federal court and of alternative dispute resolution (ADR) with an independent review panel of experts.
- If the panel finds the defendant was compliant with the standard of care, the plaintiff would be required to meet a heightened burden of proof if the plaintiff decides to proceed with the case.
- By reducing the necessary practice of defensive medicine and increasing adherence to evidence-based medicine this legislation has the potential to help lower health care costs.

Formation and Standards of the Guidelines:

- Rather than being directed by Washington, the guidelines will be developed by the physician community based on the best available scientific evidence.
- Guidelines should be developed through a transparent process by a knowledgeable, multidisciplinary panel of experts and representatives from key affected groups as recommended by Institute of Medicine's Standards for Developing Trustworthy Guidelines.
- Professional organizations that have published and maintained clinical practice guidelines are eligible to be certified by the Secretary of Health and Human Services to submit guidelines that will be treated as the standard of care.

Right of Removal to Federal Court:

- This safe harbor would provide physicians with a right of removal to federal court, where the guidelines would be deemed the standard of care.
- The requirement for the right of removal is a medical malpractice lawsuit where there is a federal payor.

Expert Review Panel, ADR, and Implications for Trial:

- After removal and prior to discovery, the case would be subject to mandatory alternative dispute resolution (ADR). The case would be heard by an independent review panel of three experts. The panel's decision would not be binding, but its findings would be admissible in court.
- The task of this panel is to render a nonbinding finding with regard to compliance or noncompliance with the standard of care.
- The guidelines are to be treated as the standard of care in ADR, but the panel allows for a human element to weigh each case on its own merits.
- If the panel finds that the defendant was not negligent, the plaintiff still has the right to proceed to trial, but would be required to meet a heightened burden of proof – increased from the preponderance of the evidence to a clear and convincing standard – in order to proceed beyond summary judgment.
- This legislation is designed to protect physicians from frivolous lawsuits, benefit patients by encouraging the practice of evidence based medicine, and help lower health care costs.