

Medical Liability Reform – Demonstration Grants

The Patient Protection and Affordable Care Act (ACA) authorizes \$50 million in demonstration grant money to States for the development, implementation, and evaluation of alternatives to current tort litigation, such as certificate of merit programs, which require a finding that a suit has merit before it can proceed to trial, and health courts, which would have cases heard by a panel of medical experts rather than a lay jury. Each state applying for funds has the liberty to develop an alternative system, must allow for the resolution of disputes, and promote a reduction of health care errors by encouraging the collection and analysis of patient safety data related to disputes by organizations that engage in efforts to improve patient safety and the quality of health care.

In reviewing the applications, the Health and Human Services (HHS) Secretary is to consult with a review panel composed of relevant experts appointed by the Comptroller General of the Government Accountability Office (GAO). When determining which states and localities will be awarded funds, the HHS Secretary consults with the Review Panel. Nominations will be solicited from the public for individuals to serve on the review panel. At least 9 but not more than 13, highly qualified and knowledgeable individuals will serve on the review panel; those individuals are to be from relevant stakeholders, including “health care providers and health care organizations.” The Comptroller General, or an individual within the GAO designated by the Comptroller General, will be appointed the Chairperson.

The HHS Secretary is to make these funds available for five years, beginning in FY2011, subject to Congress appropriating the \$50 million that was authorized under the ACA. As of October, 2013, the Administration had not included in their yearly budget requests any funding for the program; additionally, Congress has not appropriated any dollars for the program.

What are the current efforts by the Agency for Healthcare Quality and Research in regards to this program?

On November 9, 2010, AHRQ issued two requests for proposal: (1) Patient Safety and Medical Liability Reform Demonstration Projects (R18), Program Announcement (PA) Number: PAR-11-025 and (2) Patient Safety and Medical Liability Reform Planning Projects (R21), PA Number: PAR-11-023. While the initially announced application deadline was January 8, 2014, both the R18 and the R21 notice expired on March 6, 2012.

The R18 demonstration initiative is aimed to help States and health care systems to test models that meet the following goals:

- Put patient safety first and work to reduce preventable injuries;
- Foster better communication between doctors and their patients;
- Ensure that patients are compensated in a fair and timely manner for medical injuries while also reducing the incidence of frivolous lawsuits; and
- Reduce liability premiums.

More information about the R18 initiative can be found at: <http://grants.nih.gov/grants/guide/pa-files/PAR-11-025.html>.

The R21 initiative is soliciting planning grants that will lead to the later implementation of a demonstration project on patient safety and medical liability reform. Specifically, the planning effort must focus on:

- Putting patient safety first and working to reduce preventable injuries;
- Fostering better communication between doctors and their patients;
- Ensuring that patients are compensated in a fair and timely manner for medical injuries, while also reducing the incidence of frivolous lawsuits; and
- Reducing liability premiums.

More information about the R21 planning grants can be found at: <http://grants.nih.gov/grants/guide/pa-files/PAR-11-023.html>.

As of October, 2013, no awards for the planning grants or demonstration projects, as authorized by the ACA, have been announced publically by AHRQ.

However, in October 2009, prior to enactment of the ACA, in response to President Obama's September 17 directive for HHS Secretary Kathleen Sebelius to launch, at the time, a new medical liability demonstration project, AHRQ issued the request for applications for "planning grants" and "demonstration projects" from States and health care systems for patient safety and medical liability innovations that put patient safety first and work to reduce preventable injuries; foster better communication between doctors and their patients; ensure that patients are compensated in a fair and timely manner for medical injuries, while also reducing the incidence of frivolous lawsuits; and reduce liability premiums. More information about the Medical Liability Reform and Patient Safety Initiative can be found at: <http://grants.nih.gov/grants/guide/rfa-files/RFA-HS-10-022.html> (planning grants) and <http://grants.nih.gov/grants/guide/rfa-files/RFA-HS-10-021.html> (demonstration projects). Applications were due on January 20, 2010 for both grants, and on July 11, HHS awarded \$23 million in grant funding, including seven three-year demonstration projects and thirteen one-year planning grants. More information about the grant recipients can be found at: <http://www.hhs.gov/news/press/2010pres/06/20100611a.html>. President Obama used money in the existing AHRQ budget to fund these planning grants and demonstration projects.

In February 2012, AHRQ released a progress report, entitled *Medical Liability Reform and Patient Safety Initiative Progress Report*, providing a description and early observations of the planning and demonstration projects funded under the Medical Liability Reform and Patient Safety Initiative (<http://www.ahrq.gov/qual/liability/medliabrep.htm>). According to AHRQ, a report will be released each year on the progress and early observations of the demonstration projects. JBA/Rand will conduct a comprehensive evaluation of the initiative after the demonstration projects conclude in 2013. The evaluation will help to answer questions about the effects of various interventions on issues such as patient safety, liability premiums, communication between doctors and their patients, the timeliness and fairness of compensation for medical injuries, and the number of medical liability lawsuits.

What will the impact likely be on internists and their patients?

We do not know the exact impact on internists, as the impact on each state will be different, depending on how the demonstration project is constructed. It is our belief that each demonstration project selected for funding would be assessed according to its capacity for lowering liability insurance premiums or reducing the frequency and severity of malpractice claims without denying injured patients appropriate redress for physician negligence. We believe medical professional liability reforms should result in speedier and more equitable damage awards and discourage frivolous or non-meritorious claims. We also hope that liability reforms would bring stability and predictability into the professional liability insurance market.

Do these medical liability reforms enacted under the ACA infringe upon the rights of the states?

No. These reforms under the ACA do not supersede the State's ability to enact legislation awarding non-economic damages on malpractice suits, nor do these reforms supersede any State's ability to enact prior, present or future alternatives to tort reform.

What other trusted sources are available to help them better understand the impact of this provision on their practices?

- AHRQ website on medical liability grants: <http://www.ahrq.gov/qual/liability/>.
- "Patient Safety and Medical Liability Reform: Putting the Patient First" by Carolyn M. Clancy, MD, MACP, Director of AHRQ, from *Patient Safety & Quality Healthcare*.
<http://www.ahrq.gov/news/commentaries/compsafety.htm>
- What are the issues surrounding medical liability reform?, Issue Brief, January 2012, Robert Wood Johnson Foundation, <http://www.rwjf.org/en/research-publications/find-rwjf-research/2012/01/what-are-the-issues-surrounding-medical-liability-reform-.html>