

Health Care Reform Legislation (Provisions of Interest to the ABA)

Issue	ABA Policy	Senate Bill (H.R. 3590)	House Bill (H.R. 3962)
Access to Quality Health Care	Supports legislation that would provide for every American to have access to quality health care regardless of the person's income.	The goal of the legislation is to increase access to health care for all Americans regardless of the person's income.	The goal of the legislation is to increase access to health care for all Americans regardless of the person's income.
Alternatives to Medical Malpractice Litigation	Opposes caps on damages. Encourages "near misses" programs addressing liability and safety through legislation establishing pilot programs that enable and encourage medical personnel to report hospital events that, if repeated, could threaten patient safety. Supports apology legislation as a means of fostering better communication between doctors and patients. Endorses the use of alternatives to litigation for resolution of medical malpractice disputes when such alternatives are entered into only on a voluntary basis after a dispute has arisen.	Section 6801 is a Sense of the Senate in the Senate bill that encourages states to develop and test alternatives to the existing civil litigation system as a way of improving patient safety, medical errors, etc., "while preserving an individual's right to seek redress in court". Section 6801(3) provides, "Congress should consider establishing a State demonstration program to evaluate alternatives to the existing civil litigation system with respect to the resolution of medical malpractice claims." Section 399V-4 provides that states will be eligible for grants to test alternatives to civil tort litigation that emphasize patient safety, disclosure of health care errors, and early resolution of disputes, with a provision for patients to opt-out of these alternatives at any time. Alternatives will be evaluated to determine their effectiveness.	Section 2531 gives federal incentive payments to states that pass legislation with either a certificate of merit or sorry works/early offer in it, provided the state legislation does not cap damages or limit attorneys' fees.
Antitrust/ McCarran Ferguson Exemptions	Supports repeal of the current McCarran Ferguson exemption to the antitrust laws and supports replacing the exemption with legislation that permits certain cooperative activity between insurers to continue, but in general makes insurers subject to the same antitrust laws applicable to all other industries. Supports "safe harbor" exemptions for demonstrably procompetitive forms of conduct. Recommends that states retain the authority to regulate the business of insurance.	Not in the Senate bill.	H.R. 3962 repeals the exemption from the federal antitrust laws enjoyed by health and medical malpractice insurers and provides safe harbors for the insurance industry for certain procompetitive conduct.
Domestic Violence Coverage	Supports enacting legislation to provide that no person or entity could deny insurance benefits solely on the basis of the applicant's status as a victim of domestic violence.	Section 2705 Prohibits discrimination based on health status including evidence of insurability for conditions arising out of acts of domestic violence.	Section 107 prohibits health insurers from imposing any preexisting condition exclusion on the basis of domestic violence. .
Elder Justice Act	Supports the enactment of the Elder Justice Act (S. 795) to establish a multi-pronged, coordinated strategy to address elder abuse, neglect, and exploitation at the federal, state, and local levels. Supports incorporating the provisions of H.R. 448 into Senate bill. Also supports S. 1821, the Elder Abuse Victims Act (EAVA).	The provisions of the Elder Justice Act are contained in the Senate Bill.	Not in the House Bill.
End of Life Counseling	Supports House provision that would provide Medicare coverage for a voluntary consultation between enrollees and practitioners to discuss advance care planning issues.	Not in the Senate bill.	Contains a provision that would provide Medicare coverage for a voluntary consultation between enrollees and practitioners to discuss advance care planning issues. Consultations could be provided every 5 years, or more frequently if the enrollee undergoes a significant change in his or her health.

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Interstate Health Insurance Compacts	Congress, when it consents to the creation of an interstate compact agency should prescribe the administrative procedures to be employed by the agency, provide for judicial review of agency action, and specify the standards of judicial review. Provisions concerning administrative procedure and judicial review for compact agencies should be consistent with certain fundamental administrative law norms.	Contains provisions approving the formation of interstate health insurance compacts The Secretary would consult with the National Association of Insurance Commissioners and issue regulations for the creation of such compacts.	Contains provisions approving the formation of interstate health insurance compacts The Secretary of Health and Human Services (HHS) would consult with the National Association of Insurance Commissioners (NAIC), along with others, to develop model guidelines for the creation of such compacts.
Long Term Care	Supports a coordinated and comprehensive system of care and support for Americans of all ages with long term care needs that ensures equitable access without undue financial hardship, and with procedural fairness, appropriate beneficiary choice, appropriate quality, and responsible financing through appropriate means, which could involve a mixture of public funding and individual cost sharing. Also supports private insurance, employment related benefits and other mechanisms that will address the long term care needs, including tax law changes; better enforcement of consumer protections; and creative public and private options for providing, financing, and delivering long term care, including home and community based care.	Includes the Community Living Assistance Services and Supports (CLASS) Act, creating a new voluntary nationwide long-term services insurance program, financed through voluntary payroll deductions, and providing cash benefits for participating individuals who are unable to perform 2 or more functional activities of daily living.	Includes the Community Living Assistance Services and Supports (CLASS) Act.
Medical-Legal Partnerships	Supports medical-legal partnerships to integrate lawyers in a healthcare setting to help patients navigate the complex legal system.	Not in the Senate bill.	Section 2537 establishes a nationwide demonstration project awarding grants to and entering into contracts with medical-legal partnerships to assist patients and their families to navigate health-related programs and activities. No funds can be used for any medical malpractice or other civil action or proceeding or to assist individuals who are not lawfully present in the United States.

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<p>Parity of Mental Health and Substance Abuse Disorder Benefits</p>	<p>Supports a provision for parity of mental health and substance abuse disorder benefits similar to those contained in P.L. 110-343, the "Paul Wellstone and Pete Domenici Mental Health and Addiction Equity Act of 2008" but expanded to apply to all health plans covered by the new health care legislation, not solely employer-sponsored plans.</p>	<p>Section 1311 contains a provision requiring that Section 2726 of the Public Health Service Act shall apply to qualified health plans in the same manner and to the same extent as such section applies to health insurance issuers and group health plans. Additionally, Section 2001 contains provisions that, in the case of any benchmark benefit package or benchmark equivalent coverage that is offered by an entity that is not a Medicaid-managed care organization and that provides both medical and surgical benefits and mental health or substance use disorder benefits, the entity shall ensure that the financial requirements and treatment limitations applicable to such mental health or substance use disorder benefits comply with the requirements of section 2705(a) of the Public Health Service Act in the same manner as such requirements apply to a group health plan.</p>	<p>Section 214 contains a provision requiring a qualified health benefits plan to comply with standards established by the Commissioner to prohibit discrimination in health benefits or benefit structures for qualifying health benefits plans, building from Section 702 of the Employee Retirement Income Security Act of 1974, Section 2702 of the Public Health Service Act, and Section 9802 of the Internal Revenue Code of 1986. Additionally, Section 214 contains a provision applying the provisions of Section 2705 (other than subsections (a)(1), (a)(2), and (c)) of the Public Health Service Act to apply to a qualified health benefits plan, regardless of whether it is offered in the individual or group market, in the same manner as such provisions apply to health insurance coverage offered in the large group market.</p>