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1st Session
HOUSE OF REPRESENTATIVES
REPORT
108–34

PROVIDING FOR CONSIDERATION OF H.R. 5, HELP EFFICIENT, ACCESSIBLE, LOW COST, TIMELY HEALTHCARE (HEALTH) ACT OF 2003

MARCH 12, 2003.—Referred to the House Calendar and ordered to be printed

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Mr. REYNOLDS, from the Committee on Rules, submitted the following

R E P O R T

[To accompany H. Res. 139]

The Committee on Rules, having had under consideration House Resolution 139, by a nonrecord vote, reports the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 5, the Help Efficient, Accessible, Low Cost, Timely Healthcare (HEALTH) Act of 2003, under a closed rule. The rule provides two hours of debate in the House, with 80 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce. The rule waives all points of order against consideration of the bill.

The rule further provides that in lieu of the amendments recommended by the Committees on the Judiciary and on Energy and Commerce now printed in the bill, the amendment in the nature of a substitute printed in this report shall be considered as adopted. The rule provides one motion to recommit with or without instructions. Finally, the rule provides that House Resolution 126 is laid on the table.

The waiver of all points of order includes a waiver of clause 4(a) of rule XIII (requiring a three-day layover of committee reports) and of section 303 of the Congressional Budget Act (prohibiting consideration of legislation, as reported, providing new budget authority, change in revenues, change in public debt, new entitlement authority, or new credit authority for a fiscal year until the budget resolution for that year has been agreed to). The waiver of clause

4(a) of rule XIII is necessary because reports were not available until Tuesday, March 11 and the bill may be considered by the House as early as Thursday, March 13, 2003. The waiver of section 303 is necessary because a reduction of healthcare costs will increase wages and result in increased revenues.

COMMITTEE VOTES

Pursuant to clause 3(b) of House rule XIII the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 16

Date: March 12, 2003.
Measure: H.R. 5.
Motion by: Mr. Frost.
Summary of motion: To report an open rule.
Results: Defeated 3 to 7.
Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 17

Date: March 12, 2003.
Measure: H.R. 5.
Motion by: Mr. Frost.
Summary of motion: To make in order the amendment in the nature of a substitute offered by Representatives Conyers and Dingell as modified.
Results: Defeated 3 to 7.
Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 18

Date: March 12, 2003.
Measure: H.R. 5.
Motion by: Mr. Frost.
Summary of motion: to make in order the amendment offered by Representative Pallone which clarifies the definitions to ensure that its liability protections do not apply to HMOs and drug and device manufacturers.
Results: Defeated 3 to 7.
Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 19

Date: March 12, 2003.
Measure: H.R. 5.
Motion by: Mr. Frost.
Summary of motion: To make in order the amendment offered Representative Sandlin which prohibits a carrier offering medical malpractice insurance from charging a premium that exceeds 80 percent of the amount of the premium charged during calendar year 2001, but provides that carriers are permitted to increase

their premium rates on an annual basis in an amount no greater than any increase in the Consumer Price Index plus 2 percent. Provides that the Secretary of Health and Human Services may offer an adjustment to such limitation to a carrier that satisfactorily demonstrates it would be unable to earn a fair rate of return due to the imposed limitation, provided, that the adjustment may not exceed the minimum amount that the Secretary determines is required for the carrier to realize a fair rate of return.

Results: Defeated 3 to 7.

Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 20

Date: March 12, 2003.

Measure: H.R. 5.

Motion by: Mr. Frost.

Summary of motion: To make in order the amendment offered by Representative Sandlin which prohibits a carrier offering medical malpractice insurance from charging a premium that exceeds 80 percent of the amount of the premium charged during calendar year 2001. Provides that the Secretary of Health and Human Services may make an adjustment to such limitation to a carrier that satisfactorily demonstrates it would be unable to earn a fair rate of return due to the imposed limitation, provided, that the adjustment may not exceed the minimum amount that the Secretary determines is required for the carrier to realize a fair rate of return.

Results: Defeated 3 to 7.

Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 21

Date: March 12, 2003.

Measure: H.R. 5.

Motion by: Mr. Frost.

Summary of motion: To make in order the amendment offered by Representative Jackson-Lee which strikes the cap on punitive damages.

Results: Defeated 3 to 8.

Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 22

Date: March 12, 2003.

Measure: H.R. 5.

Motion by: Mr. Frost.

Summary of motion: To make in order the amendment in the nature of a substitute offered by Representatives Conyers and Dingell with the appropriate waivers.

Results: Defeated 3 to 8.

Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 23

Date: March 12, 2003.
Measure: H.R. 5.
Motion by: Mr. McGovern.
Summary of motion: To make in order the amendment offered by Representative Delahunt which changes the $250,000 cap on non-economic damages to $1,607,615 to reflect the increase in the cost of medical care since California enacted its $250,000 cap in 1975.
Results: Defeated 3 to 8.
Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 24

Date: March 12, 2003.
Measure: H.R. 5.
Motion by: Mr. McGovern.
Summary of motion: To make in order the amendment offered by Representative Delahunt which Bars health care lawsuits in all cases unless the complaint is filed within 3 years after date injury is or should have been discovered. Amendment also tolls statute of limitations for minors until they come of age.
Results: Defeated 3 to 8.
Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 25

Date: March 12, 2003.
Measure: H.R. 5.
Motion by: Mr. McGovern.
Summary of motion: To make in order the amendment offered by Representative Jackson-Lee which mandates the state agencies regulating insurance create a State Impaired Physicians Fund to provide services including drug and alcohol treatment counseling for physicians and a Participating Physicians Fund to provide training for physicians treating indigent populations. Would require all medical malpractice insurers to contribute 2 percent of their savings derived from the provisions of this Act, to the State Impaired Physicians Fund.
Results: Defeated 3 to 8.
Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 26

Date: March 12, 2003.
Measure: H.R. 5.
Motion by: Mr. McGovern.
Summary of motion: To make in order the amendment offered by Representative Hoeffel which allows for court to exceed $250,000 damages cap in cases where it finds a severe or permanent loss or impairment of a bodily function or substantial disfigurement or other special circumstances. In such cases, the cap could be exceed-

ed if failing to do so would deprive the claimant of just compensation for the injuries sustained.

Results: Defeated 3 to 8.

Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 27

Date: March 12, 2003.

Measure: H.R. 5.

Motion by: Mr. McGovern.

Summary of motion: To make in order the amendment offered by Representative Nadler which indexes the $250,000 cap on non-economic and punitive damages in the bill for inflation.

Results: Defeated 3 to 8.

Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 28

Date: March 12, 2003.

Measure: H.R. 5.

Motion by: Mr. McGovern.

Summary of motion: To make in order the amendment offered by Representative Nadler which prohibits secret settlements in medical malpractice cases unless a judge finds that doing so would not harm the public health and safety.

Results: Defeated 3 to 8.

Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 29

Date: March 12, 2003.

Measure: H.R. 5.

Motion by: Mr. McGovern.

Summary of motion: To make in order the amendment offered by Representative Jackson-Lee which strikes the non-economic damage cap.

Results: Defeated 3 to 8.

Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 30

Date: March 12, 2003.

Measure: H.R. 5.

Motion by: Mr. McGovern.

Summary of motion: To make in order the amendment offered by Representative Jackson-Lee which prohibits any malpractice insurer from increasing rates during the 12 months following enactment of this Act.

Results: Defeated 3 to 8.

Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 31

Date: March 12, 2003.
Measure: H.R. 5.
Motion by: Mr. Hastings of Florida.
Summary of motion: To make in order the amendment offered by Representative Jackson-Lee which requires that all medical malpractice insurers make a reasonable estimate of their annual savings achieved as a result of this Act. Requires the insurers to develop and implement a plan to dedicate at least 50 percent of those savings to reduction of premiums for covered physicians.
Results: Defeated 3 to 8.
Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 32

Date: March 12, 2003.
Measure: H.R. 5.
Motion by: Mr. Hastings of Florida.
Summary of motion: To make in order the amendment offered by Representative Stupak which adds a section removing the antitrust exemption for health care liability insurance companies.
Results: Defeated 3 to 8.
Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 33

Date: March 12, 2003.
Measure: H.R. 5.
Motion by: Mr. Hastings of Florida.
Summary of motion: To make in order the amendment offered by Representative Scott of Virginia which removes section 6 from the bill.
Results: Defeated 3 to 8.
Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 34

Date: March 12, 2003.
Measure: H.R. 5.
Motion by: Mr. Hastings of Florida.
Summary of motion: To make in order the amendment offered by Representative Scott of Virginia which deletes subsection "(D)" on page 20 of the bill, the so-called "Fair Share Rule."
Results: Defeated 3 to 8.
Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 35

Date: March 12, 2003.
Measure: H.R. 5.
Motion by: Mr. Hastings of Florida.
Summary of motion: To make in order the amendment offered by Representative Stupak which allows the non-economic damages cap to rise with the rate of inflation.
Results: Defeated 3 to 8.
Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 36

Date: March 12, 2003.
Measure: H.R. 5.
Motion by: Mr. Hastings of Florida.
Summary of motion: To make in order the amendment offered by Representative Berkley which provides a Sense of the Congress to express that medical malpractice liability reform should be accompanied by insurance reform.
Results: Defeated 3 to 8.
Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 37

Date: March 12, 2003.
Measure: H.R. 5.
Motion by: Mr. Frost.
Summary of motion: To make in order an en bloc amendment.
Results: Defeated 3 to 8.
Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

SUMMARY OF AMENDMENT TO BE CONSIDERED AS ADOPTED

(Summary derived from information provided by the sponsor.)

Sensenbrenner/Tauzin: Amendment in the Nature of a Substitute. Includes a 3 year statute of limitations with certain exceptions for minors, fraud, intentional concealment and the presence of a foreign body; a $250,000 cap on non-economic damages and a "fair share" rule, by which damages are allocated fairly, in direct proportion to fault; sliding scale limits on the contingency fees lawyers can charge; authorization for defendants to introduce evidence showing the plaintiff received compensation for losses from outside sources (to prevent double recoveries); guidelines for the award of punitive damages, including guidelines for punitive damages award not to exceed the greater of $250,000 or twice economic damages; a safe harbor from punitive damages for products that meet applicable FDA safety requirements, with exceptions for cases in which information required to be given to the FDA was withheld and cases in which illegal payments were made to the FDA; protections of pharmacists and doctors from being named in lawsuits for forum-shopping purposes; authorization for courts to require peri-

odic payments for future damages; except as provided in the Act nothing in the Act shall affect any defense available to a defendant in a health care lawsuit or action under any other provision of federal law; a savings clause that saves from preemption state laws that limit damages to specific amounts.

TEXT OF AMENDMENT CONSIDERED AS ADOPTED

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2003".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) EFFECT ON FEDERAL SPENDING.—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this Act to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of "defensive medicine" and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

SEC. 3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

The time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first. In no event shall the time for commencement of a health care lawsuit exceed 3 years after the date of manifestation of injury unless tolled for any of the following:

(1) Upon proof of fraud;

(2) Intentional concealment; or

(3) The presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

Actions by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that actions by a minor under the full age of 6 years shall be commenced within 3 years of manifestation of injury or prior to the minor's 8th birthday, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care organization have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

SEC. 4. COMPENSATING PATIENT INJURY.

(a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any health care lawsuit, nothing in this Act shall limit a claimant's recovery of the full amount of the available economic damages, notwithstanding the limitation in subsection (b).

(b) ADDITIONAL NONECONOMIC DAMAGES.—In any health care lawsuit, the amount of noneconomic damages, if available, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same injury.

(c) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—For purposes of applying the limitation in subsection (b), future noneconomic damages shall not be discounted to present value. The jury shall not be informed about the maximum award for noneconomic damages. An award for noneconomic damages in excess of $250,000 shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law. If separate awards are rendered for past and future noneconomic damages and the combined

awards exceed $250,000, the future noneconomic damages shall be reduced first.

(d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. Whenever a judgment of liability is rendered as to any party, a separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

SEC. 5. MAXIMIZING PATIENT RECOVERY.

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants. In particular, in any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity. In no event shall the total of all contingent fees for representing all claimants in a health care lawsuit exceed the following limits:

(1) 40 percent of the first $50,000 recovered by the claimant(s).

(2) 33⅓ percent of the next $50,000 recovered by the claimant(s).

(3) 25 percent of the next $500,000 recovered by the claimant(s).

(4) 15 percent of any amount by which the recovery by the claimant(s) is in excess of $600,000.

(b) APPLICABILITY.—The limitations in this section shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution. In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section. The requirement for court supervision in the first two sentences of subsection (a) applies only in civil actions.

SEC. 6. ADDITIONAL HEALTH BENEFITS.

In any health care lawsuit involving injury or wrongful death, any party may introduce evidence of collateral source benefits. If a party elects to introduce such evidence, any opposing party may introduce evidence of any amount paid or contributed or reasonably likely to be paid or contributed in the future by or on behalf of the opposing party to secure the right to such collateral source benefits. No provider of collateral source benefits shall recover any amount against the claimant or receive any lien or credit against the claimant's recovery or be equitably or legally subrogated to the right of the claimant in a health care lawsuit involving injury or wrongful death. This section shall apply to any health care lawsuit that is

settled as well as a health care lawsuit that is resolved by a fact finder. This section shall not apply to section 1862(b) (42 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C. 1396a(a)(25)) of the Social Security Act.

SEC. 7. PUNITIVE DAMAGES.

(a) IN GENERAL.—Punitive damages may, if otherwise permitted by applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer. In any health care lawsuit where no judgment for compensatory damages is rendered against such person, no punitive damages may be awarded with respect to the claim in such lawsuit. No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages. At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(1) whether punitive damages are to be awarded and the amount of such award; and

(2) the amount of punitive damages following a determination of punitive liability.

If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages, if awarded, in a health care lawsuit, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages, if awarded, in a health care lawsuit may be as much as $250,000 or as much as two times the amount of economic damages awarded, whichever is greater. The jury shall not be informed of this limitation.

(c) NO PUNITIVE DAMAGES FOR PRODUCTS THAT COMPLY WITH FDA STANDARDS.—

(1) IN GENERAL.—

(A) No punitive damages may be awarded against the manufacturer or distributor of a medical product, or a supplier of any component or raw material of such medical product, based on a claim that such product caused the claimant's harm where—

(i)(I) such medical product was subject to premarket approval, clearance, or licensure by the Food and Drug Administration with respect to the safety of the formulation or performance of the aspect of such medical product which caused the claimant's harm or the adequacy of the packaging or labeling of such medical product; and

(II) such medical product was so approved, cleared, or licensed; or

(ii) such medical product is generally recognized among qualified experts as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable Food and Drug Administration regulations, including without limitation those related to packaging and labeling, unless the Food and Drug Administration has determined that such medical product was not manufactured or distributed in substantial compliance with applicable Food and Drug Administration statutes and regulations.

(B) RULE OF CONSTRUCTION.—Subparagraph (A) may not be construed as establishing the obligation of the Food and Drug Administration to demonstrate affirmatively that a manufacturer, distributor, or supplier referred to in such subparagraph meets any of the conditions described in such subparagraph.

(2) LIABILITY OF HEALTH CARE PROVIDERS.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a medical product approved, licensed, or cleared by the Food and Drug Administration shall not be named as a party to a product liability lawsuit involving such product and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or seller of such product. Nothing in this paragraph prevents a court from consolidating cases involving health care providers and cases involving products liability claims against the manufacturer, distributor, or product seller of such medical product.

(3) PACKAGING.—In a health care lawsuit for harm which is alleged to relate to the adequacy of the packaging or labeling of a drug which is required to have tamper-resistant packaging under regulations of the Secretary of Health and Human Services (including labeling regulations related to such packaging), the manufacturer or product seller of the drug shall not be held liable for punitive damages unless such packaging or labeling is found by the trier of fact by clear and convincing evidence to be substantially out of compliance with such regulations.

(4) EXCEPTION.—Paragraph (1) shall not apply in any health care lawsuit in which—

(A) a person, before or after premarket approval, clearance, or licensure of such medical product, knowingly misrepresented to or withheld from the Food and Drug Administration information that is required to be submitted under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or section 351 of the Public Health Service Act (42 U.S.C. 262) that is material and is causally related to the harm which the claimant allegedly suffered; or

(B) a person made an illegal payment to an official of the Food and Drug Administration for the purpose of either securing or maintaining approval, clearance, or licensure of such medical product.

SEC. 8. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments. In any health care lawsuit, the court may be guided by the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this Act.

SEC. 9. DEFINITIONS.

In this Act:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term "alternative dispute resolution system" or "ADR" means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term "claimant" means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term "collateral source benefits" means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term "compensatory damages" means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. The term "compensatory damages" includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term "contingent fee" includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) ECONOMIC DAMAGES.—The term "economic damages" means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) HEALTH CARE LAWSUIT.—The term "health care lawsuit" means any health care liability claim concerning the provision of health care goods or services or any medical product affecting interstate commerce, or any health care liability action concerning the provision of health care goods or services or any medical product affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider, a health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim. Such term does not include a claim or action which is based on criminal liability; which seeks civil fines or penalties paid to Federal, State, or local government; or which is grounded in antitrust.

(8) HEALTH CARE LIABILITY ACTION.—The term "health care liability action" means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider, a health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, de-

fendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(9) HEALTH CARE LIABILITY CLAIM.—The term "health care liability claim" means a demand by any person, whether or not pursuant to ADR, against a health care provider, health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, including, but not limited to, third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services or medical products, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(10) HEALTH CARE ORGANIZATION.—The term "health care organization" means any person or entity which is obligated to provide or pay for health benefits under any health plan, including any person or entity acting under a contract or arrangement with a health care organization to provide or administer any health benefit.

(11) HEALTH CARE PROVIDER.—The term "health care provider" means any person or entity required by State or Federal laws or regulations to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(12) HEALTH CARE GOODS OR SERVICES.—The term "health care goods or services" means any goods or services provided by a health care organization, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, or treatment of any human disease or impairment, or the assessment or care of the health of human beings.

(13) MALICIOUS INTENT TO INJURE.—The term "malicious intent to injure" means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) MEDICAL PRODUCT.—The term "medical product" means a drug, device, or biological product intended for humans, and the terms "drug", "device", and "biological product" have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321) and section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)), respectively, including any component or raw material used therein, but excluding health care services.

(15) NONECONOMIC DAMAGES.—The term "noneconomic damages" means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(16) PUNITIVE DAMAGES.—The term "punitive damages" means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a

health care provider, health care organization, or a manufacturer, distributor, or supplier of a medical product. Punitive damages are neither economic nor noneconomic damages.

(17) RECOVERY.—The term "recovery" means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys' office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(18) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 10. EFFECT ON OTHER LAWS.

(a) VACCINE INJURY.—

(1) To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this Act does not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this Act in conflict with a rule of law of such title XXI shall not apply to such action.

(2) If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this Act or otherwise applicable law (as determined under this Act) will apply to such aspect of such action.

(b) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this Act shall be deemed to affect any defense available to a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this Act preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this Act. The provisions governing health care lawsuits set forth in this Act supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this Act; or

(2) prohibits the introduction of evidence regarding collateral source benefits, or mandates or permits subrogation or a lien on collateral source benefits.

(b) PROTECTION OF STATES' RIGHTS AND OTHER LAWS.—(1) Any issue that is not governed by any provision of law established by or under this Act (including State standards of negligence) shall be governed by otherwise applicable State or Federal law.

(2) This Act shall not preempt or supersede any State or Federal law that imposes greater procedural or substantive protections for health care providers and health care organizations from liability, loss, or damages than those provided by this Act or create a cause of action.

(c) STATE FLEXIBILITY.—No provision of this Act shall be construed to preempt—

(1) any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this Act, notwithstanding section 4(a); or

(2) any defense available to a party in a health care lawsuit under any other provision of State or Federal law.

SEC. 12. APPLICABILITY; EFFECTIVE DATE.

This Act shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of the enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

SEC. 13. SENSE OF CONGRESS.

It is the sense of Congress that a health insurer should be liable for damages for harm caused when it makes a decision as to what care is medically necessary and appropriate.

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