

109TH CONGRESS
1ST SESSION

H. R. 5

To improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

IN THE HOUSE OF REPRESENTATIVES

JULY 21, 2005

Mr. GINGREY (for himself and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Help Efficient, Acces-
5 sible, Low-cost, Timely Healthcare (HEALTH) Act of
6 2005”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—

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

14 (2) EFFECT ON INTERSTATE COMMERCE.—
15 Congress finds that the health care and insurance
16 industries are industries affecting interstate com-
17 merce and the health care liability litigation systems
18 existing throughout the United States are activities
19 that affect interstate commerce by contributing to
20 the high costs of health care and premiums for
21 health care liability insurance purchased by health
22 care system providers.

23 (3) EFFECT ON FEDERAL SPENDING.—Con-
24 gress finds that the health care liability litigation
25 systems existing throughout the United States have

1 a significant effect on the amount, distribution, and
2 use of Federal funds because of—

3 (A) the large number of individuals who
4 receive health care benefits under programs op-
5 erated or financed by the Federal Government;

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

10 (C) the large number of health care pro-
11 viders who provide items or services for which
12 the Federal Government makes payments.

13 (b) PURPOSE.—It is the purpose of this Act to imple-
14 ment reasonable, comprehensive, and effective health care
15 liability reforms designed to—

16 (1) improve the availability of health care serv-
17 ices in cases in which health care liability actions
18 have been shown to be a factor in the decreased
19 availability of services;

20 (2) reduce the incidence of “defensive medi-
21 cine” and lower the cost of health care liability in-
22 surance, all of which contribute to the escalation of
23 health care costs;

24 (3) ensure that persons with meritorious health
25 care injury claims receive fair and adequate com-

1 pensation, including reasonable noneconomic dam-
2 ages;

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

8 (5) provide an increased sharing of information
9 in the health care system which will reduce unin-
10 tended injury and improve patient care.

11 **SEC. 3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

12 The time for the commencement of a health care law-
13 suit shall be 3 years after the date of manifestation of
14 injury or 1 year after the claimant discovers, or through
15 the use of reasonable diligence should have discovered, the
16 injury, whichever occurs first. In no event shall the time
17 for commencement of a health care lawsuit exceed 3 years
18 after the date of manifestation of injury unless tolled for
19 any of the following—

20 (1) upon proof of fraud;

21 (2) intentional concealment; or

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

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

11 **SEC. 4. COMPENSATING PATIENT INJURY.**

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

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

23 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
24 DAMAGES.—For purposes of applying the limitation in
25 subsection (b), future noneconomic damages shall not be

1 discounted to present value. The jury shall not be in-
2 formed about the maximum award for noneconomic dam-
3 ages. An award for noneconomic damages in excess of
4 \$250,000 shall be reduced either before the entry of judg-
5 ment, or by amendment of the judgment after entry of
6 judgment, and such reduction shall be made before ac-
7 counting for any other reduction in damages required by
8 law. If separate awards are rendered for past and future
9 noneconomic damages and the combined awards exceed
10 \$250,000, the future noneconomic damages shall be re-
11 duced first.

12 (d) FAIR SHARE RULE.—In any health care lawsuit,
13 each party shall be liable for that party's several share
14 of any damages only and not for the share of any other
15 person. Each party shall be liable only for the amount of
16 damages allocated to such party in direct proportion to
17 such party's percentage of responsibility. Whenever a
18 judgment of liability is rendered as to any party, a sepa-
19 rate judgment shall be rendered against each such party
20 for the amount allocated to such party. For purposes of
21 this section, the trier of fact shall determine the propor-
22 tion of responsibility of each party for the claimant's
23 harm.

1 **SEC. 5. MAXIMIZING PATIENT RECOVERY.**

2 (a) COURT SUPERVISION OF SHARE OF DAMAGES
3 ACTUALLY PAID TO CLAIMANTS.—In any health care law-
4 suit, the court shall supervise the arrangements for pay-
5 ment of damages to protect against conflicts of interest
6 that may have the effect of reducing the amount of dam-
7 ages awarded that are actually paid to claimants. In par-
8 ticular, in any health care lawsuit in which the attorney
9 for a party claims a financial stake in the outcome by vir-
10 tue of a contingent fee, the court shall have the power
11 to restrict the payment of a claimant's damage recovery
12 to such attorney, and to redirect such damages to the
13 claimant based upon the interests of justice and principles
14 of equity. In no event shall the total of all contingent fees
15 for representing all claimants in a health care lawsuit ex-
16 ceed the following limits:

17 (1) 40 percent of the first \$50,000 recovered by
18 the claimant(s).

19 (2) 33 $\frac{1}{3}$ percent of the next \$50,000 recovered
20 by the claimant(s).

21 (3) 25 percent of the next \$500,000 recovered
22 by the claimant(s).

23 (4) 15 percent of any amount by which the re-
24 covery by the claimant(s) is in excess of \$600,000.

25 (b) APPLICABILITY.—The limitations in this section
26 shall apply whether the recovery is by judgment, settle-

1 ment, mediation, arbitration, or any other form of alter-
2 native dispute resolution. In a health care lawsuit involv-
3 ing a minor or incompetent person, a court retains the
4 authority to authorize or approve a fee that is less than
5 the maximum permitted under this section. The require-
6 ment for court supervision in the first two sentences of
7 subsection (a) applies only in civil actions.

8 **SEC. 6. ADDITIONAL HEALTH BENEFITS.**

9 In any health care lawsuit involving injury or wrong-
10 ful death, any party may introduce evidence of collateral
11 source benefits. If a party elects to introduce such evi-
12 dence, any opposing party may introduce evidence of any
13 amount paid or contributed or reasonably likely to be paid
14 or contributed in the future by or on behalf of the oppos-
15 ing party to secure the right to such collateral source bene-
16 fits. No provider of collateral source benefits shall recover
17 any amount against the claimant or receive any lien or
18 credit against the claimant's recovery or be equitably or
19 legally subrogated to the right of the claimant in a health
20 care lawsuit involving injury or wrongful death. This sec-
21 tion shall apply to any health care lawsuit that is settled
22 as well as a health care lawsuit that is resolved by a fact
23 finder. This section shall not apply to section 1862(b) (42
24 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C.
25 1396a(a)(25)) of the Social Security Act.

1 **SEC. 7. PUNITIVE DAMAGES.**

2 (a) IN GENERAL.—Punitive damages may, if other-
3 wise permitted by applicable State or Federal law, be
4 awarded against any person in a health care lawsuit only
5 if it is proven by clear and convincing evidence that such
6 person acted with malicious intent to injure the claimant,
7 or that such person deliberately failed to avoid unneces-
8 sary injury that such person knew the claimant was sub-
9 stantially certain to suffer. In any health care lawsuit
10 where no judgment for compensatory damages is rendered
11 against such person, no punitive damages may be awarded
12 with respect to the claim in such lawsuit. No demand for
13 punitive damages shall be included in a health care lawsuit
14 as initially filed. A court may allow a claimant to file an
15 amended pleading for punitive damages only upon a mo-
16 tion by the claimant and after a finding by the court, upon
17 review of supporting and opposing affidavits or after a
18 hearing, after weighing the evidence, that the claimant has
19 established by a substantial probability that the claimant
20 will prevail on the claim for punitive damages. At the re-
21 quest of any party in a health care lawsuit, the trier of
22 fact shall consider in a separate proceeding—

23 (1) whether punitive damages are to be award-
24 ed and the amount of such award; and

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

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

6 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
7 AGES.—

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

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

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

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

18 (D) the number of products sold or med-
19 ical procedures rendered for compensation, as
20 the case may be, by such party, of the kind
21 causing the harm complained of by the claim-
22 ant;

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

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

4 (2) MAXIMUM AWARD.—The amount of punitive
5 damages, if awarded, in a health care lawsuit may
6 be as much as \$250,000 or as much as two times
7 the amount of economic damages awarded, which-
8 ever is greater. The jury shall not be informed of
9 this limitation.

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

12 (1) IN GENERAL.—

13 (A) No punitive damages may be awarded
14 against the manufacturer or distributor of a
15 medical product, or a supplier of any compo-
16 nent or raw material of such medical product,
17 based on a claim that such product caused the
18 claimant's harm where—

19 (i)(I) such medical product was sub-
20 ject to premarket approval, clearance, or li-
21 censure by the Food and Drug Administra-
22 tion with respect to the safety of the for-
23 mulation or performance of the aspect of
24 such medical product which caused the
25 claimant's harm or the adequacy of the

1 packaging or labeling of such medical
2 product; and

3 (II) such medical product was so ap-
4 proved, cleared, or licensed; or

5 (ii) such medical product is generally
6 recognized among qualified experts as safe
7 and effective pursuant to conditions estab-
8 lished by the Food and Drug Administra-
9 tion and applicable Food and Drug Admin-
10 istration regulations, including without
11 limitation those related to packaging and
12 labeling, unless the Food and Drug Admin-
13 istration has determined that such medical
14 product was not manufactured or distrib-
15 uted in substantial compliance with appli-
16 cable Food and Drug Administration stat-
17 utes and regulations.

18 (B) RULE OF CONSTRUCTION.—Subpara-
19 graph (A) may not be construed as establishing
20 the obligation of the Food and Drug Adminis-
21 tration to demonstrate affirmatively that a
22 manufacturer, distributor, or supplier referred
23 to in such subparagraph meets any of the con-
24 ditions described in such subparagraph.

1 (2) LIABILITY OF HEALTH CARE PROVIDERS.—

2 A health care provider who prescribes, or who dis-
3 penses pursuant to a prescription, a medical product
4 approved, licensed, or cleared by the Food and Drug
5 Administration shall not be named as a party to a
6 product liability lawsuit involving such product and
7 shall not be liable to a claimant in a class action
8 lawsuit against the manufacturer, distributor, or
9 seller of such product. Nothing in this paragraph
10 prevents a court from consolidating cases involving
11 health care providers and cases involving products li-
12 ability claims against the manufacturer, distributor,
13 or product seller of such medical product.

14 (3) PACKAGING.—In a health care lawsuit for
15 harm which is alleged to relate to the adequacy of
16 the packaging or labeling of a drug which is required
17 to have tamper-resistant packaging under regula-
18 tions of the Secretary of Health and Human Serv-
19 ices (including labeling regulations related to such
20 packaging), the manufacturer or product seller of
21 the drug shall not be held liable for punitive dam-
22 ages unless such packaging or labeling is found by
23 the trier of fact by clear and convincing evidence to
24 be substantially out of compliance with such regula-
25 tions.

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

3 (A) a person, before or after premarket ap-
4 proval, clearance, or licensure of such medical
5 product, knowingly misrepresented to or with-
6 held from the Food and Drug Administration
7 information that is required to be submitted
8 under the Federal Food, Drug, and Cosmetic
9 Act (21 U.S.C. 301 et seq.) or section 351 of
10 the Public Health Service Act (42 U.S.C. 262)
11 that is material and is causally related to the
12 harm which the claimant allegedly suffered; or

13 (B) a person made an illegal payment to
14 an official of the Food and Drug Administra-
15 tion for the purpose of either securing or main-
16 taining approval, clearance, or licensure of such
17 medical product.

18 **SEC. 8. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
19 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
20 **SUITS.**

21 (a) IN GENERAL.—In any health care lawsuit, if an
22 award of future damages, without reduction to present
23 value, equaling or exceeding \$50,000 is made against a
24 party with sufficient insurance or other assets to fund a
25 periodic payment of such a judgment, the court shall, at

1 the request of any party, enter a judgment ordering that
2 the future damages be paid by periodic payments. In any
3 health care lawsuit, the court may be guided by the Uni-
4 form Periodic Payment of Judgments Act promulgated by
5 the National Conference of Commissioners on Uniform
6 State Laws.

7 (b) APPLICABILITY.—This section applies to all ac-
8 tions which have not been first set for trial or retrial be-
9 fore the effective date of this Act.

10 **SEC. 9. DEFINITIONS.**

11 In this Act:

12 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-
13 TEM; ADR.—The term “alternative dispute resolution
14 system” or “ADR” means a system that provides
15 for the resolution of health care lawsuits in a man-
16 ner other than through a civil action brought in a
17 State or Federal court.

18 (2) CLAIMANT.—The term “claimant” means
19 any person who brings a health care lawsuit, includ-
20 ing a person who asserts or claims a right to legal
21 or equitable contribution, indemnity or subrogation,
22 arising out of a health care liability claim or action,
23 and any person on whose behalf such a claim is as-
24 serted or such an action is brought, whether de-
25 ceased, incompetent, or a minor.

1 (3) COLLATERAL SOURCE BENEFITS.—The
2 term “collateral source benefits” means any amount
3 paid or reasonably likely to be paid in the future to
4 or on behalf of the claimant, or any service, product
5 or other benefit provided or reasonably likely to be
6 provided in the future to or on behalf of the claim-
7 ant, as a result of the injury or wrongful death, pur-
8 suant to—

9 (A) any State or Federal health, sickness,
10 income-disability, accident, or workers’ com-
11 pensation law;

12 (B) any health, sickness, income-disability,
13 or accident insurance that provides health bene-
14 fits or income-disability coverage;

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

20 (D) any other publicly or privately funded
21 program.

22 (4) COMPENSATORY DAMAGES.—The term
23 “compensatory damages” means objectively
24 verifiable monetary losses incurred as a result of the
25 provision of, use of, or payment for (or failure to

1 provide, use, or pay for) health care services or med-
2 ical products, such as past and future medical ex-
3 penses, loss of past and future earnings, cost of ob-
4 taining domestic services, loss of employment, and
5 loss of business or employment opportunities, dam-
6 ages for physical and emotional pain, suffering, in-
7 convenience, physical impairment, mental anguish,
8 disfigurement, loss of enjoyment of life, loss of soci-
9 ety and companionship, loss of consortium (other
10 than loss of domestic service), hedonic damages, in-
11 jury to reputation, and all other nonpecuniary losses
12 of any kind or nature. The term “compensatory
13 damages” includes economic damages and non-
14 economic damages, as such terms are defined in this
15 section.

16 (5) CONTINGENT FEE.—The term “contingent
17 fee” includes all compensation to any person or per-
18 sons which is payable only if a recovery is effected
19 on behalf of one or more claimants.

20 (6) ECONOMIC DAMAGES.—The term “economic
21 damages” means objectively verifiable monetary
22 losses incurred as a result of the provision of, use
23 of, or payment for (or failure to provide, use, or pay
24 for) health care services or medical products, such as
25 past and future medical expenses, loss of past and

1 future earnings, cost of obtaining domestic services,
2 loss of employment, and loss of business or employ-
3 ment opportunities.

4 (7) HEALTH CARE LAWSUIT.—The term
5 “health care lawsuit” means any health care liability
6 claim concerning the provision of health care goods
7 or services or any medical product affecting inter-
8 state commerce, or any health care liability action
9 concerning the provision of health care goods or
10 services or any medical product affecting interstate
11 commerce, brought in a State or Federal court or
12 pursuant to an alternative dispute resolution system,
13 against a health care provider, a health care organi-
14 zation, or the manufacturer, distributor, supplier,
15 marketer, promoter, or seller of a medical product,
16 regardless of the theory of liability on which the
17 claim is based, or the number of claimants, plain-
18 tiffs, defendants, or other parties, or the number of
19 claims or causes of action, in which the claimant al-
20 leges a health care liability claim. Such term does
21 not include a claim or action which is based on
22 criminal liability; which seeks civil fines or penalties
23 paid to Federal, State, or local government; or which
24 is grounded in antitrust.

1 (8) HEALTH CARE LIABILITY ACTION.—The
2 term “health care liability action” means a civil ac-
3 tion brought in a State or Federal Court or pursu-
4 ant to an alternative dispute resolution system,
5 against a health care provider, a health care organi-
6 zation, or the manufacturer, distributor, supplier,
7 marketer, promoter, or seller of a medical product,
8 regardless of the theory of liability on which the
9 claim is based, or the number of plaintiffs, defend-
10 ants, or other parties, or the number of causes of ac-
11 tion, in which the claimant alleges a health care li-
12 ability claim.

13 (9) HEALTH CARE LIABILITY CLAIM.—The
14 term “health care liability claim” means a demand
15 by any person, whether or not pursuant to ADR,
16 against a health care provider, health care organiza-
17 tion, or the manufacturer, distributor, supplier, mar-
18 keter, promoter, or seller of a medical product, in-
19 cluding, but not limited to, third-party claims, cross-
20 claims, counter-claims, or contribution claims, which
21 are based upon the provision of, use of, or payment
22 for (or the failure to provide, use, or pay for) health
23 care services or medical products, regardless of the
24 theory of liability on which the claim is based, or the

1 number of plaintiffs, defendants, or other parties, or
2 the number of causes of action.

3 (10) HEALTH CARE ORGANIZATION.—The term
4 “health care organization” means any person or en-
5 tity which is obligated to provide or pay for health
6 benefits under any health plan, including any person
7 or entity acting under a contract or arrangement
8 with a health care organization to provide or admin-
9 ister any health benefit.

10 (11) HEALTH CARE PROVIDER.—The term
11 “health care provider” means any person or entity
12 required by State or Federal laws or regulations to
13 be licensed, registered, or certified to provide health
14 care services, and being either so licensed, reg-
15 istered, or certified, or exempted from such require-
16 ment by other statute or regulation.

17 (12) HEALTH CARE GOODS OR SERVICES.—The
18 term “health care goods or services” means any
19 goods or services provided by a health care organiza-
20 tion, provider, or by any individual working under
21 the supervision of a health care provider, that relates
22 to the diagnosis, prevention, or treatment of any
23 human disease or impairment, or the assessment or
24 care of the health of human beings.

1 (13) MALICIOUS INTENT TO INJURE.—The
2 term “malicious intent to injure” means inten-
3 tionally causing or attempting to cause physical in-
4 jury other than providing health care goods or serv-
5 ices.

6 (14) MEDICAL PRODUCT.—The term “medical
7 product” means a drug, device, or biological product
8 intended for humans, and the terms “drug”, “de-
9 vice”, and “biological product” have the meanings
10 given such terms in sections 201(g)(1) and 201(h)
11 of the Federal Food, Drug and Cosmetic Act (21
12 U.S.C. 321) and section 351(a) of the Public Health
13 Service Act (42 U.S.C. 262(a)), respectively, includ-
14 ing any component or raw material used therein, but
15 excluding health care services.

16 (15) NONECONOMIC DAMAGES.—The term
17 “noneconomic damages” means damages for phys-
18 ical and emotional pain, suffering, inconvenience,
19 physical impairment, mental anguish, disfigurement,
20 loss of enjoyment of life, loss of society and compan-
21 ionship, loss of consortium (other than loss of do-
22 mestic service), hedonic damages, injury to reputa-
23 tion, and all other nonpecuniary losses of any kind
24 or nature.

1 (16) PUNITIVE DAMAGES.—The term “punitive
2 damages” means damages awarded, for the purpose
3 of punishment or deterrence, and not solely for com-
4 pensatory purposes, against a health care provider,
5 health care organization, or a manufacturer, dis-
6 tributor, or supplier of a medical product. Punitive
7 damages are neither economic nor noneconomic
8 damages.

9 (17) RECOVERY.—The term “recovery” means
10 the net sum recovered after deducting any disburse-
11 ments or costs incurred in connection with prosecu-
12 tion or settlement of the claim, including all costs
13 paid or advanced by any person. Costs of health care
14 incurred by the plaintiff and the attorneys’ office
15 overhead costs or charges for legal services are not
16 deductible disbursements or costs for such purpose.

17 (18) STATE.—The term “State” means each of
18 the several States, the District of Columbia, the
19 Commonwealth of Puerto Rico, the Virgin Islands,
20 Guam, American Samoa, the Northern Mariana Is-
21 lands, the Trust Territory of the Pacific Islands, and
22 any other territory or possession of the United
23 States, or any political subdivision thereof.

24 **SEC. 10. EFFECT ON OTHER LAWS.**

25 (a) VACCINE INJURY.—

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

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

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

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

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

21 **SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES'**
22 **RIGHTS.**

23 (a) HEALTH CARE LAWSUITS.—The provisions gov-
24 erning health care lawsuits set forth in this Act preempt,
25 subject to subsections (b) and (c), State law to the extent

1 that State law prevents the application of any provisions
2 of law established by or under this Act. The provisions
3 governing health care lawsuits set forth in this Act super-
4 sede chapter 171 of title 28, United States Code, to the
5 extent that such chapter—

6 (1) provides for a greater amount of damages
7 or contingent fees, a longer period in which a health
8 care lawsuit may be commenced, or a reduced appli-
9 cability or scope of periodic payment of future dam-
10 ages, than provided in this Act; or

11 (2) prohibits the introduction of evidence re-
12 garding collateral source benefits, or mandates or
13 permits subrogation or a lien on collateral source
14 benefits.

15 (b) PROTECTION OF STATES' RIGHTS AND OTHER
16 LAWS.—(1) Any issue that is not governed by any provi-
17 sion of law established by or under this Act (including
18 State standards of negligence) shall be governed by other-
19 wise applicable State or Federal law.

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

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

3 (1) any State law (whether effective before, on,
4 or after the date of the enactment of this Act) that
5 specifies a particular monetary amount of compen-
6 satory or punitive damages (or the total amount of
7 damages) that may be awarded in a health care law-
8 suit, regardless of whether such monetary amount is
9 greater or lesser than is provided for under this Act,
10 notwithstanding section 4(a); or

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

14 **SEC. 12. APPLICABILITY; EFFECTIVE DATE.**

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

23 **SEC. 13. SENSE OF CONGRESS.**

24 It is the sense of Congress that a health insurer
25 should be liable for damages for harm caused when it

- 1 makes a decision as to what care is medically necessary
- 2 and appropriate.

