

115TH CONGRESS
1ST SESSION

H. R. 1704

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

MARCH 23, 2017

Mr. HUDSON 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Accessible Care by Curbing Excessive lawSuitS Act of
6 2017” or the “ACCESS Act of 2017”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purpose.
- Sec. 3. Encouraging speedy resolution of claims.
- Sec. 4. Compensating patient injury.
- Sec. 5. Maximizing patient recovery.
- Sec. 6. Additional health benefits.
- Sec. 7. Authorization of payment of future damages to claimants in health care lawsuits.
- Sec. 8. Product liability for health care providers.
- Sec. 9. Communications following unanticipated outcome.
- Sec. 10. Notice of intent to commence lawsuit.
- Sec. 11. Affidavit of merit.
- Sec. 12. Expert witness qualifications.
- Sec. 13. Definitions.
- Sec. 14. Effect on other laws.
- Sec. 15. Rules of construction.
- Sec. 16. Effective date.

3 **SEC. 2. FINDINGS AND PURPOSE.**

4 (a) FINDINGS.—

5 (1) EFFECT ON HEALTH CARE ACCESS AND
 6 COSTS.—Congress finds that the current civil justice
 7 system is adversely affecting patient access to health
 8 care services, better patient care, and cost-efficient
 9 health care, in that the health care liability system
 10 without reform is a costly and inefficient mechanism
 11 for resolving claims of health care liability and com-
 12 pensating injured patients, and is a deterrent to the
 13 sharing of information among health care profes-
 14 sionals which impedes efforts to improve patient
 15 safety and quality of care.

16 (2) EFFECT ON FEDERAL SPENDING.—

1 (A) Congress finds that the health care li-
2 ability litigation systems existing throughout
3 the United States have a significant effect on
4 the amount, distribution, and use of Federal
5 funds because of—

6 (i) the large number of individuals
7 who receive health care benefits under pro-
8 grams operated or financed by the Federal
9 Government;

10 (ii) the large number of individuals
11 who benefit because of the exclusion from
12 Federal taxes of the amounts spent to pro-
13 vide them with health insurance benefits;
14 and

15 (iii) the large number of health care
16 providers who provide items or services for
17 which the Federal Government makes pay-
18 ments.

19 (B) Congress finds that the Federal deficit
20 would be reduced by \$62 billion over the next
21 decade if Federal health care liability reforms
22 were enacted, as verified by the Congressional
23 Budget Office.

24 (3) EFFECT ON INTERSTATE COMMERCE.—

25 Congress finds that the health care and insurance

1 industries are industries affecting interstate com-
2 merce and the health care liability litigation systems
3 existing throughout the United States are activities
4 that affect interstate commerce by contributing to
5 the high costs of health care and premiums for
6 health care liability insurance purchased by health
7 care system providers.

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

11 (1) improve the availability of health care serv-
12 ices in cases in which health care liability actions
13 have been shown to be a factor in the decreased
14 availability of services;

15 (2) reduce the incidence of “defensive medi-
16 cine” and lower the cost of health care liability in-
17 surance, all of which contribute to the escalation of
18 health care costs;

19 (3) ensure that persons with meritorious health
20 care injury claims receive fair and adequate com-
21 pensation, including reasonable noneconomic dam-
22 ages;

23 (4) improve the fairness and cost-effectiveness
24 of our current health care liability system to resolve
25 disputes over, and provide compensation for, health

1 care liability by reducing uncertainty in the amount
2 of compensation provided to injured individuals; and
3 (5) provide an increased sharing of information
4 in the health care system which will reduce unin-
5 tended injury and improve patient care.

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

7 (a) STATUTE OF LIMITATIONS.—The time for the
8 commencement of a health care lawsuit shall be 3 years
9 after the date of injury or 1 year after the claimant dis-
10 covers, or through the use of reasonable diligence should
11 have discovered, the injury, whichever occurs first. In no
12 event shall the time for commencement of a health care
13 lawsuit exceed 3 years after the date of injury unless tolled
14 for any of the following—

15 (1) upon proof of fraud;

16 (2) intentional concealment; or

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

20 Actions by a minor shall be commenced within 3 years
21 from the date of the injury except that actions by a minor
22 under the full age of 6 years shall be commenced within
23 3 years of injury, or 1 year after the injury is discovered,
24 or through the use of reasonable diligence should have
25 been discovered, or prior to the minor's 8th birthday,

1 whichever provides a longer period. Such time limitation
2 shall be tolled for minors for any period during which a
3 parent or guardian and a health care provider have com-
4 mitted fraud or collusion in the failure to bring an action
5 on behalf of the injured minor.

6 (b) STATE FLEXIBILITY.—No provision of subsection
7 (a) shall be construed to preempt any State law (whether
8 effective before, on, or after the date of the enactment of
9 this Act) that—

10 (1) specifies a time period of less than 3 years
11 after the date of injury or less than 1 year after the
12 claimant discovers, or through the use of reasonable
13 diligence should have discovered, the injury, for the
14 filing of a health care lawsuit;

15 (2) that specifies a different time period for the
16 filing of lawsuits by a minor;

17 (3) that triggers the time period based on the
18 date of the alleged negligence; or

19 (4) establishes a statute of repose for the filing
20 of health care lawsuit.

21 **SEC. 4. COMPENSATING PATIENT INJURY.**

22 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL
23 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any
24 health care lawsuit, nothing in this Act shall limit a claim-

1 ant's recovery of the full amount of the available economic
2 damages, notwithstanding the limitation in subsection (b).

3 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any
4 health care lawsuit, the amount of noneconomic damages,
5 if available, shall not exceed \$250,000, regardless of the
6 number of parties against whom the action is brought or
7 the number of separate claims or actions brought with re-
8 spect to the same injury.

9 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
10 DAMAGES.—For purposes of applying the limitation in
11 subsection (b), future noneconomic damages shall not be
12 discounted to present value. The jury shall not be in-
13 formed about the maximum award for noneconomic dam-
14 ages. An award for noneconomic damages in excess of
15 \$250,000 shall be reduced either before the entry of judg-
16 ment, or by amendment of the judgment after entry of
17 judgment, and such reduction shall be made before ac-
18 counting for any other reduction in damages required by
19 law. If separate awards are rendered for past and future
20 noneconomic damages and the combined awards exceed
21 \$250,000, the future noneconomic damages shall be re-
22 duced first.

23 (d) FAIR SHARE RULE.—In any health care lawsuit,
24 each party shall be liable for that party's several share
25 of any damages only and not for the share of any other

1 person. Each party shall be liable only for the amount of
2 damages allocated to such party in direct proportion to
3 such party's percentage of responsibility. Whenever a
4 judgment of liability is rendered as to any party, a sepa-
5 rate judgment shall be rendered against each such party
6 for the amount allocated to such party. For purposes of
7 this section, the trier of fact shall determine the propor-
8 tion of responsibility of each party for the claimant's
9 harm.

10 (e) STATE FLEXIBILITY.—No provision of this sec-
11 tion shall be construed to preempt any State law (whether
12 effective before, on, or after the date of the enactment of
13 this Act) that specifies a particular monetary amount of
14 economic or noneconomic damages (or the total amount
15 of damages) that may be awarded in a health care lawsuit,
16 regardless of whether such monetary amount is greater
17 or lesser than is provided for under this section.

18 **SEC. 5. MAXIMIZING PATIENT RECOVERY.**

19 (a) COURT SUPERVISION OF SHARE OF DAMAGES
20 ACTUALLY PAID TO CLAIMANTS.—In any health care law-
21 suit, the court shall supervise the arrangements for pay-
22 ment of damages to protect against conflicts of interest
23 that may have the effect of reducing the amount of dam-
24 ages awarded that are actually paid to claimants. In par-
25 ticular, in any health care lawsuit in which the attorney

1 for a party claims a financial stake in the outcome by vir-
2 tue of a contingent fee, the court shall have the power
3 to restrict the payment of a claimant's damage recovery
4 to such attorney, and to redirect such damages to the
5 claimant based upon the interests of justice and principles
6 of equity. In no event shall the total of all contingent fees
7 for representing all claimants in a health care lawsuit ex-
8 ceed the following limits:

9 (1) Forty percent of the first \$50,000 recovered
10 by the claimant(s).

11 (2) Thirty-three and one-third percent of the
12 next \$50,000 recovered by the claimant(s).

13 (3) Twenty-five percent of the next \$500,000
14 recovered by the claimant(s).

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

17 (b) APPLICABILITY.—The limitations in this section
18 shall apply whether the recovery is by judgment, settle-
19 ment, mediation, arbitration, or any other form of alter-
20 native dispute resolution. In a health care lawsuit involv-
21 ing a minor or incompetent person, a court retains the
22 authority to authorize or approve a fee that is less than
23 the maximum permitted under this section. The require-
24 ment for court supervision in the first two sentences of
25 subsection (a) applies only in civil actions.

1 (c) STATE FLEXIBILITY.—No provision of this sec-
2 tion shall be construed to preempt any State law (whether
3 effective before, on, or after the date of the enactment of
4 this Act) that specifies a lesser percentage or lesser total
5 value of damages which may be claimed by an attorney
6 representing a claimant in a health care lawsuit.

7 **SEC. 6. ADDITIONAL HEALTH BENEFITS.**

8 (a) COLLATERAL SOURCE BENEFITS.—In any health
9 care lawsuit involving injury or wrongful death, any party
10 may introduce evidence of collateral source benefits. If a
11 party elects to introduce such evidence, any opposing party
12 may introduce evidence of any amount paid or contributed
13 or reasonably likely to be paid or contributed in the future
14 by or on behalf of the opposing party to secure the right
15 to such collateral source benefits.

16 (b) SUBROGATION.—No provider of collateral source
17 benefits shall recover any amount against the claimant or
18 receive any lien or credit against the claimant's recovery
19 or be equitably or legally subrogated to the right of the
20 claimant in a health care lawsuit involving injury or
21 wrongful death.

22 (c) APPLICABILITY.—This section shall apply to any
23 health care lawsuit that is settled as well as a health care
24 lawsuit that is resolved by a fact finder. This section shall
25 not apply to section 1862(b) (42 U.S.C. 1395y(b)) or sec-

1 tion 1902(a)(25) (42 U.S.C. 1396a(a)(25)) of the Social
2 Security Act.

3 (d) STATE FLEXIBILITY.—No provision of subsection
4 (a) shall be construed to preempt any State law (whether
5 effective before, on, or after the date of the enactment of
6 this Act) that specifies a mandatory offset of collateral
7 source benefits against an award in a health care liability
8 lawsuit.

9 **SEC. 7. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
10 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
11 **SUITS.**

12 (a) IN GENERAL.—In any health care lawsuit, if an
13 award of future damages, without reduction to present
14 value, equaling or exceeding \$50,000 is made against a
15 party with sufficient insurance or other assets to fund a
16 periodic payment of such a judgment, the court shall, at
17 the request of any party, enter a judgment ordering that
18 the future damages be paid by periodic payments, in ac-
19 cordance with the Uniform Periodic Payment of Judg-
20 ments Act promulgated by the National Conference of
21 Commissioners on Uniform State Laws.

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

1 (c) STATE FLEXIBILITY.—No provision of this sec-
2 tion shall be construed to preempt any State law (whether
3 effective before, on, or after the date of the enactment of
4 this Act) that specifies periodic payments for future dam-
5 ages at any amount other than \$50,000 or that mandates
6 such payments absent the request of either party.

7 **SEC. 8. PRODUCT LIABILITY FOR HEALTH CARE PRO-**
8 **VIDERS.**

9 A health care provider who prescribes, or who dis-
10 penses pursuant to a prescription, a medical product ap-
11 proved, licensed, or cleared by the Food and Drug Admin-
12 istration shall not be named as a party to a product liabil-
13 ity lawsuit involving such product and shall not be liable
14 to a claimant in a class action lawsuit against the manu-
15 facturer, distributor, or seller of such product.

16 **SEC. 9. COMMUNICATIONS FOLLOWING UNANTICIPATED**
17 **OUTCOME.**

18 (a) PROVIDER COMMUNICATIONS.—In any health
19 care liability action, any and all statements, affirmations,
20 gestures, or conduct expressing apology, fault, sympathy,
21 commiseration, condolence, compassion, or a general sense
22 of benevolence which are made by a health care provider
23 or an employee of a health care provider to the patient,
24 a relative of the patient, or a representative of the patient
25 and which relate to the discomfort, pain, suffering, injury,

1 or death of the patient as the result of the unanticipated
2 outcome of medical care shall be inadmissible for any pur-
3 pose as evidence of an admission of liability or as evidence
4 of an admission against interest.

5 (b) STATE FLEXIBILITY.—No provision of this sec-
6 tion shall be construed to preempt any State law (whether
7 effective before, on, or after the date of the enactment of
8 this Act) that makes additional communications inadmis-
9 sible as evidence of an admission of liability or as evidence
10 of an admission against interest.

11 **SEC. 10. NOTICE OF INTENT TO COMMENCE LAWSUIT.**

12 (a) ADVANCE NOTICE.—A person shall not com-
13 mence an action against a health care provider unless the
14 person has given the health care provider 90 days written
15 notice before the action is commenced.

16 (b) EXCEPTIONS.—A lawsuit against a health care
17 provider filed within 6 months of the statute of limitations
18 expiring as to any claimant, or within 1 year of the statute
19 of repose expiring as to any claimant, shall be exempt
20 from compliance with this section.

21 (c) STATE FLEXIBILITY.—No provision of this sec-
22 tion shall be construed to preempt any State law (whether
23 effective before, on, or after the date of the enactment of
24 this Act) that establishes a different time period for the
25 filing of written notice.

1 **SEC. 11. AFFIDAVIT OF MERIT.**

2 (a) **REQUIRED FILING.**—Subject to subsection (b),
3 the plaintiff in an action alleging medical negligence or,
4 if the plaintiff is represented by an attorney, the plaintiff’s
5 attorney shall file simultaneously with the health care law-
6 suit an affidavit of merit signed by a health professional
7 who meets the requirements for an expert witness under
8 section 12 of this Act. The affidavit of merit shall certify
9 that the health professional has reviewed the notice and
10 all medical records supplied to him or her by the plaintiff’s
11 attorney concerning the allegations contained in the notice
12 and shall contain a statement of each of the following:

13 (1) The applicable standard of practice or care.

14 (2) The health professional’s opinion that the
15 applicable standard of practice or care was breached
16 by the health professional or health facility receiving
17 the notice.

18 (3) The actions that should have been taken or
19 omitted by the health professional or health facility
20 in order to have complied with the applicable stand-
21 ard of practice or care.

22 (4) The manner in which the breach of the
23 standard of practice or care was the proximate cause
24 of the injury alleged in the notice.

25 (5) A listing of the medical records reviewed.

1 (b) FILING EXTENSION.—Upon motion of a party for
2 good cause shown, the court in which the complaint is filed
3 may grant the plaintiff or, if the plaintiff is represented
4 by an attorney, the plaintiff’s attorney an additional 28
5 days in which to file the affidavit required under sub-
6 section (1).

7 (c) STATE FLEXIBILITY.—No provision of this sec-
8 tion shall be construed to preempt any State law (whether
9 effective before, on, or after the date of the enactment of
10 this Act) that establishes additional requirements for the
11 filing of an affidavit of merit or similar pre-litigation docu-
12 mentation.

13 **SEC. 12. EXPERT WITNESS QUALIFICATIONS.**

14 (a) IN GENERAL.—In any health care lawsuit, an in-
15 dividual shall not give expert testimony on the appropriate
16 standard of practice or care involved unless the individual
17 is licensed as a health professional in one or more States
18 and the individual meets the following criteria:

19 (1) If the party against whom or on whose be-
20 half the testimony is to be offered is or claims to be
21 a specialist, the expert witness shall specialize at the
22 time of the occurrence that is the basis for the law-
23 suit in the same specialty or claimed specialty as the
24 party against whom or on whose behalf the testi-
25 mony is to be offered. If the party against whom or

1 on whose behalf the testimony is to be offered is or
2 claims to be a specialist who is board certified, the
3 expert witness shall be a specialist who is board cer-
4 tified in that specialty or claimed specialty.

5 (2) During the 1-year period immediately pre-
6 ceding the occurrence of the action that gave rise to
7 the lawsuit, the expert witness shall have devoted a
8 majority of the individual's professional time to one
9 or more of the following:

10 (A) The active clinical practice of the same
11 health profession as the defendant and, if the
12 defendant is or claims to be a specialist, in the
13 same specialty or claimed specialty.

14 (B) The instruction of students in an ac-
15 credited health professional school or accredited
16 residency or clinical research program in the
17 same health profession as the defendant and, if
18 the defendant is or claims to be a specialist, in
19 an accredited health professional school or ac-
20 credited residency or clinical research program
21 in the same specialty or claimed specialty.

22 (3) If the defendant is a general practitioner,
23 the expert witness shall have devoted a majority of
24 the witness's professional time in the 1-year period

1 preceding the occurrence of the action giving rise to
2 the lawsuit to one or more of the following:

3 (A) Active clinical practice as a general
4 practitioner.

5 (B) Instruction of students in an accred-
6 ited health professional school or accredited
7 residency or clinical research program in the
8 same health profession as the defendant.

9 (b) LAWSUITS AGAINST ENTITIES.—If the defendant
10 in a health care lawsuit is an entity that employs a person
11 against whom or on whose behalf the testimony is offered,
12 the provisions of paragraph (1) apply as if the person were
13 the party or defendant against whom or on whose behalf
14 the testimony is offered.

15 (c) POWER OF COURT.—Nothing in this subsection
16 shall limit the power of the trial court in a health care
17 lawsuit to disqualify an expert witness on grounds other
18 than the qualifications set forth under this subsection.

19 (d) LIMITATION.—An expert witness in a health care
20 lawsuit shall not be permitted to testify if the fee of the
21 witness is in any way contingent on the outcome of the
22 lawsuit.

23 (e) STATE FLEXIBILITY.—No provision of this sec-
24 tion shall be construed to preempt any State law (whether
25 effective before, on, or after the date of the enactment of

1 this Act) that places additional qualification requirements
2 upon any individual testifying as an expert witness.

3 **SEC. 13. DEFINITIONS.**

4 In this Act:

5 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-
6 TEM; ADR.—The term “alternative dispute resolution
7 system” or “ADR” means a system that provides
8 for the resolution of health care lawsuits in a man-
9 ner other than through a civil action brought in a
10 State or Federal court.

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

19 (3) COLLATERAL SOURCE BENEFITS.—The
20 term “collateral source benefits” means any amount
21 paid or reasonably likely to be paid in the future to
22 or on behalf of the claimant, or any service, product,
23 or other benefit provided or reasonably likely to be
24 provided in the future to or on behalf of the claim-

1 ant, as a result of the injury or wrongful death, pur-
2 suant to—

3 (A) any State or Federal health, sickness,
4 income-disability, accident, or workers' com-
5 pensation law;

6 (B) any health, sickness, income-disability,
7 or accident insurance that provides health bene-
8 fits or income-disability coverage;

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

14 (D) any other publicly or privately funded
15 program.

16 (4) 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 (5) ECONOMIC DAMAGES.—The term “economic
21 damages” means objectively verifiable monetary
22 losses incurred as a result of the provision or use of
23 (or failure to provide or use) health care services or
24 medical products, such as past and future medical
25 expenses, loss of past and future earnings, cost of

1 obtaining domestic services, loss of employment, and
2 loss of business or employment opportunities, unless
3 otherwise defined under applicable State law. In no
4 circumstances shall damages for health care services
5 or medical products exceed the amount actually paid
6 or incurred by or on behalf of the claimant.

7 (6) FUTURE DAMAGES.—The term “future
8 damages” means any damages that are incurred
9 after the date of judgment, settlement, or other reso-
10 lution (including mediation, or any other form of al-
11 ternative dispute resolution).

12 (7) HEALTH CARE LAWSUIT.—The term
13 “health care lawsuit” means any health care liability
14 claim concerning the provision of goods or services
15 for which coverage was provided in whole or in part
16 via a Federal program, subsidy or tax benefit, or
17 any health care liability action concerning the provi-
18 sion of goods or services for which coverage was pro-
19 vided in whole or in part via a Federal program,
20 subsidy or tax benefit, brought in a State or Federal
21 court or pursuant to an alternative dispute resolu-
22 tion system, against a health care provider regard-
23 less of the theory of liability on which the claim is
24 based, or the number of claimants, plaintiffs, de-
25 fendants, or other parties, or the number of claims

1 or causes of action, in which the claimant alleges a
2 health care liability claim. Such term does not in-
3 clude a claim or action which is based on criminal
4 liability; which seeks civil fines or penalties paid to
5 Federal, State, or local government; or which is
6 grounded in antitrust.

7 (8) HEALTH CARE LIABILITY ACTION.—The
8 term “health care liability action” means a civil ac-
9 tion brought in a State or Federal court or pursuant
10 to an alternative dispute resolution system, against
11 a health care provider regardless of the theory of li-
12 ability on which the claim is based, or the number
13 of plaintiffs, defendants, or other parties, or the
14 number of causes of action, in which the claimant al-
15 leges a health care liability claim.

16 (9) HEALTH CARE LIABILITY CLAIM.—The
17 term “health care liability claim” means a demand
18 by any person, whether or not pursuant to ADR,
19 against a health care provider, including, but not
20 limited to, third-party claims, cross-claims, counter-
21 claims, or contribution claims, which are based upon
22 the provision or use of (or the failure to provide or
23 use) health care services or medical products, re-
24 gardless of the theory of liability on which the claim

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

3 (10) HEALTH CARE PROVIDER.—The term
4 “health care provider” means any person or entity
5 required by State or Federal laws or regulations to
6 be licensed, registered, or certified to provide health
7 care services, and being either so licensed, reg-
8 istered, or certified, or exempted from such require-
9 ment by other statute or regulation, as well as any
10 other individual or entity defined as a health care
11 provider, health care professional, or health care in-
12 stitution under State law.

13 (11) HEALTH CARE SERVICES.—The term
14 “health care services” means the provision of any
15 goods or services by a health care provider, or by
16 any individual working under the supervision of a
17 health care provider, that relates to the diagnosis,
18 prevention, or treatment of any human disease or
19 impairment, or the assessment or care of the health
20 of human beings.

21 (12) MEDICAL PRODUCT.—The term “medical
22 product” means a drug, device, or biological product
23 intended for humans, and the terms “drug”, “de-
24 vice”, and “biological product” have the meanings
25 given such terms in sections 201(g)(1) and 201(h)

1 of the Federal Food, Drug, and Cosmetic Act (21
2 U.S.C. 321(g)(1) and (h)) and section 351(a) of the
3 Public Health Service Act (42 U.S.C. 262(a)), re-
4 spectively, including any component or raw material
5 used therein, but excluding health care services.

6 (13) NONECONOMIC DAMAGES.—The term
7 “noneconomic damages” means damages for phys-
8 ical and emotional pain, suffering, inconvenience,
9 physical impairment, mental anguish, disfigurement,
10 loss of enjoyment of life, loss of society and compan-
11 ionship, loss of consortium (other than loss of do-
12 mestic service), hedonic damages, injury to reputa-
13 tion, and all other nonpecuniary losses of any kind
14 or nature incurred as a result of the provision or use
15 of (or failure to provide or use) health care services
16 or medical products, unless otherwise defined under
17 applicable State law.

18 (14) RECOVERY.—The term “recovery” means
19 the net sum recovered after deducting any disburse-
20 ments or costs incurred in connection with prosecu-
21 tion or settlement of the claim, including all costs
22 paid or advanced by any person. Costs of health care
23 incurred by the plaintiff and the attorneys’ office
24 overhead costs or charges for legal services are not
25 deductible disbursements or costs for such purpose.

1 (15) RELATIVE.—The term “relative” means a
2 victim’s spouse, parent, grandparent, stepfather,
3 stepmother, child, grandchild, brother, sister, half
4 brother, half sister, or spouse’s parents. The term
5 includes said relationships that are created as a re-
6 sult of adoption.

7 (16) REPRESENTATIVE.—The term “represent-
8 ative” means a legal guardian, attorney, person des-
9 ignated to make decisions on behalf of a patient
10 under a medical power of attorney, or any person
11 recognized in law or custom as a patient’s agent.

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

19 (18) UNANTICIPATED OUTCOME.—The term
20 “unanticipated outcome” means the outcome of a
21 medical treatment or procedure that differs from an
22 expected result.

23 **SEC. 14. EFFECT ON OTHER LAWS.**

24 (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. 15. RULES OF CONSTRUCTION.**

22 (a) HEALTH CARE LAWSUITS.—Unless otherwise
23 specified in this Act, the provisions governing health care
24 lawsuits set forth in this Act preempt, subject to sub-
25 sections (b) and (c), State law to the extent that State

1 law prevents the application of any provisions of law estab-
2 lished by or under this Act. The provisions governing
3 health care lawsuits set forth in this Act supersede chapter
4 171 of title 28, United States Code, to the extent that
5 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.—Any issue that is not governed by any provision
17 of law established by or under this Act (including State
18 standards of negligence) shall be governed by otherwise
19 applicable State or Federal law.

20 (c) STATE FLEXIBILITY.—No provision of this Act
21 shall be construed to preempt any defense available to a
22 party in a health care lawsuit under any other provision
23 of State or Federal law.

1 **SEC. 16. EFFECTIVE DATE.**

2 This Act shall apply to any health care lawsuit
3 brought in a Federal or State court, or subject to an alter-
4 native dispute resolution system, that is initiated on or
5 after the date of the enactment of this Act, except that
6 any health care lawsuit arising from an injury occurring
7 prior to the date of the enactment of this Act shall be
8 governed by the applicable statute of limitations provisions
9 in effect at the time the cause of action accrued.

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