

114TH CONGRESS  
2D SESSION

# H. R. 4589

To amend title XVIII of the Social Security Act to repeal the cap on the Medicare Advantage star rating bonuses, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 2016

Mr. MACARTHUR introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Energy and Commerce and Ways and Means, 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 amend title XVIII of the Social Security Act to repeal the cap on the Medicare Advantage star rating bonuses, and for other purposes.

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 “Excellence in Medicare  
5 Act”.

# 1 **TITLE I—MEDICARE ADVANTAGE**

## 2 **SEC. 101. REPEALING CAP ON MEDICARE ADVANTAGE STAR** 3 **RATING BONUSES.**

4 (a) IN GENERAL.—Section 1853(n)(4) of the Social  
5 Security Act (42 U.S.C. 1395w–23(n)(4)) is amended by  
6 striking “(determined taking into account subsection (o))”  
7 and inserting “determined before application of subsection  
8 (o)”.

9 (b) EFFECTIVE DATE.—The amendment made by  
10 subsection (a) shall apply beginning with respect to 2017.

# 11 **TITLE II—HEALTH ACT**

## 12 **SEC. 201. SHORT TITLE.**

13 This title may be cited as the “Medical Malpractice  
14 Reform Act of 2015”.

## 15 **SEC. 202. FINDINGS AND PURPOSE.**

16 (a) FINDINGS.—

17 (1) EFFECT ON HEALTH CARE ACCESS AND  
18 COSTS.—Congress finds that our current civil justice  
19 system is adversely affecting patient access to health  
20 care services, better patient care, and cost-efficient  
21 health care, in that the health care liability system  
22 is a costly and ineffective mechanism for resolving  
23 claims of health care liability and compensating in-  
24 jured patients, and is a deterrent to the sharing of  
25 information among health care professionals which

1 impedes efforts to improve patient safety and quality  
2 of care.

3 (2) EFFECT ON INTERSTATE COMMERCE.—

4 Congress finds that the health care liability litigation  
5 systems existing throughout the United States are  
6 activities that affect interstate commerce by contrib-  
7 uting to the high costs of health care and premiums  
8 for health care liability insurance purchased by  
9 health care system providers.

10 (3) EFFECT ON FEDERAL SPENDING.—Con-

11 gress finds that the health care liability litigation  
12 systems existing throughout the United States have  
13 a significant effect on the amount, distribution, and  
14 use of Federal funds because of—

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

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

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

1 (b) PURPOSE.—It is the purpose of this title to imple-  
2 ment reasonable, comprehensive, and effective health care  
3 liability reforms designed to—

4 (1) improve the availability of health care serv-  
5 ices in cases in which health care liability actions  
6 have been shown to be a factor in the decreased  
7 availability of services;

8 (2) reduce the incidence of “defensive medi-  
9 cine” and lower the cost of health care liability in-  
10 surance, all of which contribute to the escalation of  
11 health care costs;

12 (3) ensure that persons with meritorious health  
13 care injury claims receive fair and adequate com-  
14 pensation, including reasonable noneconomic dam-  
15 ages;

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

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

1 **SEC. 203. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

2       The time for the commencement of a health care law-  
3 suit shall be 3 years after the date of manifestation of  
4 injury or 1 year after the claimant discovers, or through  
5 the use of reasonable diligence should have discovered, the  
6 injury, whichever occurs first. In no event shall the time  
7 for commencement of a health care lawsuit exceed 3 years  
8 after the date of manifestation of injury unless tolled for  
9 any of the following—

10           (1) upon proof of fraud;

11           (2) intentional concealment; or

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

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

1 **SEC. 204. COMPENSATING PATIENT INJURY.**

2 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL  
3 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any  
4 health care lawsuit, nothing in this title shall limit a claim-  
5 ant’s recovery of the full amount of the available economic  
6 damages, notwithstanding the limitation in subsection (b).

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

13 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC  
14 DAMAGES.—For purposes of applying the limitation in  
15 subsection (b), future noneconomic damages shall not be  
16 discounted to present value. The jury shall not be in-  
17 formed about the maximum award for noneconomic dam-  
18 ages. An award for noneconomic damages in excess of  
19 \$250,000 shall be reduced either before the entry of judg-  
20 ment, or by amendment of the judgment after entry of  
21 judgment, and such reduction shall be made before ac-  
22 counting for any other reduction in damages required by  
23 law. If separate awards are rendered for past and future  
24 noneconomic damages and the combined awards exceed  
25 \$250,000, the future noneconomic damages shall be re-  
26 duced first.

1 (d) FAIR SHARE RULE.—In any health care lawsuit,  
2 each party shall be liable for that party's several share  
3 of any damages only and not for the share of any other  
4 person. Each party shall be liable only for the amount of  
5 damages allocated to such party in direct proportion to  
6 such party's percentage of responsibility. Whenever a  
7 judgment of liability is rendered as to any party, a sepa-  
8 rate judgment shall be rendered against each such party  
9 for the amount allocated to such party. For purposes of  
10 this section, the trier of fact shall determine the propor-  
11 tion of responsibility of each party for the claimant's  
12 harm.

13 **SEC. 205. MAXIMIZING PATIENT RECOVERY.**

14 (a) COURT SUPERVISION OF SHARE OF DAMAGES  
15 ACTUALLY PAID TO CLAIMANTS.—In any health care law-  
16 suit, the court shall supervise the arrangements for pay-  
17 ment of damages to protect against conflicts of interest  
18 that may have the effect of reducing the amount of dam-  
19 ages awarded that are actually paid to claimants. In par-  
20 ticular, in any health care lawsuit in which the attorney  
21 for a party claims a financial stake in the outcome by vir-  
22 tue of a contingent fee, the court shall have the power  
23 to restrict the payment of a claimant's damage recovery  
24 to such attorney, and to redirect such damages to the  
25 claimant based upon the interests of justice and principles

1 of equity. In no event shall the total of all contingent fees  
2 for representing all claimants in a health care lawsuit ex-  
3 ceed the following limits:

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

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

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

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

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

21 **SEC. 206. ADDITIONAL BENEFITS.**

22 In any health care lawsuit involving injury or wrong-  
23 ful death, any party may introduce evidence of collateral  
24 source benefits. If a party elects to introduce such evi-  
25 dence, any opposing party may introduce evidence of any



1 amount paid or contributed or reasonably likely to be paid  
2 or contributed in the future by or on behalf of the oppos-  
3 ing party to secure the right to such collateral source bene-  
4 fits. No provider of collateral source benefits shall recover  
5 any amount against the claimant or receive any lien or  
6 credit against the claimant's recovery or be equitably or  
7 legally subrogated to the right of the claimant in a health  
8 care lawsuit involving injury or wrongful death. This sec-  
9 tion shall apply to any health care lawsuit that is settled  
10 as well as a health care lawsuit that is resolved by a fact  
11 finder. This section shall not apply to section 1862(b) (42  
12 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C.  
13 1396a(a)(25)) of the Social Security Act.

14 **SEC. 207. PUNITIVE DAMAGES.**

15 (a) IN GENERAL.—Punitive damages may, if other-  
16 wise permitted by applicable State or Federal law, be  
17 awarded against any person in a health care lawsuit only  
18 if it is proven by clear and convincing evidence that such  
19 person acted with malicious intent to injure the claimant,  
20 or that such person deliberately failed to avoid unneces-  
21 sary injury that such person knew the claimant was sub-  
22 stantially certain to suffer. In any health care lawsuit  
23 where no judgment for compensatory damages is rendered  
24 against such person, no punitive damages may be awarded  
25 with respect to the claim in such lawsuit. No demand for

1 punitive damages shall be included in a health care lawsuit  
2 as initially filed. A court may allow a claimant to file an  
3 amended pleading for punitive damages only upon a mo-  
4 tion by the claimant and after a finding by the court, upon  
5 review of supporting and opposing affidavits or after a  
6 hearing, after weighing the evidence, that the claimant has  
7 established by a substantial probability that the claimant  
8 will prevail on the claim for punitive damages. At the re-  
9 quest of any party in a health care lawsuit, the trier of  
10 fact shall consider in a separate proceeding—

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

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

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

20           (b) DETERMINING AMOUNT OF PUNITIVE DAM-  
21 AGES.—

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

1 (A) The severity of the harm caused by the  
2 conduct of such party.

3 (B) The duration of the conduct or any  
4 concealment of it by such party.

5 (C) The profitability of the conduct to such  
6 party.

7 (D) The number of products sold or med-  
8 ical procedures rendered for compensation, as  
9 the case may be, by such party, of the kind  
10 causing the harm complained of by the claim-  
11 ant.

12 (E) Any criminal penalties imposed on  
13 such party, as a result of the conduct com-  
14 plained of by the claimant.

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

18 (2) MAXIMUM AWARD.—The amount of punitive  
19 damages, if awarded, in a health care lawsuit may  
20 be as much as \$250,000 or as much as two times  
21 the amount of economic damages awarded, which-  
22 ever is greater. The jury shall not be informed of  
23 this limitation.

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

1 (1) IN GENERAL.—

2 (A) No punitive damages may be awarded  
3 against the manufacturer or distributor of a  
4 medical product, or a supplier of any compo-  
5 nent or raw material of such medical product,  
6 based on a claim that such product caused the  
7 claimant's harm where—

8 (i)(I) such medical product was sub-  
9 ject to premarket approval, clearance, or li-  
10 censure by the Food and Drug Administra-  
11 tion with respect to the safety of the for-  
12 mulation or performance of the aspect of  
13 such medical product which caused the  
14 claimant's harm or the adequacy of the  
15 packaging or labeling of such medical  
16 product; and

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

19 (ii) such medical product is generally  
20 recognized among qualified experts as safe  
21 and effective pursuant to conditions estab-  
22 lished by the Food and Drug Administra-  
23 tion and applicable Food and Drug Admin-  
24 istration regulations, including without  
25 limitation those related to packaging and

1 labeling, unless the Food and Drug Admin-  
2 istration has determined that such medical  
3 product was not manufactured or distrib-  
4 uted in substantial compliance with appli-  
5 cable Food and Drug Administration stat-  
6 utes and regulations.

7 (B) RULE OF CONSTRUCTION.—Subpara-  
8 graph (A) may not be construed as establishing  
9 the obligation of the Food and Drug Adminis-  
10 tration to demonstrate affirmatively that a  
11 manufacturer, distributor, or supplier referred  
12 to in such subparagraph meets any of the con-  
13 ditions described in such subparagraph.

14 (2) LIABILITY OF HEALTH CARE PROVIDERS.—  
15 A health care provider who prescribes, or who dis-  
16 penses pursuant to a prescription, a medical product  
17 approved, licensed, or cleared by the Food and Drug  
18 Administration shall not be named as a party to a  
19 product liability lawsuit involving such product and  
20 shall not be liable to a claimant in a class action  
21 lawsuit against the manufacturer, distributor, or  
22 seller of such product. Nothing in this paragraph  
23 prevents a court from consolidating cases involving  
24 health care providers and cases involving products li-

1 ability claims against the manufacturer, distributor,  
2 or product seller of such medical product.

3 (3) PACKAGING.—In a health care lawsuit for  
4 harm which is alleged to relate to the adequacy of  
5 the packaging or labeling of a drug which is required  
6 to have tamper-resistant packaging under regula-  
7 tions of the Secretary of Health and Human Serv-  
8 ices (including labeling regulations related to such  
9 packaging), the manufacturer or product seller of  
10 the drug shall not be held liable for punitive dam-  
11 ages unless such packaging or labeling is found by  
12 the trier of fact by clear and convincing evidence to  
13 be substantially out of compliance with such regula-  
14 tions.

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

17 (A) a person, before or after premarket ap-  
18 proval, clearance, or licensure of such medical  
19 product, knowingly misrepresented to or with-  
20 held from the Food and Drug Administration  
21 information that is required to be submitted  
22 under the Federal Food, Drug, and Cosmetic  
23 Act (21 U.S.C. 301 et seq.) or section 351 of  
24 the Public Health Service Act (42 U.S.C. 262)

1 that is material and is causally related to the  
2 harm which the claimant allegedly suffered; or

3 (B) a person made an illegal payment to  
4 an official of the Food and Drug Administra-  
5 tion for the purpose of either securing or main-  
6 taining approval, clearance, or licensure of such  
7 medical product.

8 **SEC. 208. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**  
9 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**  
10 **SUITS.**

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

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

24 **SEC. 209. DEFINITIONS.**

25 In this title:

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

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

15          (3) COLLATERAL SOURCE BENEFITS.—The  
16          term “collateral source benefits” means any amount  
17          paid or reasonably likely to be paid in the future to  
18          or on behalf of the claimant, or any service, product,  
19          or other benefit provided or reasonably likely to be  
20          provided in the future to or on behalf of the claim-  
21          ant, as a result of the injury or wrongful death, pur-  
22          suant to—

23                   (A) any State or Federal health, sickness,  
24                   income-disability, accident, or workers’ com-  
25                   pensation law;



1           (B) any health, sickness, income-disability,  
2           or accident insurance that provides health bene-  
3           fits or income-disability coverage;

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

9           (D) any other publicly or privately funded  
10          program.

11          (4) COMPENSATORY DAMAGES.—The term  
12          “compensatory damages” means objectively  
13          verifiable monetary losses incurred as a result of the  
14          provision of, use of, or payment for (or failure to  
15          provide, use, or pay for) health care services or med-  
16          ical products, such as past and future medical ex-  
17          penses, loss of past and future earnings, cost of ob-  
18          taining domestic services, loss of employment, and  
19          loss of business or employment opportunities, dam-  
20          ages for physical and emotional pain, suffering, in-  
21          convenience, physical impairment, mental anguish,  
22          disfigurement, loss of enjoyment of life, loss of soci-  
23          ety and companionship, loss of consortium (other  
24          than loss of domestic service), hedonic damages, in-  
25          jury to reputation, and all other nonpecuniary losses

1 of any kind or nature. The term “compensatory  
2 damages” includes economic damages and non-  
3 economic damages, as such terms are defined in this  
4 section.

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

9 (6) ECONOMIC DAMAGES.—The term “economic  
10 damages” means objectively verifiable monetary  
11 losses incurred as a result of the provision of, use  
12 of, or payment for (or failure to provide, use, or pay  
13 for) health care services or medical products, such as  
14 past and future medical expenses, loss of past and  
15 future earnings, cost of obtaining domestic services,  
16 loss of employment, and loss of business or employ-  
17 ment opportunities.

18 (7) HEALTH CARE LAWSUIT.—The term  
19 “health care lawsuit” means any health care liability  
20 claim concerning the provision of health care goods  
21 or services or any medical product affecting inter-  
22 state commerce, or any health care liability action  
23 concerning the provision of health care goods or  
24 services or any medical product affecting interstate  
25 commerce, brought in a State or Federal court or

1       pursuant to an alternative dispute resolution system,  
2       against a health care provider, a health care organi-  
3       zation, or the manufacturer, distributor, supplier,  
4       marketer, promoter, or seller of a medical product,  
5       regardless of the theory of liability on which the  
6       claim is based, or the number of claimants, plain-  
7       tiffs, defendants, or other parties, or the number of  
8       claims or causes of action, in which the claimant al-  
9       leges a health care liability claim. Such term does  
10      not include a claim or action which is based on  
11      criminal liability; which seeks civil fines or penalties  
12      paid to Federal, State, or local government; or which  
13      is grounded in antitrust.

14           (8) HEALTH CARE LIABILITY ACTION.—The  
15      term “health care liability action” means a civil ac-  
16      tion brought in a State or Federal court or pursuant  
17      to an alternative dispute resolution system, against  
18      a health care provider, a health care organization, or  
19      the manufacturer, distributor, supplier, marketer,  
20      promoter, or seller of a medical product, regardless  
21      of the theory of liability on which the claim is based,  
22      or the number of plaintiffs, defendants, or other par-  
23      ties, or the number of causes of action, in which the  
24      claimant alleges a health care liability claim.

1           (9) HEALTH CARE LIABILITY CLAIM.—The  
2 term “health care liability claim” means a demand  
3 by any person, whether or not pursuant to ADR,  
4 against a health care provider, health care organiza-  
5 tion, or the manufacturer, distributor, supplier, mar-  
6 keter, promoter, or seller of a medical product, in-  
7 cluding, but not limited to, third-party claims, cross-  
8 claims, counter-claims, or contribution claims, which  
9 are based upon the provision of, use of, or payment  
10 for (or the failure to provide, use, or pay for) health  
11 care services or medical products, regardless of the  
12 theory of liability on which the claim is based, or the  
13 number of plaintiffs, defendants, or other parties, or  
14 the number of causes of action.

15           (10) HEALTH CARE ORGANIZATION.—The term  
16 “health care organization” means any person or en-  
17 tity which is obligated to provide or pay for health  
18 benefits under any health plan, including any person  
19 or entity acting under a contract or arrangement  
20 with a health care organization to provide or admin-  
21 ister any health benefit.

22           (11) HEALTH CARE PROVIDER.—The term  
23 “health care provider” means any person or entity  
24 required by State or Federal laws or regulations to  
25 be licensed, registered, or certified to provide health

1 care services, and being either so licensed, reg-  
2 istered, or certified, or exempted from such require-  
3 ment by other statute or regulation.

4 (12) HEALTH CARE GOODS OR SERVICES.—The  
5 term “health care goods or services” means any  
6 goods or services provided by a health care organiza-  
7 tion, provider, or by any individual working under  
8 the supervision of a health care provider, that relates  
9 to the diagnosis, prevention, or treatment of any  
10 human disease or impairment, or the assessment or  
11 care of the health of human beings.

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

17 (14) MEDICAL PRODUCT.—The term “medical  
18 product” means a drug, device, or biological product  
19 intended for humans, and the terms “drug”, “de-  
20 vice”, and “biological product” have the meanings  
21 given such terms in sections 201(g)(1) and 201(h)  
22 of the Federal Food, Drug, and Cosmetic Act (21  
23 U.S.C. 321(g)(1) and (h)) and section 351(a) of the  
24 Public Health Service Act (42 U.S.C. 262(a)), re-

1       spectively, including any component or raw material  
2       used therein, but excluding health care services.

3           (15) NONECONOMIC DAMAGES.—The term  
4       “noneconomic damages” means damages for phys-  
5       ical and emotional pain, suffering, inconvenience,  
6       physical impairment, mental anguish, disfigurement,  
7       loss of enjoyment of life, loss of society and compan-  
8       ionship, loss of consortium (other than loss of do-  
9       mestic service), hedonic damages, injury to reputa-  
10      tion, and all other nonpecuniary losses of any kind  
11      or nature.

12          (16) PUNITIVE DAMAGES.—The term “punitive  
13      damages” means damages awarded, for the purpose  
14      of punishment or deterrence, and not solely for com-  
15      pensatory purposes, against a health care provider,  
16      health care organization, or a manufacturer, dis-  
17      tributor, or supplier of a medical product. Punitive  
18      damages are neither economic nor noneconomic  
19      damages.

20          (17) RECOVERY.—The term “recovery” means  
21      the net sum recovered after deducting any disburse-  
22      ments or costs incurred in connection with prosecu-  
23      tion or settlement of the claim, including all costs  
24      paid or advanced by any person. Costs of health care  
25      incurred by the plaintiff and the attorneys’ office

1 overhead costs or charges for legal services are not  
2 deductible disbursements or costs for such purpose.

3 (18) STATE.—The term “State” means each of  
4 the several States, the District of Columbia, the  
5 Commonwealth of Puerto Rico, the Virgin Islands,  
6 Guam, American Samoa, the Northern Mariana Is-  
7 lands, the Trust Territory of the Pacific Islands, and  
8 any other territory or possession of the United  
9 States, or any political subdivision thereof.

10 **SEC. 210. EFFECT ON OTHER LAWS.**

11 (a) VACCINE INJURY.—

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

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

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

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

1 under this title) will apply to such aspect of such ac-  
2 tion.

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

7 **SEC. 211. STATE FLEXIBILITY AND PROTECTION OF**  
8 **STATES' RIGHTS.**

9 (a) HEALTH CARE LAWSUITS.—The provisions gov-  
10 erning health care lawsuits set forth in this title preempt,  
11 subject to subsections (b) and (c), State law to the extent  
12 that State law prevents the application of any provisions  
13 of law established by or under this title. The provisions  
14 governing health care lawsuits set forth in this title super-  
15 sede chapter 171 of title 28, United States Code, to the  
16 extent that such chapter—

17 (1) provides for a greater amount of damages  
18 or contingent fees, a longer period in which a health  
19 care lawsuit may be commenced, or a reduced appli-  
20 cability or scope of periodic payment of future dam-  
21 ages, than provided in this title; or

22 (2) prohibits the introduction of evidence re-  
23 garding collateral source benefits, or mandates or  
24 permits subrogation or a lien on collateral source  
25 benefits.



1 (b) PROTECTION OF STATES' RIGHTS AND OTHER  
2 LAWS.—(1) Any issue that is not governed by any provi-  
3 sion of law established by or under this title (including  
4 State standards of negligence) shall be governed by other-  
5 wise applicable State or Federal law.

6 (2) This title shall not preempt or supersede any  
7 State or Federal law that imposes greater procedural or  
8 substantive protections for health care providers and  
9 health care organizations from liability, loss, or damages  
10 than those provided by this title or create a cause of ac-  
11 tion.

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

14 (1) any State law (whether effective before, on,  
15 or after the date of the enactment of this Act) that  
16 specifies a particular monetary amount of compen-  
17 satory or punitive damages (or the total amount of  
18 damages) that may be awarded in a health care law-  
19 suit, regardless of whether such monetary amount is  
20 greater or lesser than is provided for under this title,  
21 notwithstanding section 204(a); or

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

1 **SEC. 212. APPLICABILITY; EFFECTIVE DATE.**

2       This title 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 injury occurred.

○