

112TH CONGRESS
2D SESSION

S. 3473

To replace automatic spending cuts with targeted reforms, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2012

Mr. INHOFE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To replace automatic spending cuts with targeted reforms, 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Sequestration Prevention Act of 2012”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FULLY REPEAL THE SEQUESTRATION PROVISION OF
ROUND 2 OF THE BUDGET CONTROL ACT

Sec. 101. Repeal.

TITLE II—REPEAL OF HEALTH CARE LAW

- Sec. 201. Short title.
- Sec. 202. Repeal of the job-killing health care law and health care-related provisions in the Health Care and Education Reconciliation Act of 2010.
- Sec. 203. Budgetary effects of this Act.

TITLE III—NUTRITION ASSISTANCE BLOCK GRANT PROGRAM

- Sec. 301. Nutrition assistance block grant program.
- Sec. 302. Funding.
- Sec. 303. Repeals.
- Sec. 304. Baseline.

TITLE IV—BLOCK GRANT THE MEDICAID PROGRAM

- Sec. 401. Medical assistance block grant program.
- Sec. 402. Funding.
- Sec. 403. Termination of mandatory funding.
- Sec. 404. Miscellaneous.
- Sec. 405. Baseline.
- Sec. 406. Definitions.

TITLE V—REDUCTION OF FEDERAL WORKFORCE

- Sec. 501. Reduction in the number of Federal employees.

TITLE VI—PROHIBITION ON CLIMATE CHANGE AND GLOBAL WARMING FUNDING

- Sec. 601. No funding for climate change or global warming.

TITLE VII—PROTECTING ACCESS TO HEALTH CARE

- Sec. 700. Short title.

Subtitle A—HEALTH Act

- Sec. 701. Short title.
- Sec. 702. Purpose.
- Sec. 703. Encouraging speedy resolution of claims.
- Sec. 704. Compensating patient injury.
- Sec. 705. Maximizing patient recovery.
- Sec. 706. Punitive damages.
- Sec. 707. Authorization of payment of future damages to claimants in health care lawsuits.
- Sec. 708. Definitions.
- Sec. 709. Effect on other laws.
- Sec. 710. State flexibility and protection of States' rights.
- Sec. 711. Applicability; effective date.

Subtitle B—Health Care Safety Net Enhancement

- Sec. 721. Short title.
- Sec. 722. Protection for emergency and related services furnished pursuant to EMTALA.
- Sec. 723. Constitutional authority.

Subtitle C—Restoring the Application of Antitrust Laws to Health Sector Insurers

Sec. 731. Short title.

Sec. 732. Application of the antitrust laws to the business of health insurance.

Subtitle D—Protections for Good Samaritan Health Professionals

Sec. 741. Short title.

Sec. 742. Limitation on liability for volunteer health care professionals.

TITLE VIII—BUDGET CONTROL ACT SPENDING CAP
ADJUSTMENTS

Sec. 801. Budget Control Act spending cap adjustments.

1 **TITLE I—FULLY REPEAL THE SE-**
2 **QUESTRATION PROVISION OF**
3 **ROUND 2 OF THE BUDGET**
4 **CONTROL ACT**

5 **SEC. 101. REPEAL.**

6 Section 251A of the Balanced Budget and Emer-
7 gency Deficit Control Act of 1985 is repealed.

8 **TITLE II—REPEAL OF HEALTH**
9 **CARE LAW**

10 **SEC. 201. SHORT TITLE.**

11 This title may be cited as the “Repealing the Job-
12 Killing Health Care Law Act”.

13 **SEC. 202. REPEAL OF THE JOB-KILLING HEALTH CARE LAW**
14 **AND HEALTH CARE-RELATED PROVISIONS IN**
15 **THE HEALTH CARE AND EDUCATION REC-**
16 **ONCILIATION ACT OF 2010.**

17 (a) **JOB-KILLING HEALTH CARE LAW.**—Effective as
18 of the enactment of Public Law 111–148, such Act is re-
19 pealed, and the provisions of law amended or repealed by

1 such Act are restored or revived as if such Act had not
2 been enacted.

3 (b) HEALTH CARE-RELATED PROVISIONS IN THE
4 HEALTH CARE AND EDUCATION RECONCILIATION ACT OF
5 2010.—Effective as of the enactment of the Health Care
6 and Education Reconciliation Act of 2010 (Public Law
7 111–152), title I and subtitle B of title II of such Act
8 are repealed, and the provisions of law amended or re-
9 pealed by such title or subtitle, respectively, are restored
10 or revived as if such title and subtitle had not been en-
11 acted.

12 **SEC. 203. BUDGETARY EFFECTS OF THIS ACT.**

13 The budgetary effects of this title, for the purpose
14 of complying with the Statutory Pay-As-You-Go Act of
15 2010, shall be determined by reference to the latest state-
16 ment titled “Budgetary Effects of PAYGO Legislation”
17 for this title, submitted for printing in the Congressional
18 Record by the Chairman of the Committee on the Budget
19 of the House of Representatives, as long as such statement
20 has been submitted prior to the vote on passage of this
21 Act.

1 **TITLE III—NUTRITION ASSIST-**
2 **ANCE BLOCK GRANT PRO-**
3 **GRAM**

4 **SEC. 301. NUTRITION ASSISTANCE BLOCK GRANT PRO-**
5 **GRAM.**

6 (a) IN GENERAL.—For each of fiscal years 2014
7 through 2022, the Secretary shall establish a nutrition as-
8 sistance block grant program under which the Secretary
9 shall make annual grants to each participating State that
10 establishes a nutrition assistance program in the State
11 and submits to the Secretary annual reports under sub-
12 section (d).

13 (b) REQUIREMENTS.—As a requirement of receiving
14 grants under this section, the Governor of each partici-
15 pating State shall certify that the State nutrition assist-
16 ance program includes—

17 (1) work requirements;

18 (2) mandatory drug testing; and

19 (3) limitations on the eligible uses of benefits
20 that are at least as restrictive as the limitations in
21 place for the supplemental nutrition assistance pro-
22 gram established under the Food and Nutrition Act
23 of 2008 (7 U.S.C. 2011 et seq.) as of May 31, 2012.

1 (c) AMOUNT OF GRANT.—For each fiscal year, the
2 Secretary shall make a grant to each participating State
3 in an amount equal to the product of—

4 (1) the amount made available under section
5 302 for the applicable fiscal year; and

6 (2) the proportion that—

7 (A) the number of legal residents in the
8 State whose income does not exceed 100 per-
9 cent of the poverty line (as defined in section
10 673(2) of the Community Services Block Grant
11 Act (42 U.S.C. 9902(2), including any revision
12 required by such section)) applicable to a family
13 of the size involved; bears to

14 (B) the number of such individuals in all
15 participating States for the applicable fiscal
16 year, based on data for the most recent fiscal
17 year for which data is available.

18 (d) ANNUAL REPORT REQUIREMENTS.—

19 (1) IN GENERAL.—Not later than January 1 of
20 each year, each State that receives a grant under
21 this section shall submit to the Secretary a report
22 that shall include, for the year covered by the re-
23 port—

24 (A) a description of the structure and de-
25 sign of the nutrition assistance program of the

1 State, including the manner in which residents
2 of the State qualify for the program;

3 (B) the cost the State incurs to administer
4 the program;

5 (C) whether the State has established a
6 rainy day fund for the nutrition assistance pro-
7 gram of the State; and

8 (D) general statistics about participation
9 in the nutrition assistance program.

10 (2) AUDIT.—Each year, the Comptroller Gen-
11 eral of the United States shall—

12 (A) conduct an audit on the effectiveness
13 of the nutritional assistance block grant pro-
14 gram and the manner in which each partici-
15 pating State is implementing the program; and

16 (B) not later than June 30, submit to the
17 appropriate committees of Congress a report
18 describing—

19 (i) the results of the audit; and

20 (ii) the manner in which the State will
21 carry out the supplemental nutrition as-
22 sistance program in the State, including
23 eligibility and fraud prevention require-
24 ments.

25 (e) USE OF FUNDS.—

1 (1) IN GENERAL.—A State that receives a
2 grant under this section may use the grant in any
3 manner determined to be appropriate by the State to
4 provide nutrition assistance to the legal residents of
5 the State.

6 (2) AVAILABILITY OF FUNDS.—Grant funds
7 made available to a State under this section shall—

8 (A) remain available to the State for a pe-
9 riod of 5 years; and

10 (B) after that period, shall—

11 (i) revert to the Federal Government
12 to be deposited in the Treasury and used
13 for Federal budget deficit reduction; or

14 (ii) if there is no Federal budget def-
15 icit, be used to reduce the Federal debt in
16 such manner as the Secretary of the
17 Treasury considers appropriate.

18 **SEC. 302. FUNDING.**

19 There is authorized to be appropriated to carry out
20 this title—

21 (1) for fiscal year 2014, \$44,400,000,000;

22 (2) for fiscal year 2015, \$45,500,000,000;

23 (3) for fiscal year 2016, \$46,600,000,000;

24 (4) for fiscal year 2017, \$47,800,000,000;

25 (5) for fiscal year 2018, \$49,000,000,000;

- 1 (6) for fiscal year 2019, \$50,200,000,000;
2 (7) for fiscal year 2020, \$51,500,000,000;
3 (8) for fiscal year 2021, \$52,800,000,000; and
4 (9) for fiscal year 2022, \$54,100,000,000.

5 **SEC. 303. REPEALS.**

6 (a) IN GENERAL.—Effective September 30, 2013, the
7 Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.)
8 is repealed.

9 (b) REPEAL OF MANDATORY FUNDING.—

10 (1) IN GENERAL.—Notwithstanding any other
11 provision of law, effective September 30, 2013, the
12 supplemental nutrition assistance program estab-
13 lished under the Food and Nutrition Act of 2008 (7
14 U.S.C. 2011 et seq.) (as in effect prior to that date)
15 shall cease to be a program funded through direct
16 spending (as defined in section 250(c) of the Bal-
17 anced Budget and Emergency Deficit Control Act of
18 1985 (2 U.S.C. 900(c)) prior to the amendment
19 made by paragraph (2)).

20 (2) DIRECT SPENDING.—Effective September
21 30, 2013, section 250(c)(8) of the Balanced Budget
22 and Emergency Deficit Control Act of 1985 (2
23 U.S.C. 900(c)(8)) is amended—

24 (A) in subparagraph (A), by adding “and”
25 at the end;

1 (B) in subparagraph (B), by striking “;
2 and” at the end and inserting a period; and

3 (C) by striking subparagraph (C).

4 (3) ENTITLEMENT AUTHORITY.—Effective Sep-
5 tember 30, 2013, section 3(9) of the Congressional
6 Budget and Impoundment Control Act of 1974 (2
7 U.S.C. 622(9)) is amended—

8 (A) by striking “means—” and all that fol-
9 lows through “the authority to make” and in-
10 sserting “means the authority to make”;

11 (B) by striking “; and” and inserting a pe-
12 riod; and

13 (C) by striking subparagraph (B).

14 (4) OTHER DIRECT SPENDING.—Effective Sep-
15 tember 30, 2013, section 1026(5) of the Congres-
16 sional Budget and Impoundment Control Act of
17 1974 (2 U.S.C. 691e(5)) is amended—

18 (A) in subparagraph (A), by adding “and”
19 at the end;

20 (B) in subparagraph (B), by striking “;
21 and” at the end and inserting a period; and

22 (C) by striking subparagraph (C).

23 (c) RELATIONSHIP TO OTHER LAW.—Any reference
24 in this title, an amendment made by this title, or any other
25 law to the supplemental nutrition assistance program shall

1 be considered to be a reference to the nutrition assistance
2 block grant program under this title.

3 **SEC. 304. BASELINE.**

4 Notwithstanding section 257 of the Balanced Budget
5 and Emergency Deficit Control Act of 1985 (2 U.S.C.
6 907), the baseline shall assume that, on and after Sep-
7 tember 30, 2013, no benefits shall be provided under the
8 supplemental nutrition assistance program established
9 under the Food and Nutrition Act of 2008 (7 U.S.C. 2011
10 et seq.) (as in effect prior to that date).

11 **TITLE IV—BLOCK GRANT THE**
12 **MEDICAID PROGRAM**

13 **SEC. 401. MEDICAL ASSISTANCE BLOCK GRANT PROGRAM.**

14 (a) **IN GENERAL.**—For each of fiscal years 2014
15 through 2022, the Secretary shall establish a Medicaid
16 block grant program under which the Secretary shall make
17 annual grants to each participating State that establishes
18 a medical assistance program for individuals in the State
19 and submits to the Secretary annual reports under sub-
20 section (d).

21 (b) **AMOUNT OF GRANT.**—For each fiscal year, the
22 Secretary shall make a grant to each participating State
23 in an amount equal to the product of—

24 (1) the amount made available under section
25 402 for the applicable fiscal year; and

1 (2) the proportion that—

2 (A) the number of legal residents in the
3 State whose income does not exceed 185 per-
4 cent of the poverty line (as defined in section
5 673(2) of the Community Services Block Grant
6 Act (42 U.S.C. 9902(2), including any revision
7 required by such section)) applicable to a family
8 of the size involved; bears to

9 (B) the number of such individuals in all
10 participating States for the applicable fiscal
11 year, based on data for the most recent fiscal
12 year for which data is available.

13 (c) USE OF FUNDS.—

14 (1) IN GENERAL.—A State that receives a
15 grant under this section may use the grant in any
16 manner determined to be appropriate by the State to
17 provide medical assistance to legal residents of the
18 State.

19 (2) AVAILABILITY OF FUNDS.—Grant funds
20 made available to a State under this section shall—

21 (A) remain available to the State for a pe-
22 riod of 5 years; and

23 (B) after that period, shall—

1 (i) revert to the Federal Government
2 to be deposited in the Treasury and used
3 for Federal budget deficit reduction; or

4 (ii) if there is no Federal budget def-
5 icit, be used to reduce the Federal debt in
6 such manner as the Secretary of the
7 Treasury considers appropriate.

8 (d) ANNUAL REPORT REQUIREMENTS.—

9 (1) IN GENERAL.—Not later than January 1 of
10 each year, each State that receives a grant under
11 this section shall submit to the Secretary a report
12 that shall include, for the year covered by the re-
13 port—

14 (A) a description of the structure and de-
15 sign of the Medicaid program of the State, in-
16 cluding the manner in which residents of the
17 State qualify for the program;

18 (B) the cost the State incurs to administer
19 the program;

20 (C) whether the State has established a
21 rainy day fund for the Medicaid program of the
22 State; and

23 (D) general statistics about participation
24 in Medicaid program.

1 (2) AUDIT.—Each year, the Comptroller Gen-
2 eral of the United States shall—

3 (A) conduct an audit on the effectiveness
4 of the Medicaid block grant program and the
5 manner in which each participating State is im-
6 plementing the program; and

7 (B) not later than June 30, submit to the
8 appropriate committees of Congress a report
9 describing—

10 (i) the results of the audit; and

11 (ii) the manner in which the State will
12 carry out the Medicaid program in the
13 State, including eligibility and fraud pre-
14 vention requirements.

15 **SEC. 402. FUNDING.**

16 There is authorized to be appropriated to carry out
17 this title—

18 (1) for fiscal year 2014, \$304,000,000,000;

19 (2) for fiscal year 2015, \$311,000,000,000;

20 (3) for fiscal year 2016, \$317,000,000,000;

21 (4) for fiscal year 2017, \$334,000,000,000;

22 (5) for fiscal year 2018, \$345,000,000,000;

23 (6) for fiscal year 2019, \$355,000,000,000;

24 (7) for fiscal year 2020, \$370,000,000,000;

25 (8) for fiscal year 2021, \$382,000,000,000; and

1 (9) for fiscal year 2022, \$402,000,000,000.

2 **SEC. 403. TERMINATION OF MANDATORY FUNDING.**

3 (a) IN GENERAL.—Effective October 1, 2013, title
4 XIX of the Social Security Act (42 U.S.C. 1396 et seq.)
5 and subsections (f) and (g) of section 1108 of the Social
6 Security Act (42 U.S.C. 1308) are repealed.

7 (b) ELIMINATION OF MANDATORY FUNDING.—Not-
8 withstanding any other provision of law, effective October
9 1, 2013, the Medicaid program established under title
10 XIX of the Social Security Act (42 U.S.C. 1396 et seq.)
11 shall cease to be a program funded through direct spend-
12 ing (as defined in section 250(c) of the Balanced Budget
13 and Emergency Deficit Control Act of 1985 (2 U.S.C.
14 900(c)).

15 **SEC. 404. MISCELLANEOUS.**

16 (a) RELATIONSHIP TO OTHER LAW.—Any reference
17 in this Act, an amendment made by this Act, or any other
18 Act to the Medicaid program or to title XIX of the Social
19 Security Act shall be considered to be a reference to the
20 Medicaid block grant program established under this title.

21 (b) NONENTITLEMENT.—Nothing in this title shall
22 be construed as providing—

23 (1) an individual with an entitlement to medical
24 assistance provided under a grant made under this
25 title; or

1 (2) as an obligation of the Federal Government
2 to provide payments to States to carry out this title
3 other than to the extent funds are made available
4 for that purpose through an appropriations Act.

5 (c) WAIVERS.—

6 (1) IN GENERAL.—In the case of a State con-
7 ducting an experimental, pilot, or demonstration
8 project under section 1115 of the Social Security
9 Act (42 U.S.C. 1315) or other authority relating to
10 the Medicaid program under title XIX of the Social
11 Security Act that is in effect on the date of enact-
12 ment of this Act, the waiver shall terminate on Sep-
13 tember 30, 2013, unless the State submits a request,
14 not later than July 1, 2013, to the Secretary to con-
15 tinue the project. The Secretary may approve the re-
16 quest of a State to continue with such a project only
17 if the total amount of Federal funds paid to the
18 State to conduct the project will not exceed the
19 amount of Federal funds that would be paid to the
20 State under this title if the project were not contin-
21 ued.

22 (2) NO WAIVER AUTHORITY.—The Secretary
23 may not waive any provision of this title under sec-
24 tion 1115 of the Social Security Act (42 U.S.C.
25 1315).

1 (d) HOLD HARMLESS PROVISIONS.—

2 (1) CHIP.—The State children’s health insur-
3 ance program established under title XXI of the So-
4 cial Security Act (42 U.S.C. 1397aa et seq.) shall
5 continue to be operated in accordance with the pro-
6 visions of that title.

7 (2) CHILD SUPPORT AND FOSTER CARE PAY-
8 MENTS.—The Federal medical assistance percent-
9 age, as defined in section 1905(b) of the Social Se-
10 curity Act (42 U.S.C. 1396d(b)), (as in effect on
11 September 30, 2013) shall continue to apply to pay-
12 ments to States under parts D and E of title IV of
13 the Social Security Act (42 U.S.C. 651 et seq.; 670
14 et seq.). Notwithstanding the repeal of title XIX of
15 the Social Security Act under section 403(a), the
16 Secretary shall annually determine and promulgate
17 the Federal medical assistance percentage for each
18 State in accordance with the provisions of section
19 1101(a)(8)(B) of the Social Security Act (42 U.S.C.
20 1301(a)(8)(B)).

21 (3) VACCINES FOR CHILDREN PROGRAM.—The
22 program for the distribution of pediatric vaccines es-
23 tablished under section 1928 of the Social Security
24 Act (42 U.S.C. 1396s) shall continue to be operated

1 in accordance with the provisions of that section (as
2 in effect on September 30, 2013).

3 (e) **TECHNICAL ASSISTANCE.**—The Secretary shall
4 provide technical assistance and guidance to States to co-
5 ordinate the transition to the Medicaid block grant pro-
6 gram established under this title.

7 **SEC. 405. BASELINE.**

8 Notwithstanding section 257 of the Balanced Budget
9 and Emergency Deficit Control Act of 1985 (2 U.S.C.
10 907), the baseline shall assume that after September 30,
11 2013, no payments shall be provided under section 1903
12 of title XIX of the Social Security Act (42 U.S.C. 1396b).

13 **SEC. 406. DEFINITIONS.**

14 In this title:

15 (1) **MEDICAL ASSISTANCE.**—The term “medical
16 assistance” means payment for part or all of the
17 cost of providing, or arranging for the provision of
18 (including through the purchase of health insurance
19 coverage), health benefits.

20 (2) **SECRETARY.**—The term “Secretary” means
21 the Secretary of Health and Human Services.

22 (3) **STATE.**—The term “State” means each of
23 the 50 States, the District of Columbia, Puerto Rico,
24 the United States Virgin Islands, Guam, the North-
25 ern Mariana Islands, and American Samoa.

1 **TITLE V—REDUCTION OF**
2 **FEDERAL WORKFORCE**

3 **SEC. 501. REDUCTION IN THE NUMBER OF FEDERAL EM-**
4 **PLOYEES.**

5 (a) DEFINITION.—In this section, the term “agency”
6 has the meaning given the term “Executive agency” under
7 section 105 of title 5, United States Code.

8 (b) DETERMINATION OF NUMBER OF EMPLOYEES.—
9 Not later than 60 days after the date of enactment of this
10 Act, the Director of the Office of Management and Budget
11 shall determine the number of full-time employees em-
12 ployed in each agency. The head of each agency shall co-
13 operate with the Director of the Office of Management
14 and Budget in making the determinations.

15 (c) REPLACEMENT HIRE RATE.—

16 (1) IN GENERAL.—During the period described
17 under paragraph (2), the head of each agency may
18 hire no more than 2 employees in that agency for
19 every 3 employees who leave employment in that
20 agency.

21 (2) PERIOD OF REPLACEMENT HIRE RATE.—
22 Paragraph (1) shall apply to each agency during the
23 period beginning 60 days after the date of enact-
24 ment of this Act through the date on which the Di-
25 rector of the Office of Management and Budget

1 makes a determination that the number of full-time
2 employees employed in that agency is 10 percent less
3 than the number of full-time employees employed in
4 that agency determined under subsection (a).

5 (d) WAIVERS.—This section may be waived upon a
6 determination by the President that—

7 (1) the existence of a state of war or other na-
8 tional security concern so requires; or

9 (2) the existence of an extraordinary emergency
10 threatening life, health, public safety, property, or
11 the environment so requires.

12 **TITLE VI—PROHIBITION ON CLI-** 13 **MATE CHANGE AND GLOBAL** 14 **WARMING FUNDING**

15 **SEC. 601. NO FUNDING FOR CLIMATE CHANGE OR GLOBAL** 16 **WARMING.**

17 On and after the date of enactment of this Act, no
18 Federal funds may be expended for any activity relating
19 to climate change or global warming.

20 **TITLE VII—PROTECTING ACCESS** 21 **TO HEALTH CARE**

22 **SEC. 700. SHORT TITLE.**

23 This title may be cited as the “Protecting Access to
24 Health Care Act”.

1 **Subtitle A—HEALTH Act**

2 **SEC. 701. SHORT TITLE.**

3 This subtitle may be cited as the “Help Efficient, Ac-
4 cessible, Low-cost, Timely Healthcare (HEALTH) Act of
5 2012”.

6 **SEC. 702. PURPOSE.**

7 It is the purpose of this subtitle to implement reason-
8 able, comprehensive, and effective health care liability re-
9 forms designed to—

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

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

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

22 (4) improve the fairness and cost-effectiveness
23 of our current health care liability system to resolve
24 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. 703. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

7 The time for the commencement of a health care law-
8 suit shall be 3 years after the date of manifestation of
9 injury or 1 year after the claimant discovers, or through
10 the use of reasonable diligence should have discovered, the
11 injury, whichever occurs first. In no event shall the time
12 for commencement of a health care lawsuit exceed 3 years
13 after the date of manifestation of injury unless tolled for
14 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 alleged manifestation of injury except
22 that actions by a minor under the full age of 6 years shall
23 be commenced within 3 years of manifestation of injury
24 or prior to the minor's 8th birthday, whichever provides
25 a longer period. Such time limitation shall be tolled for

1 minors for any period during which a parent or guardian
2 and a health care provider or health care organization
3 have committed fraud or collusion in the failure to bring
4 an action on behalf of the injured minor.

5 **SEC. 704. COMPENSATING PATIENT INJURY.**

6 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL
7 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any
8 health care lawsuit, nothing in this subtitle shall limit a
9 claimant’s recovery of the full amount of the available eco-
10 nomic damages, notwithstanding the limitation in sub-
11 section (b).

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

18 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
19 DAMAGES.—For purposes of applying the limitation in
20 subsection (b), future noneconomic damages shall not be
21 discounted to present value. The jury shall not be in-
22 formed about the maximum award for noneconomic dam-
23 ages. An award for noneconomic damages in excess of
24 \$250,000 shall be reduced either before the entry of judg-
25 ment, or by amendment of the judgment after entry of

1 judgment, and such reduction shall be made before ac-
2 counting for any other reduction in damages required by
3 law. If separate awards are rendered for past and future
4 noneconomic damages and the combined awards exceed
5 \$250,000, the future noneconomic damages shall be re-
6 duced first.

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

19 **SEC. 705. MAXIMIZING PATIENT RECOVERY.**

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

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

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

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

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

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

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

1 ment for court supervision in the first two sentences of
2 subsection (a) applies only in civil actions.

3 **SEC. 706. PUNITIVE DAMAGES.**

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

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

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

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

10 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
11 AGES.—

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

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

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

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

22 (D) the number of products sold or med-
23 ical procedures rendered for compensation, as
24 the case may be, by such party, of the kind

1 causing the harm complained of by the claim-
2 ant;

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

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

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

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

17 (1) IN GENERAL.—

18 (A) No punitive damages may be awarded
19 against the manufacturer or distributor of a
20 medical product, or a supplier of any compo-
21 nent or raw material of such medical product,
22 based on a claim that such product caused the
23 claimant's harm where—

24 (i)(I) such medical product was sub-
25 ject to premarket approval, clearance, or li-

1 censure by the Food and Drug Administra-
2 tion with respect to the safety of the for-
3 mulation or performance of the aspect of
4 such medical product which caused the
5 claimant's harm or the adequacy of the
6 packaging or labeling of such medical
7 product; and

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

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

23 (B) RULE OF CONSTRUCTION.—Subpara-
24 graph (A) may not be construed as establishing
25 the obligation of the Food and Drug Adminis-

1 tration to demonstrate affirmatively that a
2 manufacturer, distributor, or supplier referred
3 to in such subparagraph meets any of the con-
4 ditions described in such subparagraph.

5 (2) LIABILITY OF HEALTH CARE PROVIDERS.—

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

18 (3) PACKAGING.—In a health care lawsuit for
19 harm which is alleged to relate to the adequacy of
20 the packaging or labeling of a drug which is required
21 to have tamper-resistant packaging under regula-
22 tions of the Secretary of Health and Human Serv-
23 ices (including labeling regulations related to such
24 packaging), the manufacturer or product seller of
25 the drug shall not be held liable for punitive dam-

1 ages unless such packaging or labeling is found by
2 the trier of fact by clear and convincing evidence to
3 be substantially out of compliance with such regula-
4 tions.

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

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

17 (B) a person made an illegal payment to
18 an official of the Food and Drug Administra-
19 tion for the purpose of either securing or main-
20 taining approval, clearance, or licensure of such
21 medical product; or

22 (C) the defendant caused the medical prod-
23 uct which caused the claimant's harm to be
24 misbranded or adulterated (as such terms are

1 used in chapter V of the Federal Food, Drug,
2 and Cosmetic Act (21 U.S.C. 351 et seq.)).

3 **SEC. 707. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
4 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
5 **SUITS.**

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

16 (b) APPLICABILITY.—This section applies to all ac-
17 tions which have not been first set for trial or retrial be-
18 fore the effective date of this subtitle.

19 **SEC. 708. DEFINITIONS.**

20 In this subtitle:

21 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-
22 TEM; ADR.—The term “alternative dispute resolution
23 system” or “ADR” means a system that provides
24 for the resolution of health care lawsuits in a man-

1 ner other than through a civil action brought in a
2 State or Federal court.

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

11 (3) 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 (4) 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 (5) 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 (6) 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 (7) 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 (8) 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 (9) 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 (10) 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 (11) 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 (12) 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 (13) 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 (14) 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 (15) 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 (16) 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 (17) 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. 709. 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 subtitle does not affect the appli-
17 cation of the rule of law to such an action; and

18 (B) any rule of law prescribed by this sub-
19 title in conflict with a rule of law of such title
20 XXI 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 subtitle or otherwise applicable law (as determined

1 under this subtitle) will apply to such aspect of such
2 action.

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

7 **SEC. 710. 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 subtitle pre-
11 empt, subject to subsections (b) and (c), State law to the
12 extent that State law prevents the application of any pro-
13 visions of law established by or under this subtitle. The
14 provisions governing health care lawsuits set forth in this
15 subtitle supersede chapter 171 of title 28, United States
16 Code, to the 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 subtitle; 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 subtitle (including
4 State standards of negligence) shall be governed by other-
5 wise applicable State or Federal law.

6 (2) This subtitle 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 subtitle or create a cause of
11 action.

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

14 (1) any State law (whether effective before, on,
15 or after the date of the enactment of this title) 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 sub-
21 title, notwithstanding section 704(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. 711. APPLICABILITY; EFFECTIVE DATE.**

2 This subtitle 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 title, except that
 6 any health care lawsuit arising from an injury occurring
 7 prior to the date of the enactment of this title shall be
 8 governed by the applicable statute of limitations provisions
 9 in effect at the time the injury occurred.

10 **Subtitle B—Health Care Safety Net**
 11 **Enhancement**

12 **SEC. 721. SHORT TITLE.**

13 This subtitle may be cited as the “Health Care Safety
 14 Net Enhancement Act of 2012”.

15 **SEC. 722. PROTECTION FOR EMERGENCY AND RELATED**
 16 **SERVICES FURNISHED PURSUANT TO**
 17 **EMTALA.**

18 Section 224(g) of the Public Health Service Act (42
 19 U.S.C. 233(g)) is amended—

20 (1) in paragraph (4), by striking “An entity”
 21 and inserting “Subject to paragraph (6), an entity”;
 22 and

23 (2) by adding at the end the following:

24 “(6)(A) For purposes of this section—

1 “(i) an entity described in subparagraph
2 (B) shall be considered to be an entity de-
3 scribed in paragraph (4); and

4 “(ii) the provisions of this section shall
5 apply to an entity described in subparagraph
6 (B) in the same manner as such provisions
7 apply to an entity described in paragraph (4),
8 except that—

9 “(I) notwithstanding paragraph
10 (1)(B), the deeming of any entity described
11 in subparagraph (B), or of an officer, gov-
12 erning board member, employee, con-
13 tractor, or on-call provider of such an enti-
14 ty, to be an employee of the Public Health
15 Service for purposes of this section shall
16 apply only with respect to items and serv-
17 ices that are furnished to an individual
18 pursuant to section 1867 of the Social Se-
19 curity Act and to post stabilization services
20 (as defined in subparagraph (D)) furnished
21 to such an individual;

22 “(II) nothing in paragraph (1)(D)
23 shall be construed as preventing a physi-
24 cian or physician group described in sub-
25 paragraph (B)(ii) from making the appli-

1 cation referred to in such paragraph or as
2 conditioning the deeming of a physician or
3 physician group that makes such an appli-
4 cation upon receipt by the Secretary of an
5 application from the hospital or emergency
6 department that employs or contracts with
7 the physician or group, or enlists the phy-
8 sician or physician group as an on-call pro-
9 vider;

10 “(III) notwithstanding paragraph (3),
11 this paragraph shall apply only with re-
12 spect to causes of action arising from acts
13 or omissions that occur on or after Janu-
14 ary 1, 2012;

15 “(IV) paragraph (5) shall not apply to
16 a physician or physician group described in
17 subparagraph (B)(ii);

18 “(V) the Attorney General, in con-
19 sultation with the Secretary, shall make
20 separate estimates under subsection (k)(1)
21 with respect to entities described in sub-
22 paragraph (B) and entities described in
23 paragraph (4) (other than those described
24 in subparagraph (B)), and the Secretary
25 shall establish separate funds under sub-

1 section (k)(2) with respect to such groups
2 of entities, and any appropriations under
3 this subsection for entities described in
4 subparagraph (B) shall be separate from
5 the amounts authorized by subsection
6 (k)(2);

7 “(VI) notwithstanding subsection
8 (k)(2), the amount of the fund established
9 by the Secretary under such subsection
10 with respect to entities described in sub-
11 paragraph (B) may exceed a total of
12 \$10,000,000 for a fiscal year; and

13 “(VII) subsection (m) shall not apply
14 to entities described in subparagraph (B).

15 “(B) An entity described in this subparagraph
16 is—

17 “(i) a hospital or an emergency depart-
18 ment to which section 1867 of the Social Secu-
19 rity Act applies; and

20 “(ii) a physician or physician group that is
21 employed by, is under contract with, or is an
22 on-call provider of such hospital or emergency
23 department, to furnish items and services to in-
24 dividuals under such section.

1 “(C) For purposes of this paragraph, the term
2 ‘on-call provider’ means a physician or physician
3 group that—

4 “(i) has full, temporary, or locum tenens
5 staff privileges at a hospital or emergency de-
6 partment to which section 1867 of the Social
7 Security Act applies; and

8 “(ii) is not employed by or under contract
9 with such hospital or emergency department,
10 but agrees to be ready and available to provide
11 services pursuant to section 1867 of the Social
12 Security Act or post-stabilization services to in-
13 dividuals being treated in the hospital or emer-
14 gency department with or without compensation
15 from the hospital or emergency department.

16 “(D) For purposes of this paragraph, the term
17 ‘post stabilization services’ means, with respect to an
18 individual who has been treated by an entity de-
19 scribed in subparagraph (B) for purposes of com-
20 plying with section 1867 of the Social Security Act,
21 services that are—

22 “(i) related to the condition that was so
23 treated; and

24 “(ii) provided after the individual is sta-
25 bilized in order to maintain the stabilized condi-

1 tion or to improve or resolve the condition of
2 the individual.

3 “(E)(i) Nothing in this paragraph (or in any
4 other provision of this section as such provision ap-
5 plies to entities described in subparagraph (B) by
6 operation of subparagraph (A)) shall be construed as
7 authorizing or requiring the Secretary to make pay-
8 ments to such entities, the budget authority for
9 which is not provided in advance by appropriation
10 Acts.

11 “(ii) The Secretary shall limit the total amount
12 of payments under this paragraph for a fiscal year
13 to the total amount appropriated in advance by ap-
14 propriation Acts for such purpose for such fiscal
15 year. If the total amount of payments that would
16 otherwise be made under this paragraph for a fiscal
17 year exceeds such total amount appropriated, the
18 Secretary shall take such steps as may be necessary
19 to ensure that the total amount of payments under
20 this paragraph for such fiscal year does not exceed
21 such total amount appropriated.”.

22 **SEC. 723. CONSTITUTIONAL AUTHORITY.**

23 The constitutional authority upon which this subtitle
24 rests is the power of the Congress to provide for the gen-
25 eral welfare, to regulate commerce, and to make all laws

1 which shall be necessary and proper for carrying into exe-
 2 cution Federal powers, as enumerated in Section 8 of Arti-
 3 cle I of the Constitution of the United States.

4 **Subtitle C—Restoring the Applica-**
 5 **tion of Antitrust Laws to Health**
 6 **Sector Insurers**

7 **SEC. 731. SHORT TITLE.**

8 This subtitle may be cited as the “Health Insurance
 9 Industry Fair Competition Act of 2012”.

10 **SEC. 732. APPLICATION OF THE ANTITRUST LAWS TO THE**
 11 **BUSINESS OF HEALTH INSURANCE.**

12 (a) AMENDMENT TO McCARRAN-FERGUSON ACT.—
 13 Section 3 of the Act of March 9, 1945 (15 U.S.C. 1013),
 14 commonly known as the McCarran-Ferguson Act, is
 15 amended by adding at the end the following:

16 “(c) Nothing contained in this Act shall modify, im-
 17 pair, or supersede the operation of any of the antitrust
 18 laws with respect to the business of health insurance. For
 19 purposes of the preceding sentence, the term ‘antitrust
 20 laws’ has the meaning given it in subsection (a) of the
 21 first section of the Clayton Act, except that such term in-
 22 cludes section 5 of the Federal Trade Commission Act to
 23 the extent that such section 5 applies to unfair methods
 24 of competition. For the purposes of this subsection, the
 25 term ‘business of health insurance’ shall—

1 “(1) mean ‘health insurance coverage’ offered
2 by a ‘health insurance issuer’ as those terms are de-
3 fined in section 9001 of the Patient Protection and
4 Affordable Care Act, which incorporates by reference
5 and utilizes the definitions included in section 9832
6 of the Internal Revenue Code (26 U.S.C. 9832); and

7 “(2) not include—

8 “(A) life insurance and annuities;

9 “(B) property or casualty insurance, in-
10 cluding but not limited to, automobile, medical
11 malpractice or workers’ compensation insur-
12 ance; or

13 “(C) any insurance or benefits defined as
14 ‘excepted benefits’ under section 9832(c) of the
15 Internal Revenue Code (26 U.S.C. 9832(c)),
16 whether offered separately or in combination
17 with products described in subparagraph (A).”.

18 (b) RELATED PROVISION.—For purposes of section
19 5 of the Federal Trade Commission Act (15 U.S.C. 45)
20 to the extent such section applies to unfair methods of
21 competition, section 3(c) of the McCarran-Ferguson Act
22 shall apply with respect to the business of health insurance
23 without regard to whether such business is carried on for
24 profit, notwithstanding the definition of “Corporation”

1 contained in section 4 of the Federal Trade Commission
2 Act.

3 (c) LIMITATION ON CLASS ACTIONS.—

4 (1) LIMITATION.—No class action may be
5 heard in a Federal or State court on a claim against
6 a person engaged in the business of health insurance
7 for a violation of any of the antitrust laws (as de-
8 fined in section 3(e) of the Act of March 9, 1945
9 (15 U.S.C. 1013), commonly known as the
10 McCarran-Ferguson Act).

11 (2) EXEMPTION.—Paragraph (1) shall not
12 apply with respect to any action commenced—

13 (A) by the United States or any State; or

14 (B) by a named claimant for an injury
15 only to itself.

16 **Subtitle D—Protections for Good** 17 **Samaritan Health Professionals**

18 **SEC. 741. SHORT TITLE.**

19 This subtitle may be cited as the “Good Samaritan
20 Health Professionals Act of 2012”.

21 **SEC. 742. LIMITATION ON LIABILITY FOR VOLUNTEER** 22 **HEALTH CARE PROFESSIONALS.**

23 (a) IN GENERAL.—Title II of the Public Health Serv-
24 ice Act (42 U.S.C. 202 et seq.) is amended by inserting
25 after section 224 the following:

1 **“SEC. 224A. LIMITATION ON LIABILITY FOR VOLUNTEER**
2 **HEALTH CARE PROFESSIONALS.**

3 “(a) **LIMITATION ON LIABILITY.**—Except as provided
4 in subsection (b), a health care professional shall not be
5 liable under Federal or State law for any harm caused
6 by an act or omission of the professional if—

7 “(1) the professional is serving as a volunteer
8 for purposes of responding to a disaster; and

9 “(2) the act or omission occurs—

10 “(A) during the period of the disaster, as
11 determined under the laws listed in subsection
12 (e)(1);

13 “(B) in the health care professional’s ca-
14 pacity as such a volunteer; and

15 “(C) in a good faith belief that the indi-
16 vidual being treated is in need of health care
17 services.

18 “(b) **EXCEPTIONS.**—Subsection (a) does not apply
19 if—

20 “(1) the harm was caused by an act or omission
21 constituting willful or criminal misconduct, gross
22 negligence, reckless misconduct, or a conscious fla-
23 grant indifference to the rights or safety of the indi-
24 vidual harmed by the health care professional; or

25 “(2) the health care professional rendered the
26 health care services under the influence (as deter-

1 mined pursuant to applicable State law) of intoxi-
2 cating alcohol or an intoxicating drug.

3 “(c) STANDARD OF PROOF.—In any civil action or
4 proceeding against a health care professional claiming that
5 the limitation in subsection (a) applies, the plaintiff shall
6 have the burden of proving by clear and convincing evi-
7 dence the extent to which limitation does not apply.

8 “(d) PREEMPTION.—

9 “(1) IN GENERAL.—This section preempts the
10 laws of a State or any political subdivision of a State
11 to the extent that such laws are inconsistent with
12 this section, unless such laws provide greater protec-
13 tion from liability.

14 “(2) VOLUNTEER PROTECTION ACT.—Protec-
15 tions afforded by this section are in addition to those
16 provided by the Volunteer Protection Act of 1997.

17 “(e) DEFINITIONS.—In this section:

18 “(1) The term ‘disaster’ means—

19 “(A) a national emergency declared by the
20 President under the National Emergencies Act;

21 “(B) an emergency or major disaster de-
22 clared by the President under the Robert T.
23 Stafford Disaster Relief and Emergency Assist-
24 ance Act; or

1 “(C) a public health emergency determined
2 by the Secretary under section 319 of this Act.

3 “(2) The term ‘harm’ includes physical, non-
4 physical, economic, and noneconomic losses.

5 “(3) The term ‘health care professional’ means
6 an individual who is licensed, certified, or authorized
7 in one or more States to practice a health care pro-
8 fession.

9 “(4) The term ‘State’ includes each of the sev-
10 eral States, the District of Columbia, the Common-
11 wealth of Puerto Rico, the Virgin Islands, Guam,
12 American Samoa, the Northern Mariana Islands,
13 and any other territory or possession of the United
14 States.

15 “(5)(A) The term ‘volunteer’ means a health
16 care professional who, with respect to the health
17 care services rendered, does not receive—

18 “(i) compensation; or

19 “(ii) any other thing of value in lieu of
20 compensation, in excess of \$500 per year.

21 “(B) For purposes of subparagraph (A), the
22 term ‘compensation’—

23 “(i) includes payment under any insurance
24 policy or health plan, or under any Federal or
25 State health benefits program; and

1 “(ii) excludes—
2 “(I) reasonable reimbursement or al-
3 lowance for expenses actually incurred;
4 “(II) receipt of paid leave; and
5 “(III) receipt of items to be used ex-
6 clusively for rendering the health services
7 in the health care professional’s capacity
8 as a volunteer described in subsection
9 (a)(1).”.

10 (b) EFFECTIVE DATE.—

11 (1) IN GENERAL.—This subtitle and the
12 amendment made by subsection (a) shall take effect
13 90 days after the date of the enactment of this title.

14 (2) APPLICATION.—This subtitle applies to any
15 claim for harm caused by an act or omission of a
16 health care professional where the claim is filed on
17 or after the effective date of this subtitle, but only
18 if the harm that is the subject of the claim or the
19 conduct that caused such harm occurred on or after
20 such effective date.

1 **TITLE VIII—BUDGET CONTROL**
2 **ACT SPENDING CAP ADJUST-**
3 **MENTS**

4 **SEC. 801. BUDGET CONTROL ACT SPENDING CAP ADJUST-**
5 **MENTS.**

6 (a) REENACTMENT.—Section 251 of the Balanced
7 Budget and Emergency Deficit Control Act of 1985 is re-
8 enacted as in effect on January 15, 2012.

9 (b) NEW CAPS.—The Balanced Budget and Emer-
10 gency Deficit Control Act of 1985 is amended—

11 (1) in section 250(c)(4), by striking subpara-
12 graph (B) and inserting the following:

13 “(B) The term ‘security category’ means discre-
14 tionary appropriations in budget function 050.”; and

15 (2) in section 251(c), by striking paragraphs
16 (2) through (10) and inserting the following:

17 “(2) with respect to fiscal year 2013—

18 “(A) for the security category,
19 \$546,000,000,000; and

20 “(B) for the nonsecurity category,
21 \$430,700,000,000;

22 “(3) with respect to fiscal year 2014—

23 “(A) for the security category,
24 \$566,800,000,000; and

1 “(B) for the nonsecurity category,
2 \$769,100,000,000;

3 “(4) with respect to fiscal year 2015—

4 “(A) for the security category,
5 \$620,400,000,000; and

6 “(B) for the nonsecurity category,
7 \$777,200,000,000;

8 “(5) with respect to fiscal year 2016—

9 “(A) for the security category,
10 \$657,700,000,000; and

11 “(B) for the nonsecurity category,
12 \$784,300,000,000;

13 “(6) with respect to fiscal year 2017—

14 “(A) for the security category,
15 \$702,000,000,000; and

16 “(B) for the nonsecurity category,
17 \$802,000,000,000;

18 “(7) with respect to fiscal year 2018—

19 “(A) for the security category,
20 \$736,800,000,000; and

21 “(B) for the nonsecurity category,
22 \$824,400,000,000;

23 “(8) with respect to fiscal year 2019—

24 “(A) for the security category,
25 \$780,900,000,000; and

1 “(B) for the nonsecurity category,
2 \$845,700,000,000;

3 “(9) with respect to fiscal year 2020—

4 “(A) for the security category,
5 \$828,100,000,000; and

6 “(B) for the nonsecurity category,
7 \$872,100,000,000;

8 “(10) with respect to fiscal year 2021—

9 “(A) for the security category,
10 \$865,300,000,000; and

11 “(B) for the nonsecurity category,
12 \$894,400,000,000; and

13 “(11) with respect to fiscal year 2022—

14 “(A) for the security category,
15 \$990,800,000,000; and

16 “(B) for the nonsecurity category:
17 \$925,300,000,000.”.

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