

111TH CONGRESS
2D SESSION

H. R. 5690

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

IN THE HOUSE OF REPRESENTATIVES

JULY 1, 2010

Mr. GINGREY of Georgia (for himself, Mr. FLEMING, Mr. SMITH of Texas, Mr. KLINE of Minnesota, Mr. HALL of Texas, Mr. BILBRAY, Mr. MARCHANT, Mr. BISHOP of Utah, Mr. FRANKS of Arizona, Mr. ROONEY, Mr. SHAD-EGG, Mr. LEE of New York, Mrs. McMORRIS RODGERS, Mrs. BLACKBURN, Mr. ROE of Tennessee, Mr. KINGSTON, Mr. COLE, Mr. CASSIDY, Mr. PITTS, Mr. WESTMORELAND, Mr. LATTA, Mr. BONNER, Mr. LINDER, Mr. BOUSTANY, Mr. GRIFFITH, Mr. TIM MURPHY of Pennsylvania, Mr. BARTLETT, and Mr. DENT) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Meaningful End to Defensive Medicine & Aimless Law-
4 suits (MedMal) Act of 2010”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings; purpose.
- Sec. 3. Health care lawsuit statute of limitations.
- Sec. 4. Early offer.
- Sec. 5. Collateral source benefits.
- Sec. 6. Benevolent gesture or admission of fault by a health care provider.
- Sec. 7. Fair share rule.
- Sec. 8. Punitive damages.
- Sec. 9. Authorization of payment of future damages to claimants in health care lawsuits.
- Sec. 10. Liability of health care providers for FDA-approved products.
- Sec. 11. Expert Witness Standards.
- Sec. 12. Protection of States’ rights and effect on other laws.
- Sec. 13. Definitions.
- Sec. 14. Applicability.

7 **SEC. 2. FINDINGS; PURPOSE.**

8 (a) FINDINGS.—

9 (1) EFFECT ON HEALTH CARE ACCESS AND
10 COSTS.—Congress finds that the United States civil
11 justice system adversely affects patient access to
12 health care services, the quality of patient care, and
13 the cost-efficiency of health care because the health
14 care liability system is costly, ineffective, and a de-
15 terrent to the sharing of information among health
16 care professionals, which impedes efforts to improve
17 patient safety and quality of care.

1 (2) EFFECT ON INTERSTATE COMMERCE.—

2 Congress finds that—

3 (A) the health care and insurance indus-
4 tries affect interstate commerce; and

5 (B) the health care liability litigation sys-
6 tems throughout the United States affect inter-
7 state commerce by contributing to the high cost
8 of health care and premiums for health care li-
9 ability insurance purchased by health care sys-
10 tem providers.

11 (3) EFFECT ON FEDERAL SPENDING.—Con-
12 gress finds that the health care liability litigation
13 systems throughout the United States have a signifi-
14 cant effect on the amount, distribution, and use of
15 Federal funds because of—

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

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

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

1 (b) PURPOSE.—It is the purpose of this Act 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 lawsuits have been
6 shown to be a factor in the decreased availability of
7 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 health care liability by reducing uncer-
19 tainty in the amount of compensation provided to in-
20 jured individuals; and

21 (5) increase the sharing of information in the
22 health care system to reduce unintended injury and
23 improve patient care.

1 **SEC. 3. HEALTH CARE LAWSUIT STATUTE OF LIMITATIONS.**

2 (a) STATUTE OF LIMITATIONS FOR HEALTH CARE
3 LAWSUIT.—Except as provided under subsection (b), a
4 health care lawsuit is barred unless it is commenced before
5 the earlier of—

6 (1) the expiration of the 3-year period begin-
7 ning on the date of manifestation of injury; or

8 (2) the expiration of the 1-year period begin-
9 ning on the date on which the claimant discovers, or
10 through the use of reasonable diligence should have
11 discovered, the injury.

12 (b) TOLLING OF STATUTE OF LIMITATIONS.—The
13 statute of limitations under subsection (a) may be tolled
14 for any of the following:

15 (1) Proof of fraud.

16 (2) Intentional concealment of information nec-
17 essary for a claimant to file a health care lawsuit.

18 (3) The presence of a foreign body, which has
19 no therapeutic or diagnostic purpose or effect, in the
20 person of the injured person that is related to the
21 health care liability claim.

22 (c) APPLICABILITY.—This section shall not apply to
23 any health care lawsuit arising from an injury occurring
24 before the date of the enactment of this Act.

1 **SEC. 4. EARLY OFFER.**

2 (a) IN GENERAL.—If a claimant rejects a qualified
3 early offer from a defendant in a health care lawsuit, the
4 amount of noneconomic damages that may be awarded
5 against that defendant in the lawsuit may not exceed
6 \$350,000.

7 (b) QUALIFIED EARLY OFFER.—In this section, the
8 term “qualified early offer” means, with respect to a
9 health care lawsuit, a reasonable offer that—

10 (1) is made by a defendant to a claimant in
11 order to settle the health care liability claim which
12 is the subject of the lawsuit;

13 (2) provides for the periodic payment to the
14 claimant of net economic damages as such damages
15 accrue, for which the defendant is responsible, to the
16 claimant, to the extent that such damages are not
17 already covered by a collateral source;

18 (3) provides for payment of the reasonable at-
19 torney’s fees of the claimant;

20 (4) is made to the claimant not later than 180
21 days after the date such lawsuit is commenced; and

22 (5) allows the claimant to accept or reject such
23 offer within 30 days after the date on which such
24 offer is made.

1 (c) CALCULATION OF AWARD.—If a claimant rejects
2 a qualified early offer from a defendant in a health care
3 lawsuit—

4 (1) an award for noneconomic damages in ex-
5 cess of \$350,000 shall be reduced to such amount ei-
6 ther before the entry of judgment, or by amendment
7 of the judgment after entry of judgment, and such
8 reduction shall be made before accounting for any
9 other reduction in damages required by law; and

10 (2) in a case in which separate awards are ren-
11 dered for past and future noneconomic damages, the
12 future noneconomic damages shall be reduced first.

13 (d) ATTORNEY’S FEES.—If a qualified early offer is
14 rejected and a judgment is subsequently entered against
15 the offeree in that health care lawsuit, the offeree shall
16 be liable for the attorney’s fees of the offeror.

17 (e) NO JURY NOTIFICATION.—If a claimant rejects
18 a qualified early offer, the jury shall not be informed about
19 the maximum award for noneconomic damages.

20 (f) EARLY OFFER EVIDENCE INADMISSIBLE.—In
21 any health care lawsuit, a qualified early offer shall be
22 inadmissible as evidence of admission of liability or as evi-
23 dence of an admission against interest.

1 **SEC. 5. COLLATERAL SOURCE BENEFITS.**

2 (a) EVIDENCE OF COLLATERAL SOURCE BENEFITS
3 ADMISSIBLE.—In any health care lawsuit involving injury
4 or wrongful death, a party may introduce evidence of col-
5 lateral source benefits.

6 (b) COLLATERAL SOURCE BENEFITS INTRO-
7 DUCED.—If a party elects to introduce evidence of collat-
8 eral source benefits, an opposing party may introduce evi-
9 dence of an amount paid or contributed or reasonably like-
10 ly to be paid or contributed in the future by or on behalf
11 of the opposing party in order to secure such collateral
12 source benefits.

13 (c) PROVIDERS OF COLLATERAL SOURCE BENEFITS
14 BARRED FROM RECOVERY.—In any health care lawsuit
15 involving injury or wrongful death, a provider of collateral
16 source benefits may not—

- 17 (1) recover an amount against the claimant;
18 (2) receive a lien or credit against the claim-
19 ant's recovery; or
20 (3) be equitably or legally subrogated to the
21 rights of the claimant.

22 (d) RECOVERY DEFINED.—In this section, the term
23 “recovery” means, with respect to a health care liability
24 claim, the net sum recovered by a claimant after deducting
25 any disbursements or costs incurred in connection with
26 prosecution or settlement of the claim, including all costs

1 paid or advanced by any person, but does not include costs
2 of health care incurred by the claimant or the charges for
3 legal services of the claimant's attorney.

4 (e) **APPLICABILITY.**—Subsection (c) shall not apply
5 in the case of a collateral source benefit for which the Sec-
6 retary of Health and Human Services or a State or local
7 agency administering a State Medicaid plan may recover
8 (or expect to recover) any payment made for such benefit
9 pursuant to section 1862(b) (42 U.S.C. 1395y(b)) or sec-
10 tion 1902(a)(25) (42 U.S.C. 1396a(a)(25)) of the Social
11 Security Act.

12 **SEC. 6. BENEVOLENT GESTURE OR ADMISSION OF FAULT**
13 **BY A HEALTH CARE PROVIDER.**

14 (a) **EVIDENCE INADMISSIBLE.**—In any health care
15 lawsuit, a benevolent gesture or admission of fault that
16 is made by a health care provider, or an employee of a
17 health care provider, to the claimant, a relative of the
18 claimant, or a representative of the claimant shall be inad-
19 missible as evidence of admission of liability or as evidence
20 of an admission against interest.

21 (b) **APPLICATION OF RULE.**—The rule established
22 under subsection (a) applies to a benevolent gesture or ad-
23 mission of fault by a health care provider to a claimant
24 or the claimant's relative or representative (including any
25 such gesture or admission made before the commencement

1 of the health care lawsuit) regarding the claimant’s dis-
2 comfort, pain, suffering, injury, or death, regardless of the
3 cause, including the unanticipated outcome of any treat-
4 ment, consultation, care, or service provided by such pro-
5 vider (or by the employees, agents, or contractors of such
6 provider) or the omission of such treatment, consultation,
7 care, or service.

8 (c) APPLICABILITY.—This section shall apply in all
9 judicial proceedings commenced after the date of the en-
10 actment of this Act and, insofar as is just and practicable,
11 in all judicial proceedings pending on such date of enact-
12 ment.

13 (d) DEFINITIONS.—In this section:

14 (1) BENEVOLENT GESTURE.—The term “benev-
15 olent gesture” means any statement, affirmation,
16 gesture, or conduct, including subsequent remedial
17 or preventative measures, expressing apology, sym-
18 pathy, commiseration, condolence, compassion, or a
19 general sense of benevolence that relates solely to
20 discomfort, pain, suffering, injury, or death as the
21 result of the unanticipated outcome of medical care.

22 (2) RELATIVE.—The term “relative” means,
23 with respect to a claimant, the claimant’s spouse,
24 parent, stepparent, grandparent, child, stepchild,
25 grandchild, brother, sister, half-brother, half-sister,

1 spouse's parents, or any other person who has a
2 family-type relationship with the claimant.

3 (3) REPRESENTATIVE.—The term “representa-
4 tive” means a legal guardian, attorney, or an agent
5 designated to make medical decisions under a power
6 of attorney over health care matters, a health care
7 representative who is authorized to make health care
8 decisions for a principal under applicable law, a sur-
9rogate designated in an advance directive for health
10 care, or any person recognized in law or custom as
11 an agent.

12 (4) UNANTICIPATED OUTCOME.—The term
13 “unanticipated outcome” means an outcome of a
14 medical treatment or procedure, care, or service that
15 differs from the expected or anticipated result.

16 **SEC. 7. FAIR SHARE RULE.**

17 (a) LIABILITY.—In any health care lawsuit, each
18 party shall be liable for that party's several share of any
19 damages only and not for the share of any other person.

20 (b) ALLOCATION OF DAMAGES.—Each party shall be
21 liable only for the amount of damages allocated to such
22 party in direct proportion to such party's percentage of
23 responsibility.

24 (c) DETERMINATION OF RESPONSIBILITY.—For pur-
25 poses of this section, the trier of fact shall determine the

1 proportion of responsibility of each party for the claim-
2 ant's harm.

3 **SEC. 8. PUNITIVE DAMAGES.**

4 (a) PUNITIVE DAMAGES AWARD.—Punitive damages
5 may be awarded against a defendant in a health care law-
6 suit for a health care liability claim only if—

7 (1) otherwise permitted by applicable State or
8 Federal law;

9 (2) it is proven by clear and convincing evidence
10 that such defendant acted with malicious intent to
11 injure the claimant, or that such defendant delib-
12 erately failed to avoid unnecessary injury that such
13 defendant knew the claimant was substantially cer-
14 tain to suffer; and

15 (3) compensatory damages are awarded for
16 such claim.

17 (b) DEMAND FOR PUNITIVE DAMAGES.—

18 (1) COMPLAINT.—A claimant may not file a de-
19 mand for punitive damages in the original complaint
20 for a health care lawsuit.

21 (2) AMENDED COMPLAINT.—A claimant may
22 file an amended complaint for punitive damages if
23 the court finds, after reviewing supporting and op-
24 posing affidavits or after a hearing, that the claim-
25 ant has established by a substantial probability that

1 the claimant will prevail on the claim for punitive
2 damages.

3 (3) HEARING.—

4 (A) REQUEST FOR PUNITIVE DAMAGES
5 HEARING.—At the request of any party in a
6 health care lawsuit, the trier of fact shall con-
7 sider in a separate hearing whether punitive
8 damages are to be awarded and the amount of
9 such award, using the factors listed under sub-
10 section (c).

11 (B) EVIDENCE INADMISSIBLE.—If a sepa-
12 rate punitive damages hearing is requested, any
13 evidence introduced at such hearing that is rel-
14 evant only to the claim for punitive damages, as
15 determined by applicable State law, shall be in-
16 admissible in any proceeding to determine
17 whether compensatory damages are to be
18 awarded.

19 (c) AMOUNT OF PUNITIVE DAMAGES.—

20 (1) FACTORS CONSIDERED.—In determining
21 the amount of punitive damages against a party in
22 a health care lawsuit, the trier of fact shall consider,
23 where applicable, only the following:

24 (A) The severity of the harm caused by the
25 conduct of such party.

1 (B) The duration of the conduct or any
2 concealment of conduct by such party.

3 (C) The profitability of the conduct to such
4 party.

5 (D) The number of products sold or med-
6 ical procedures rendered for compensation by
7 such party that caused the harm complained of
8 by the claimant.

9 (E) Any criminal penalties imposed on
10 such party, as a result of the conduct com-
11 plained of by the claimant.

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

15 (2) MAXIMUM AWARD.—The maximum amount
16 of punitive damages that may be awarded in a
17 health care lawsuit is \$350,000 or two times the
18 amount of economic damages awarded, whichever is
19 greater.

20 (3) NO JURY NOTIFICATION.—The jury shall
21 not be informed about the maximum award for puni-
22 tive damages under paragraph (2).

23 (d) MALICIOUS INTENT TO INJURE.—In this section,
24 the term “malicious intent to injure” means intentionally

1 causing or attempting to cause physical injury other than
2 providing health care goods or services.

3 **SEC. 9. 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.

13 (b) COURT GUIDANCE.—In any health care lawsuit,
14 the court may be guided by the Uniform Periodic Payment
15 of Judgments Act promulgated by the National Con-
16 ference of Commissioners on Uniform State Laws.

17 (c) APPLICABILITY.—This section applies to all ac-
18 tions that have not been first set for trial or retrial before
19 the effective date of this Act.

20 **SEC. 10. LIABILITY OF HEALTH CARE PROVIDERS FOR FDA-**
21 **APPROVED PRODUCTS.**

22 (a) IN GENERAL.—Except as provided in subsection
23 (b), a health care provider who prescribes, or who dis-
24 penses pursuant to a prescription, a medical product ap-
25 proved, licensed, or cleared by the Food and Drug Admin-

1 istration may not be named as a party to a product liabil-
2 ity lawsuit involving such product and shall not be liable
3 to a claimant in a class action involving such product that
4 is brought against the manufacturer, distributor, or seller
5 of such product.

6 (b) CONSOLIDATION OF CASES.—Nothing in sub-
7 section (a) prevents a court from consolidating cases in-
8 volving health care providers and cases involving product
9 liability claims against the manufacturer, distributor, or
10 seller of a medical product.

11 **SEC. 11. EXPERT WITNESS STANDARDS.**

12 (a) REQUIREMENTS.—No individual shall be qualified
13 to testify as an expert witness concerning issues of neg-
14 ligence in any health care lawsuit against a defendant un-
15 less such individual—

16 (1) except as required under subsection (b), is
17 a health care professional who—

18 (A) is appropriately credentialed or li-
19 censed in 1 or more States to deliver health
20 care services; and

21 (B) typically treats the diagnosis or condi-
22 tion or provides the type of treatment under re-
23 view; and

24 (2) can demonstrate by competent evidence
25 that, as a result of training, education, knowledge,

1 and experience in the evaluation, diagnosis, and
2 treatment of the disease or injury which is the sub-
3 ject matter of the lawsuit against the defendant, the
4 individual was substantially familiar with applicable
5 standards of care and practice as they relate to the
6 act or omission which is the subject of the lawsuit
7 on the date of the incident.

8 (b) PHYSICIAN REVIEW.—In a health care lawsuit,
9 if the claim of the plaintiff involved treatment that is rec-
10 ommended or provided by a physician (allopathic or osteo-
11 pathic), an individual shall not be qualified to be an expert
12 witness under this subsection with respect to issues of neg-
13 ligence concerning such treatment unless such individual
14 is a physician.

15 (c) SPECIALTIES AND SUBSPECIALTIES.—With re-
16 spect to a lawsuit described in subsection (a), a court shall
17 not permit an expert in one medical specialty or sub-
18 specialty to testify against a defendant in another medical
19 specialty or subspecialty unless, in addition to a showing
20 of substantial familiarity in accordance with subsection
21 (a)(2), there is a showing that the standards of care and
22 practice in the two specialty or subspecialty fields are simi-
23 lar.

1 (d) LIMITATION.—The limitations in this subsection
2 shall not apply to expert witnesses testifying as to the de-
3 gree or permanency of medical or physical impairment.

4 **SEC. 12. PROTECTION OF STATES' RIGHTS AND EFFECT ON**
5 **OTHER LAWS.**

6 (a) PREEMPTION OF STATE LAW.—The provisions
7 governing health care lawsuits set forth in this Act pre-
8 empt, subject to subsections (c) and (d), State law to the
9 extent that State law prevents the application of any pro-
10 visions of law established by this Act.

11 (b) PREEMPTION OF FEDERAL LAW.—The provisions
12 governing health care lawsuits set forth in this Act super-
13 sede chapters 161 and 171 of title 28, United States Code,
14 to the extent that such chapters—

15 (1) provide for a greater amount of damages, a
16 longer period in which a health care lawsuit may be
17 commenced, or a reduced applicability or scope of
18 periodic payment of future damages, than provided
19 in this Act; or

20 (2) prohibit the introduction of evidence regard-
21 ing collateral source benefits, or mandate or permit
22 subrogation or a lien on collateral source benefits.

23 (c) PROTECTION OF STATES' RIGHTS AND OTHER
24 LAWS.—

1 (1) IN GENERAL.—This Act shall not preempt
2 or supersede any State or Federal law that imposes
3 greater procedural or substantive protections (in-
4 cluding any statute of limitations that expires sooner
5 than statutes of limitations imposed in this Act) for
6 health care providers and health care organizations
7 from liability, loss, or damages than those provided
8 by this Act, except as provided for under subsection
9 (d)(1).

10 (2) APPLICABLE LAW.—Any issue that is not
11 governed by any provision of law established by this
12 Act shall be governed by otherwise applicable State
13 or Federal law.

14 (d) STATE FLEXIBILITY AND FEDERAL LAW.—The
15 provisions of this Act shall not be construed to preempt—

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

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

1 (3) any State law that provides for an alter-
2 native dispute resolution system.

3 (e) VACCINE INJURY.—

4 (1) IN GENERAL.—To the extent that title XXI
5 of the Public Health Service Act establishes a Fed-
6 eral rule of law applicable to a civil action brought
7 for a vaccine-related injury or death—

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

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

13 (2) APPLICABLE PROVISIONS.—If there is an
14 aspect of a civil action brought for a vaccine-related
15 injury or death to which a Federal rule of law under
16 title XXI of the Public Health Service Act does not
17 apply, then this Act shall apply to such aspect of
18 such action.

19 **SEC. 13. DEFINITIONS.**

20 In this Act:

21 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-
22 TEM.—The term “alternative dispute resolution sys-
23 tem” means a system that provides for the resolu-
24 tion of health care lawsuits in a manner other than

1 through a civil action brought in a State or Federal
2 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, and any
8 person on whose behalf such a claim is asserted,
9 whether such person is deceased, incompetent, or a
10 minor.

11 (3) COLLATERAL SOURCE BENEFITS.—The
12 term “collateral source benefits” means any amount
13 paid or reasonably likely to be paid in the future to
14 or on behalf of a claimant, or any service, product,
15 or other benefit provided or reasonably likely to be
16 provided in the future to or on behalf of a claimant,
17 as a result of the injury or wrongful death, pursuant
18 to—

19 (A) any State or Federal health, sickness,
20 income-disability, accident, or workers’ com-
21 pensation law;

22 (B) any health, sickness, income-disability,
23 or accident insurance that provides health bene-
24 fits or income-disability coverage;

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

6 (D) any other publicly or privately funded
7 program.

8 (4) COMPENSATORY DAMAGES.—The term
9 “compensatory damages” means economic damages
10 and noneconomic damages.

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

20 (6) HEALTH CARE GOODS OR SERVICES.—The
21 term “health care goods or services” means any
22 goods or services provided by a health care organiza-
23 tion, a health care provider, or an individual working
24 under the supervision of a health care provider, that
25 relate to the diagnosis, prevention, or treatment of

1 any human disease or impairment, or the assessment
2 or care of the health of human beings.

3 (7) HEALTH CARE LAWSUIT.—The term
4 “health care lawsuit”—

5 (A) means any health care liability claim
6 affecting interstate commerce that is brought in
7 a State or Federal court or pursuant to an al-
8 ternative dispute resolution system; and

9 (B) does not include a claim or action that
10 is based on criminal liability, that seeks civil
11 fines or penalties paid to Federal, State, or
12 local government, or that is grounded in anti-
13 trust.

14 (8) HEALTH CARE LIABILITY CLAIM.—The
15 term “health care liability claim” means a demand
16 by any person, whether or not pursuant to an alter-
17 native dispute resolution system, against a health
18 care provider, health care organization, or the manu-
19 facturer, distributor, supplier, marketer, promoter,
20 or seller of a medical product, including third-party
21 claims, cross-claims, counterclaims, or contribution
22 claims, that is based upon the provision of, use of,
23 or payment for (or the failure to provide, use, or pay
24 for) health care goods or services or any medical
25 product, for injury or wrongful death, regardless of

1 the number of plaintiffs, defendants, or other par-
2 ties, or the number of causes of action.

3 (9) HEALTH CARE ORGANIZATION.—The term
4 “health care organization”—

5 (A) means any person or entity that is ob-
6 ligated to provide or pay for health care goods
7 or services under any health insurance plan;
8 and

9 (B) includes any person or entity acting
10 under a contract or arrangement with a health
11 care organization to provide or administer any
12 healthcare goods or services.

13 (10) HEALTH CARE PROVIDER.—The term
14 “health care provider” means any person or entity
15 required by State or Federal laws or regulations to
16 be licensed, registered, or certified to provide health
17 care services, or exempted from such requirement by
18 other law or regulation.

19 (11) MEDICAL PRODUCT.—

20 (A) IN GENERAL.—The term “medical
21 product” means a drug, device, or biological
22 product intended for humans.

23 (B) ADDITIONAL DEFINITIONS.—For pur-
24 poses of subparagraph (A):

1 (i) DRUG.—The term “drug” has the
2 meaning given such term in section
3 201(g)(1) of the Federal Food, Drug, and
4 Cosmetic Act (21 U.S.C. 321(g)(1)).

5 (ii) DEVICE.—The term “device” has
6 the meaning given such term in section
7 201(h) of the Federal Food, Drug, and
8 Cosmetic Act (21 U.S.C. 321(h)).

9 (iii) BIOLOGICAL PRODUCT.—The
10 term “biological product” has the meaning
11 given such term in section 351(i) of the
12 Public Health Service Act (42 U.S.C.
13 262(i)).

14 (12) MINOR.—The term “minor” means an in-
15 dividual who is less than 18 years of age.

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

1 (14) PUNITIVE DAMAGES.—The term “punitive
2 damages”—

3 (A) means damages awarded, for the pur-
4 pose of punishment or deterrence, and not sole-
5 ly for compensatory purposes, against a health
6 care provider, health care organization, or a
7 manufacturer, distributor, or supplier of a med-
8 ical product; and

9 (B) does not include economic damages or
10 noneconomic damages.

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

19 **SEC. 14. APPLICABILITY.**

20 Except as otherwise provided, this Act shall apply to
21 any health care lawsuit brought in a Federal or State
22 court, or subject to an alternative dispute resolution sys-
23 tem, that is initiated on or after the date of the enactment
24 of this Act.

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