

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 5) TO IMPROVE PATIENT ACCESS TO HEALTH CARE SERVICES AND PROVIDE IMPROVED MEDICAL CARE BY REDUCING THE EXCESSIVE BURDEN THE LIABILITY SYSTEM PLACES ON THE HEALTH CARE DELIVERY SYSTEM

MARCH 20, 2012.—Referred to the House Calendar and ordered to be printed

Mr. NUGENT, from the Committee on Rules,  
submitted the following

R E P O R T

[To accompany H. Res. 591]

The Committee on Rules, having had under consideration House Resolution 591, by a record vote of 7–4, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 5, the Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2011, under a structured rule. The resolution provides six hours of general debate equally divided among and controlled by the respective chairs and ranking minority members of the Committees on Energy and Commerce, the Judiciary, and Ways and Means. The resolution waives all points of order against consideration of the bill. The resolution provides that an amendment in the nature of a substitute consisting of the text of Rules Committee Print 112–18 shall be considered as adopted and the bill, as amended, shall be considered as original text for the purpose of amendment and shall be considered as read. The resolution waives all points of order against provisions in the bill, as amended. The resolution makes in order only those further amendments printed in this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments printed in this report. Finally, the resolution provides one motion to recommit with or without instructions.

## EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of the bill includes a waiver of Section 303(a) of the Congressional Budget Act, prohibiting consideration of legislation, as reported, providing new budget authority, change in revenues, change in public debt, new entitlement authority, or new credit authority for a fiscal year until the budget resolution for that year has been agreed to, and clause 3(c)(1) of rule XIII, requiring the inclusion of oversight findings in a committee report.

Although the resolution waives all points of order against provisions in the bill, as amended, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendments printed in this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

## COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

*Rules Committee record vote No. 198*

Motion by Ms. Slaughter to report an open rule. Defeated: 4–6.

Majority Members	Vote	Minority Members	Vote
Ms. Foxx .....	Nay	Ms. Slaughter .....	Yea
Mr. Bishop of Utah .....	Nay	Mr. McGovern .....	Yea
Mr. Nugent .....	Nay	Mr. Hastings of Florida .....	Yea
Mr. Scott of South Carolina .....	Nay	Mr. Polis .....	Yea
Mr. Webster .....	Nay		
Mr. Dreier, Chairman .....	Nay		

*Rules Committee record vote No. 199*

Motion by Mr. Hastings of Florida to make in order and provide the appropriate waivers for amendment #6 offered by Rep. Johnson (GA) and Rep. Braley (IA), which would specify that nothing in the bill shall preempt any applicable State constitutional provision; and amendment #7 offered by Rep. Poe (TX), which would prevent the provisions of H.R. 5 from preempting any State law that is in effect on the date of enactment of the bill. Defeated: 4–7.

Majority Members	Vote	Minority Members	Vote
Ms. Foxx .....	Nay	Ms. Slaughter .....	Yea
Mr. Bishop of Utah .....	Nay	Mr. McGovern .....	Yea
Mr. Woodall .....	Nay	Mr. Hastings of Florida .....	Yea
Mr. Nugent .....	Nay	Mr. Polis .....	Yea
Mr. Scott of South Carolina .....	Nay		
Mr. Webster .....	Nay		
Mr. Dreier, Chairman .....	Nay		

*Rules Committee record vote No. 200*

Motion by Ms. Slaughter to make in order and provide the appropriate waivers for amendment #19 offered by Rep. DeGette (CO), which would deny the protections from a health care liability claim against a health care organization in the underlying bill to the ex-

tent such claim is based on an act or omission constituting a violation of the Patient Protection and Affordable Care Act. Defeated: 4–7.

Majority Members	Vote	Minority Members	Vote
Ms. Foxx .....	Nay	Ms. Slaughter .....	Yea
Mr. Bishop of Utah .....	Nay	Mr. McGovern .....	Yea
Mr. Woodall .....	Nay	Mr. Hastings of Florida .....	Yea
Mr. Nugent .....	Nay	Mr. Polis .....	Yea
Mr. Scott of South Carolina .....	Nay		
Mr. Webster .....	Nay		
Mr. Dreier, Chairman .....	Nay		

*Rules Committee record vote No. 201*

Motion by Ms. Foxx to report the rule. Adopted: 7–4.

Majority Members	Vote	Minority Members	Vote
Ms. Foxx .....	Yea	Ms. Slaughter .....	Nay
Mr. Bishop of Utah .....	Yea	Mr. McGovern .....	Nay
Mr. Woodall .....	Yea	Mr. Hastings of Florida .....	Nay
Mr. Nugent .....	Yea	Mr. Polis .....	Nay
Mr. Scott of South Carolina .....	Yea		
Mr. Webster .....	Yea		
Mr. Dreier, Chairman .....	Yea		

SUMMARY OF THE AMENDMENTS MADE IN ORDER

1. Woodall (GA): Would strike the findings in Title I. (10 minutes)

2. Bonamici (OR): Would delay date of enactment until Secretary of Health and Human Services submits to Congress a report on the potential effect of this title on health care premiums. (10 minutes)

3. Hastings, Alcee (FL): Would strike Title II (Repeal of the Independent Payment Advisory Board). (10 minutes)

4. Dent (PA), Sessions (TX): Would address the crisis in access to emergency care by extending liability coverage to on-call and emergency room physicians under the Public Health Service Act. (10 minutes)

5. Gosar (AZ): Would restore the application of antitrust laws to the business of health insurance by amending the McCarran-Ferguson Act. (10 minutes)

6. Stearns (FL), Matheson (UT): Would grant limited civil liability protection to health professionals that volunteer at federally declared disaster sites. (10 minutes)

TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WOODALL OF GEORGIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 1, strike line 9 through page 3, line 8 and insert the following:

**SEC. 102. PURPOSE.**

It is the purpose of this title to implement reasonable, comprehensive, and effective health care liability reforms designed to—

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BONAMICI OF OREGON OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 23, line 22, strike “date of enactment” and insert “effective date”.

Page 23, line 24, strike “date of enactment” and insert “effective date”.

Page 24, line 2, insert after “the injury occurred” the following: “This title shall take effect only on the date the Secretary of Health and Human Services submits to Congress a report on the potential effect of this title on health care premium reductions.”.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HASTINGS OF FLORIDA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 24, strike line 3 and all that follows through the end of the bill.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DENT OF PENNSYLVANIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, insert the following:

**TITLE III—HEALTH CARE SAFETY NET  
ENHANCEMENT**

**SEC. 301. SHORT TITLE.**

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

**SEC. 302. PROTECTION FOR EMERGENCY AND RELATED SERVICES FURNISHED PURSUANT TO EMTALA.**

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

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

(2) by adding at the end the following:

“(6)(A) For purposes of this section—

“(i) an entity described in subparagraph (B) shall be considered to be an entity described in paragraph (4); and

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

“(I) notwithstanding paragraph (1)(B), the deeming of any entity described in subparagraph (B), or of an officer, governing board member, employee, contractor, or on-call provider of such an entity, to be an employee of the Public Health Service for purposes of this section shall apply only with respect to items and services that are furnished to an individual pursuant to section 1867 of the Social Security Act and to post stabilization services (as defined in subparagraph (D)) furnished to such an individual;

“(II) nothing in paragraph (1)(D) shall be construed as preventing a physician or physician group described in subparagraph (B)(ii) from making the application referred to in such paragraph or as conditioning the deeming of a physician or physician group that makes such an application upon receipt by the Secretary of an application from the hospital or emergency department that employs or contracts with the physician or group, or enlists the physician or physician group as an on-call provider;

“(III) notwithstanding paragraph (3), this paragraph shall apply only with respect to causes of action arising from acts or omissions that occur on or after January 1, 2012;

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

“(V) the Attorney General, in consultation with the Secretary, shall make separate estimates under subsection (k)(1) with respect to entities described in subparagraph (B) and entities described in paragraph (4) (other than those described in subparagraph (B)), and the Secretary shall establish separate funds under subsection (k)(2) with respect to such groups of entities, and any appropriations under this subsection for entities described in subparagraph (B) shall be separate from the amounts authorized by subsection (k)(2);

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

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

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

“(i) a hospital or an emergency department to which section 1867 of the Social Security Act applies; and

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

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

“(i) has full, temporary, or locum tenens staff privileges at a hospital or emergency department to which section 1867 of the Social Security Act applies; and

“(ii) is not employed by or under contract with such hospital or emergency department, but agrees to be ready and available to provide services pursuant to section 1867 of the Social Security Act or post-stabilization services to individuals being treated in the hospital or emergency department with or without compensation from the hospital or emergency department.

“(D) For purposes of this paragraph, the term ‘post stabilization services’ means, with respect to an individual who has been treated by an entity described in subparagraph (B) for

purposes of complying with section 1867 of the Social Security Act, services that are—

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

“(ii) provided after the individual is stabilized in order to maintain the stabilized condition or to improve or resolve the condition of the individual.

“(E)(i) Nothing in this paragraph (or in any other provision of this section as such provision applies to entities described in subparagraph (B) by operation of subparagraph (A)) shall be construed as authorizing or requiring the Secretary to make payments to such entities, the budget authority for which is not provided in advance by appropriation Acts.

“(ii) The Secretary shall limit the total amount of payments under this paragraph for a fiscal year to the total amount appropriated in advance by appropriation Acts for such purpose for such fiscal year. If the total amount of payments that would otherwise be made under this paragraph for a fiscal year exceeds such total amount appropriated, the Secretary shall take such steps as may be necessary to ensure that the total amount of payments under this paragraph for such fiscal year does not exceed such total amount appropriated.”.

**SEC. 303. CONSTITUTIONAL AUTHORITY.**

The constitutional authority upon which this title rests is the power of the Congress to provide for the general welfare, to regulate commerce, and to make all laws which shall be necessary and proper for carrying into execution Federal powers, as enumerated in section 8 of article I of the Constitution of the United States.

**5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GOSAR OF ARIZONA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES**

At the end of the bill, add the following (and make such technical and conforming changes as may be appropriate):

**TITLE III—RESTORING THE APPLICATION OF ANTITRUST LAWS TO HEALTH SECTOR INSURERS**

**SEC. 301. SHORT TITLE.**

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

**SEC. 302. APPLICATION OF THE ANTITRUST LAWS TO THE BUSINESS OF HEALTH INSURANCE.**

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

“(c) Nothing contained in this Act shall modify, impair, or supersede the operation of any of the antitrust laws with respect to the business of health insurance. For purposes of the preceding sentence, the term ‘antitrust laws’ has the meaning given it in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the

extent that such section 5 applies to unfair methods of competition. For the purposes of this subsection, the term ‘business of health insurance’ shall—

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

“(2) not include—

“(A) life insurance and annuities;

“(B) property or casualty insurance, including but not limited to, automobile, medical malpractice or workers’ compensation insurance; or

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

(b) RELATED PROVISION.—For purposes of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section applies to unfair methods of competition, section 3(c) of the McCarran-Ferguson Act shall apply with respect to the business of health insurance without regard to whether such business is carried on for profit, notwithstanding the definition of “Corporation” contained in section 4 of the Federal Trade Commission Act.

(c) LIMITATION ON CLASS ACTIONS.—

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

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

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

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

## 6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE STEARNS OF FLORIDA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following:

### **TITLE III—PROTECTIONS FOR GOOD SAMARITAN HEALTH PROFESSIONALS**

#### **SEC. 301. SHORT TITLE.**

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

#### **SEC. 302. LIMITATION ON LIABILITY FOR VOLUNTEER HEALTH CARE PROFESSIONALS.**

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

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

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

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

“(2) the act or omission occurs—

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

“(B) in the health care professional’s capacity as such a volunteer; and

“(C) in a good faith belief that the individual being treated is in need of health care services.

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

“(1) the harm was caused by an act or omission constituting willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious flagrant indifference to the rights or safety of the individual harmed by the health care professional; or

“(2) the health care professional rendered the health care services under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or an intoxicating drug.

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

“(d) **PREEMPTION.**—

“(1) **IN GENERAL.**—This section preempts the laws of a State or any political subdivision of a State to the extent that such laws are inconsistent with this section, unless such laws provide greater protection from liability.

“(2) **VOLUNTEER PROTECTION ACT.**—Protections afforded by this section are in addition to those provided by the Volunteer Protection Act of 1997.

“(e) **DEFINITIONS.**—In this section:

“(1) The term ‘disaster’ means—

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

“(B) an emergency or major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act; or

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

“(2) The term ‘harm’ includes physical, nonphysical, economic, and noneconomic losses.

“(3) The term ‘health care professional’ means an individual who is licensed, certified, or authorized in one or more States to practice a health care profession.

“(4) The term ‘State’ includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana



Islands, and any other territory or possession of the United States.

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

“(i) compensation; or

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

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

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

“(ii) excludes—

“(I) reasonable reimbursement or allowance for expenses actually incurred;

“(II) receipt of paid leave; and

“(III) receipt of items to be used exclusively for rendering the health services in the health care professional’s capacity as a volunteer described in subsection (a)(1).”.

(b) EFFECTIVE DATE.—

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

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