115TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
115–179

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 1215) 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

JUNE 13, 2017.—Referred to the House Calendar and ordered to be printed

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

R E P O R T

[To accompany H. Res. 382]

The Committee on Rules, having had under consideration House Resolution 382, by a record vote of 7 to 3, 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. 1215, the Protecting Access to Care Act of 2017, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on the Judiciary. The resolution waives all points of order against consideration of the bill. The resolution makes in order as original text for purpose of amendment an amendment in the nature of a substitute consisting of the text of Rules Committee Print 115–10 and provides that it shall be considered as read. The resolution waives all points of order against that amendment in the nature of a substitute. 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. 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 of the Congressional Budget Act, which prohibits consideration of legislation providing a change in revenues for a fiscal year until the budget resolution for that year has been agreed to.

Although the resolution waives all points of order against the amendment in the nature of a substitute made in order as original text, 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. 62

Motion by Mr. McGovern to report an open rule. Defeated: 3–7

Majority Members	Vote	Minority Members	Vote
Mr. Cole	Nay	Ms. Slaughter	Yea
Mr. Woodall	Nay	Mr. McGovern	Yea
Mr. Burgess	Nay	Mr. Hastings of Florida	Yea
Mr. Collins	Nay	Mr. Polis	
Mr. Byrne			
Mr. Newhouse	Nay		
Mr. Buck	Nay		
Ms. Cheney			
Mr. Sessions, Chairman	Nay		

Rules Committee record vote No. 63

Motion by Mr. Cole to report the rule. Adopted: 7–3

Majority Members	Vote	Minority Members	Vote
Mr. Cole	Yea	Ms. Slaughter	Nay
Mr. Woodall	Yea	Mr. McGovern	Nay
Mr. Burgess	Yea	Mr. Hastings of Florida	Nay
Mr. Collins	Yea	Mr. Polis	
Mr. Byrne			
Mr. Newhouse	Yea		
Mr. Buck	Yea		
Ms. Cheney			
Mr. Sessions, Chairman	Yea		

SUMMARY OF THE AMENDMENTS MADE IN ORDER

1. Sessions (TX), Burgess (TX): Begins the tolling of the statute of limitations on the date of the alleged breach or tort, rather than the date of the injury, which is not always a date certain. The statute of limits will be three years after the alleged breach or one year after the claimant discovers the breach, whichever occurs first. (10 minutes)

2. Burgess (TX), Sessions (TX): Clarifies that health care services as defined in H.R. 1215 include safety, professional, and administrative services directly related to health care. (10 minutes)

3. Roe (TN), Hudson (NC), Marshall (KS), Bucshon (IN): Limits who qualifies as an expert witness, in medical malpractice negligence cases, based on professional qualifications as well as geographic relation to where the case in chief is being litigated. (10 minutes)

4. Hudson (NC), Abraham (LA), Harris (MD), Roe (TN), Marshall (KS), Bucshon (IN), DesJarlais (TN): Allows a physician to apologize to a patient for an unintended outcome without having the apology count against them in the court of law. Defers to the state law where "sorry provisions" are already in statute. Requires a plaintiff to provide a notice of intent to the physician 90 days before the lawsuit is filed. Defers to state laws that directly address Notices of Intent. Requires a plaintiff to have a physician in the same specialty as the defendant physician to sign an affidavit certifying the merits of the case before the lawsuit could be brought to court. Defers to state laws that directly address Affidavits of Merit. Requires that for any "expert witness" called to testify during trial, the witness would need to meet the same licensing requirements as the defendant physician. Defers to state laws that directly address Expert Witness Qualifications. (10 minutes)

5. Barr (KY): Gives affirmative defense to defendants in health care liability cases if they can show they complied with clinical practice guidelines. (10 minutes)

TEXT OF AMENDMENTS MADE IN ORDER

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

Page 1, strike line 7 and all that follows through page 2, line 18 and insert the following:

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the time for the commencement of a health care lawsuit shall be, whichever occurs first of the following:

(A) 3 years after the date of the occurrence of the breach or tort;

(B) 3 years after the date the medical or health care treatment that is the subject of the claim is completed; or

(C) 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury.

(2) TOLLING.—In no event shall the time for commencement of a health care lawsuit exceed 3 years after the date of the occurrence of the breach or tort or 3 years after the date the medical or health care treatment that is the subject of the claim is completed (whichever occurs first) unless tolled for any of the following—

(A) upon proof of fraud;

(B) intentional concealment; or

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

(3) ACTIONS BY A MINOR.—Actions by a minor shall be commenced within 3 years after the date of the occurrence of the breach or tort or 3 years after the date of the medical or health care treatment that is the subject of the claim is completed (whichever occurs first) except that actions by a minor under the full age of 6 years shall be commenced within 3 years after the date of the occurrence of the breach or tort, 3 years after the date of the medical or health care treatment that is the subject of the claim is completed, or 1 year after the injury is discovered, or through the use of reasonable diligence should have been discovered, or prior to the minor's 8th birthday, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

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2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BURGESS OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 12, line 13, insert after "goods or services" the following: "(including safety, professional, or administrative services directly related to health care)".

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

Add, at the end of the bill, the following (and amend the table of contents accordingly):

SEC. 11. LIMITATION ON EXPERT WITNESS TESTIMONY.

(a) IN GENERAL.—No person in a health care profession requiring licensure under the laws of a State shall be competent to testify in any court of law to establish the following facts—

(1) the recognized standard of acceptable professional practice and the specialty thereof, if any, that the defendant practices, which shall be the type of acceptable professional practice recognized in the defendant's community or in a community similar to the defendant's community that was in place at the time the alleged injury or wrongful action occurred,

(2) that the defendant acted with less than or failed to act with ordinary and reasonable care in accordance with the recognized standard, and

(3) that as a proximate result of the defendant's negligent act or omission, the claimant suffered injuries which would not otherwise have occurred,

unless the person was licensed to practice, in the State or a contiguous bordering State, a profession or specialty which would make the person's expert testimony relevant to the issues in the case and had practiced this profession or specialty in one of these States during the year preceding the date that the alleged injury or wrongful act occurred.

(b) APPLICABILITY.—The requirements set forth in subsection (a) shall also apply to expert witnesses testifying for the defendant as rebuttal witnesses.

(c) WAIVER AUTHORITY.—The court may waive the requirements in this subsection if it determines that the appropriate witnesses otherwise would not be available.

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4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HUDSON OF NORTH CAROLINA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Add, at the end of the bill, the following:

SEC. 11. COMMUNICATIONS FOLLOWING UNANTICIPATED OUTCOME.

(a) PROVIDER COMMUNICATIONS.—In any health care liability action, any and all statements, affirmations, gestures, or conduct expressing apology, fault, sympathy, commiseration, condolence, compassion, or a general sense of benevolence which are made by a health care provider or an employee of a health care provider to the patient, a relative of the patient, or a representative of the patient and which relate to the discomfort, pain, suffering, injury, or death of the patient as the result of the unanticipated outcome of medical care shall be inadmissible for any purpose as evidence of an admission of liability or as evidence of an admission against interest.

(b) STATE FLEXIBILITY.—No provision of this section shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that makes additional communications inadmissible as evidence of an admission of liability or as evidence of an admission against interest.

SEC. 12. EXPERT WITNESS QUALIFICATIONS.

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

(1) If the party against whom or on whose behalf the testimony is to be offered is or claims to be a specialist, the expert witness shall specialize at the time of the occurrence that is the basis for the lawsuit in the same specialty or claimed specialty as the party against whom or on whose behalf the testimony is to be offered. If the party against whom or on whose behalf the testimony is to be offered is or claims to be a specialist who is board certified, the expert witness shall be a specialist who is board certified in that specialty or claimed specialty.

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

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

(B) The instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession as the defendant and, if the defendant is or claims to be a specialist, in an accredited health professional school or ac-

credited residency or clinical research program in the same specialty or claimed specialty.

(3) If the defendant is a general practitioner, the expert witness shall have devoted a majority of the witness's professional time in the 1-year period preceding the occurrence of the action giving rise to the lawsuit to one or more of the following:

(A) Active clinical practice as a general practitioner.

(B) Instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession as the defendant.

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

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

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

(e) STATE FLEXIBILITY.—No provision of this section shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that places additional qualification requirements upon any individual testifying as an expert witness.

SEC. 13. AFFIDAVIT OF MERIT.

(a) REQUIRED FILING.—Subject to subsection (b), the plaintiff in a health care lawsuit alleging negligence or, if the plaintiff is represented by an attorney, the plaintiff's attorney shall file simultaneously with the health care lawsuit an affidavit of merit signed by a health professional who meets the requirements for an expert witness under section 14 of this Act. The affidavit of merit shall certify that the health professional has reviewed the notice and all medical records supplied to him or her by the plaintiff's attorney concerning the allegations contained in the notice and shall contain a statement of each of the following:

(1) The applicable standard of practice or care.

(2) The health professional's opinion that the applicable standard of practice or care was breached by the health professional or health facility receiving the notice.

(3) The actions that should have been taken or omitted by the health professional or health facility in order to have complied with the applicable standard of practice or care.

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

(5) A listing of the medical records reviewed.

(b) FILING EXTENSION.—Upon motion of a party for good cause shown, the court in which the complaint is filed may grant the plaintiff or, if the plaintiff is represented by an attorney, the plaintiff's attorney an additional 28 days in which to file the affidavit required under subsection (a).

(c) STATE FLEXIBILITY.—No provision of this section shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that establishes additional requirements for the filing of an affidavit of merit or similar pre-litigation documentation.

SEC. 14. NOTICE OF INTENT TO COMMENCE LAWSUIT.

(a) ADVANCE NOTICE.—A person shall not commence a health care lawsuit against a health care provider unless the person has given the health care provider 90 days written notice before the action is commenced.

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

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

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5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BARR OF KENTUCKY OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Add, at the end of the bill, the following (and amend the table of contents accordingly):

SEC. 11. AFFIRMATIVE DEFENSE.

(a) IN GENERAL.—In the case of a health care lawsuit, it shall be an affirmative defense to any health care liability claim alleged therein that the defendant complied with a clinical practice guideline that was established, published, maintained, and updated on a regular basis by an eligible professional organization and that is applicable to the provision or use of health care services or medical products for which the health care liability claim is brought.

(b) DEFINITIONS.—For purposes of this section:

(1) CLINICAL PRACTICE GUIDELINE.—The term "clinical practice guideline" means systematically developed statements based on the review of clinical evidence for assisting a health care provider to determine the appropriate health care in specific clinical circumstances.

(2) ELIGIBLE PROFESSIONAL ORGANIZATION.—The term "eligible professional organization" means a national or State medical society or medical specialty society.

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