

105TH CONGRESS
2D SESSION

H. R. 4791

To establish rules for the payment of damage awards for future losses in certain health care liability actions.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 10, 1998

Mr. BARTON of Texas introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish rules for the payment of damage awards for future losses in certain health care liability actions.

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. PAYMENTS FOR FUTURE LOSSES IN A HEALTH**
4 **CARE LIABILITY ACTION.**

5 (a) IN GENERAL.—In any health care liability action,
6 brought under Federal law or in a Federal court, in which
7 the damages awarded to a claimant for future economic
8 and noneconomic loss combined exceed \$50,000, the
9 claimant shall not be required to receive such damages in
10 a single, lump-sum payment.

1 (b) PERIODIC PAYMENTS.—A claimant who is award-
2 ed damages described in subsection (a) shall be entitled
3 to request the court to order that such damages be paid
4 in whole or in part on a periodic basis. A court awarding
5 such periodic payments shall attempt to ensure that the
6 amount of such payments, along with any lump-sum pay-
7 ment, constitute a full recovery of the claimant’s future
8 loss and that the payment schedule is in the best interests
9 of the claimant.

10 **SEC. 2. NONAPPLICABILITY.**

11 Section 1 shall not apply with respect to any health
12 care liability action—

13 (1) for damages arising from a vaccine-related
14 injury or death to the extent that title XXI of the
15 Public Health Service Act (42 U.S.C. 300aa-10 et
16 seq.) applies to the action; or

17 (2) under the Employee Retirement Income Se-
18 curity Act of 1974 (29 U.S.C. 1001 et seq.).

19 **SEC. 3. FINALITY OF JUDGMENT.**

20 Except where specifically authorized by statute, the
21 judgment of a court awarding periodic payments described
22 in section 1(b) may not, in the absence of fraud, be re-
23 opened at any time to contest, amend, or modify the
24 schedule or amount of the payments.

1 **SEC. 4. ASSURANCE OF FUTURE PERIODIC PAYMENTS.**

2 A court awarding periodic payments described in sec-
3 tion 1(b) shall, upon request of the claimant to receive
4 the award, require the person ordered to make the pay-
5 ments to make assurances that satisfy the court that the
6 payments will be made by—

7 (1) making a qualified assignment (as described
8 in section 130 of the Internal Revenue Code of
9 1986) of the periodic payment liability;

10 (2) purchasing an annuity contract issued by a
11 company licensed to do business as an insurance
12 company under the laws of any State;

13 (3) purchasing obligations of the United States;

14 or

15 (4) providing other assurances.

16 **SEC. 5. LUMP-SUM SETTLEMENTS.**

17 This Act shall not be construed to preclude a settle-
18 ment that provides for a single, lump-sum payment.

19 **SEC. 6. DEFINITIONS.**

20 In this Act—

21 (1) the term “claimant” means any person who
22 brings a health care liability action and any person
23 on whose behalf such an action is brought;

24 (2) the term “health benefit plan” means—

25 (A) a hospital or medical expense incurred
26 policy or certificate;

1 (B) a hospital or medical service plan con-
2 tract;

3 (C) a health maintenance subscriber con-
4 tract; or

5 (D) a Medicare+Choice plan (offered
6 under part C of title XVIII of the Social Secu-
7 rity Act),

8 that provides benefits with respect to health care
9 services;

10 (3) the term “health care liability action”
11 means a civil action against—

12 (A) a health care provider;

13 (B) an entity which is obligated to provide
14 or pay for health benefits under any health ben-
15 efit plan (including any person or entity acting
16 under a contract or arrangement to provide or
17 administer any health benefit); or

18 (C) the manufacturer, distributor, supplier,
19 marketer, promoter, or seller of a medical prod-
20 uct,

21 in which the claimant alleges a claim (including
22 third party claims, cross claims, counter claims, or
23 contribution claims) based upon the provision of (or
24 the failure to provide or pay for) health care services
25 or the use of a medical product;

1 (4) the term “health care provider” means any
2 person engaged in the delivery of health care serv-
3 ices in a State that is required by the laws or regu-
4 lations of the State to be licensed or certified by the
5 State to engage in the delivery of such services in
6 the State;

7 (5) the term “health care services” means serv-
8 ices eligible for payment under a health benefit plan,
9 including services related to the delivery or adminis-
10 tration of such services; and

11 (6) the term “medical product” means, with re-
12 spect to the allegation of a claimant, a drug (as de-
13 fined in section 201(g)(1) of the Federal Food,
14 Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) or a
15 device (as defined in section 201(h) of the Federal
16 Food, Drug, and Cosmetic Act (21 U.S.C. 321(h))
17 if—

18 (A) such drug or device—

19 (i) was subject to premarket approval
20 under section 505 or 515 of the Federal
21 Food, Drug, and Cosmetic Act (21 U.S.C.
22 355 or 360e) or licensed under section 351
23 of the Public Health Service Act (42
24 U.S.C. 262) with respect to the safety of
25 the formulation or performance of the as-

1 pect of such drug or device which is the
2 subject of the claimant's allegation or the
3 adequacy of the packaging or labeling of
4 such drug or device; and

5 (ii) was approved by the Food and
6 Drug Administration at the time that the
7 claimant's claim of action arose; or

8 (B) the drug or device is generally recog-
9 nized as safe and effective under regulations
10 issued by the Secretary of Health and Human
11 Services under section 201(p) of the Federal
12 Food, Drug, and Cosmetic Act (21 U.S.C.
13 321(p)),

14 except that such term shall not include any product
15 that the claimant can show gained approval for mar-
16 keting from the Food and Drug Administration as
17 a result of withheld information, misrepresentation,
18 or an illegal payment by the manufacturer of the
19 product.

○