

108TH CONGRESS  
2D SESSION

# H. R. 4993

To limit the liability of hospitals and emergency departments for noneconomic and punitive damages when providing uncompensated care, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2004

Mr. SHADEGG (for himself, Mr. FLAKE, Mr. NORWOOD, and Mr. THORNBERRY) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To limit the liability of hospitals and emergency departments for noneconomic and punitive damages when providing uncompensated care, 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.**

4       This Act may be cited as the “Emergency Care Li-  
5       ability Relief Act”.

6       **SEC. 2. CONSTITUTIONAL AUTHORITY.**

7       The constitutional authority upon which this Act  
8       rests is the power of Congress to provide for the general  
9       welfare, to regulate commerce, and to make all laws which

1 shall be necessary and proper, as enumerated in section  
 2 8 of article I of the Constitution of the United States.

3 **SEC. 3. LIMITATIONS ON NONECONOMIC AND PUNITIVE**  
 4 **DAMAGES WHEN PROVIDING UNCOMPEN-**  
 5 **SATED CARE.**

6 (a) IN GENERAL.—Whenever items or services are  
 7 furnished under section 1867 of the Social Security Act  
 8 (42 U.S.C. 1395dd) to an uninsured individual for pur-  
 9 poses of complying with such section, the liability of an  
 10 emergency care provider for an injury arising out of the  
 11 furnishing of such items or services shall be subject to the  
 12 following limitations:

13 (1) NONECONOMIC DAMAGES.—With respect to  
 14 noneconomic damages, the aggregate such liability  
 15 for all such providers may not exceed \$250,000 or  
 16 two times the amount of economic damages, which-  
 17 ever is greater.

18 (2) PUNITIVE DAMAGES.—With respect to puni-  
 19 tive damages, the aggregate such liability for all  
 20 such providers may not exceed \$250,000 or three  
 21 times the amount of economic damages, whichever is  
 22 greater.

23 (b) DEFINITIONS.—In this section:

24 (1) EMERGENCY CARE PROVIDER.—The term  
 25 “emergency care provider” means an emergency care

entity or an officer, governing board member, employee, or contractor of such an entity.

(2) EMERGENCY CARE ENTITY.—The term “emergency care entity” means—

(A) a hospital or an emergency department to which section 1867 of the Social Security Act (42 U.S.C. 1395dd) applies; and

(B) a physician or physician group that is employed by, or under contract with, such hospital or department to furnish items and services to individuals under such section.

(3) UNINSURED INDIVIDUAL.—The term “uninsured individual” means an individual who, at the time the items or services described in subsection (a) are furnished—

(A) does not have coverage under—

(i) a group health plan (as defined in section 2791(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–91(a)(1)));

(ii) part A (42 U.S.C. 1395c et seq.) or B (42 U.S.C. 1395j et seq.) of title XVIII of the Social Security Act; or

(iii) a State plan under title XIX (42 U.S.C. 1396 et seq.) of the Social Security Act; and

1 (B) does not have health insurance cov-  
 2 erage (as defined in section 2791(b)(1) of the  
 3 Public Health Service Act (42 U.S.C. 300gg–  
 4 91(b)(1)) from any other source.

5 **SEC. 4. AWARDS OF ATTORNEY FEES AND COSTS IN AN AC-**  
 6 **TION INVOLVING UNCOMPENSATED CARE.**

7 (a) IN GENERAL.—In any action in any State or Fed-  
 8 eral court in which liability or damages described in sec-  
 9 tion 3(a) is contested, the court (or the jury, if the matter  
 10 is tried before a jury) may award to each prevailing party  
 11 a reasonable attorney’s fee and other reasonable costs re-  
 12 lating to the prosecution of the action, subject to the other  
 13 provisions of this section.

14 (b) PERSONS LIABLE.—Liability for each award  
 15 under subsection (a) shall be borne by one or more of the  
 16 following persons, as allocated by the court or jury:

17 (1) A nonprevailing party personally.

18 (2) An attorney or law firm representing a non-  
 19 prevailing party, but only if such representation was  
 20 on a contingent-fee basis.

21 (c) FACTORS CONSIDERED.—In exercising its discre-  
 22 tion under subsections (a) and (b), the court or jury shall  
 23 consider, and may conduct a separate evidentiary hearing  
 24 on, the following factors:

1           (1) The validity or reasonableness, or both, of  
2           the claim of the nonprevailing party.

3           (2) The reasonableness of the conduct of the  
4           litigation by the attorney or law firm representing  
5           the nonprevailing party, including consideration of  
6           any offer of settlement by the prevailing party.

7           (3) The reasonableness of the conduct of the  
8           litigation by the attorney or law firm representing  
9           the prevailing party, including consideration of any  
10          offer of settlement by the nonprevailing party.

11          (4) The financial resources of the nonprevailing  
12          party and the extent to which the nonprevailing  
13          party would have been unfairly discouraged from  
14          pursuing a reasonable and legitimate claim for inju-  
15          ries by such an award.

16 **SEC. 5. JURY IN AN ACTION INVOLVING UNCOMPENSATED**  
17 **CARE TO CONSIDER EFFECT OF DAMAGES ON**  
18 **HEALTH CARE LIABILITY INSURANCE.**

19          In any action in any State or Federal court in which  
20          liability or damages described in section 3(a) is contested,  
21          the court shall instruct the jury that in considering the  
22          amount of damages (whether compensatory or punitive)  
23          to award against a defendant that has been found liable,  
24          the jury must consider the effect of the amount awarded

1 on the price and availability of health care liability insur-  
2 ance.

