

111TH CONGRESS
1ST SESSION

H. R. 2975

To improve the medical care by reducing the excessive burden imposed by the civil liability system on the health care delivery system.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 2009

Mr. CAMPBELL 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 the medical care by reducing the excessive burden imposed by the civil liability system on the health care delivery system.

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 “Medical Practice Pro-
5 tection Act of 2009”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—

1 (1) EFFECT ON HEALTH CARE ACCESS AND
2 COSTS.—Congress finds that our current civil justice
3 system is adversely affecting patient access to health
4 care services, better patient care, and cost-efficient
5 health care, in that the health care liability system
6 is a costly and ineffective mechanism for resolving
7 claims of health care liability and compensating in-
8 jured patients, and is a deterrent to the sharing of
9 information among health care professionals which
10 impedes efforts to improve patient safety and quality
11 of care.

12 (2) EFFECT ON INTERSTATE COMMERCE.—
13 Congress finds that the health care and insurance
14 industries are industries affecting interstate com-
15 merce and the health care liability litigation systems
16 existing throughout the United States are activities
17 that affect interstate commerce by contributing to
18 the high costs of health care and premiums for
19 health care liability insurance purchased by health
20 care system providers.

21 (3) EFFECT ON FEDERAL SPENDING.—Con-
22 gress finds that the health care liability litigation
23 systems existing throughout the United States have
24 a significant effect on the amount, distribution, and
25 use of Federal funds because of—

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

4 (B) the large number of individuals who
5 benefit because of the exclusion from Federal
6 taxes of the amounts spent to provide them
7 with health insurance benefits; and

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

11 (b) PURPOSE.—It is the purpose of this Act to imple-
12 ment reasonable, comprehensive, and effective health care
13 liability reforms designed to—

14 (1) improve the availability of health care serv-
15 ices in cases in which health care liability actions
16 have been shown to be a factor in the decreased
17 availability of services;

18 (2) reduce the incidence of “defensive medi-
19 cine” and lower the cost of health care liability in-
20 surance, all of which contribute to the escalation of
21 health care costs;

22 (3) ensure that persons with meritorious health
23 care injury claims receive fair and adequate com-
24 pensation, including reasonable noneconomic dam-
25 ages;

1 (4) improve the fairness and cost-effectiveness
2 of our current health care liability system to resolve
3 disputes over, and provide compensation for, health
4 care liability by reducing uncertainty in the amount
5 of compensation provided to injured individuals; and

6 (5) provide an increased sharing of information
7 in the health care system which will reduce unin-
8 tended injury and improve patient care.

9 **SEC. 3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

10 The time for the commencement of a health care law-
11 suit shall be 3 years after the date of manifestation of
12 injury or 1 year after the claimant discovers, or through
13 the use of reasonable diligence should have discovered, the
14 injury, whichever occurs first. In no event shall the time
15 for commencement of a health care lawsuit exceed 3 years
16 after the date of manifestation of injury unless tolled for
17 any of the following—

18 (1) upon proof of fraud;

19 (2) intentional concealment; or

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

23 Actions by a minor shall be commenced within 3 years
24 from the date of the alleged manifestation of injury except
25 that actions by a minor under the full age of 6 years shall

1 be commenced within 3 years of manifestation of injury
2 or prior to the minor's 8th birthday, whichever provides
3 a longer period. Such time limitation shall be tolled for
4 minors for any period during which a parent or guardian
5 and a health care provider or health care institution have
6 committed fraud or collusion in the failure to bring an
7 action on behalf of the injured minor.

8 **SEC. 4. COMPENSATING PATIENT INJURY.**

9 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL
10 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any
11 health care lawsuit, nothing in this Act shall limit a claim-
12 ant's recovery of the full amount of the available economic
13 damages, notwithstanding the limitation in subsection (b).

14 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any
15 health care lawsuit, the amount of noneconomic damages,
16 if available, may be as much as \$250,000, regardless of
17 the number of parties against whom the action is brought
18 or the number of separate claims or actions brought with
19 respect to the same injury.

20 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
21 DAMAGES.—For purposes of applying the limitation in
22 subsection (b), future noneconomic damages shall not be
23 discounted to present value. The jury shall not be in-
24 formed about the maximum award for noneconomic dam-
25 ages. An award for noneconomic damages in excess of

1 \$250,000 shall be reduced either before the entry of judg-
2 ment, or by amendment of the judgment after entry of
3 judgment, and such reduction shall be made before ac-
4 counting for any other reduction in damages required by
5 law. If separate awards are rendered for past and future
6 noneconomic damages and the combined awards exceed
7 \$250,000, the future noneconomic damages shall be re-
8 duced first.

9 (d) FAIR SHARE RULE.—In any health care lawsuit,
10 each party shall be liable for that party's several share
11 of any damages only and not for the share of any other
12 person. Each party shall be liable only for the amount of
13 damages allocated to such party in direct proportion to
14 such party's percentage of responsibility. Whenever a
15 judgment of liability is rendered as to any party, a sepa-
16 rate judgment shall be rendered against each such party
17 for the amount allocated to such party. For purposes of
18 this section, the trier of fact shall determine the propor-
19 tion of responsibility of each party for the claimant's
20 harm.

21 **SEC. 5. MAXIMIZING PATIENT RECOVERY.**

22 (a) COURT SUPERVISION OF SHARE OF DAMAGES
23 ACTUALLY PAID TO CLAIMANTS.—In any health care law-
24 suit, the court shall supervise the arrangements for pay-
25 ment of damages to protect against conflicts of interest

1 that may have the effect of reducing the amount of dam-
2 ages awarded that are actually paid to claimants. In par-
3 ticular, in any health care lawsuit in which the attorney
4 for a party claims a financial stake in the outcome by vir-
5 tue of a contingent fee, the court shall have the power
6 to restrict the payment of a claimant's damage recovery
7 to such attorney, and to redirect such damages to the
8 claimant based upon the interests of justice and principles
9 of equity. In no event shall the total of all contingent fees
10 for representing all claimants in a health care lawsuit ex-
11 ceed the following limits:

12 (1) 40 percent of the first \$50,000 recovered by
13 the claimant(s).

14 (2) 33 $\frac{1}{3}$ percent of the next \$50,000 recovered
15 by the claimant(s).

16 (3) 25 percent of the next \$500,000 recovered
17 by the claimant(s).

18 (4) 15 percent of any amount by which the re-
19 covery by the claimant(s) is in excess of \$600,000.

20 (b) APPLICABILITY.—The limitations in this section
21 shall apply whether the recovery is by judgment, settle-
22 ment, mediation, arbitration, or any other form of alter-
23 native dispute resolution. In a health care lawsuit involv-
24 ing a minor or incompetent person, a court retains the
25 authority to authorize or approve a fee that is less than

1 the maximum permitted under this section. The require-
2 ment for court supervision in the first two sentences of
3 subsection (a) applies only in civil actions.

4 **SEC. 6. ADDITIONAL HEALTH BENEFITS.**

5 In any health care lawsuit involving injury or wrong-
6 ful death, any party may introduce evidence of collateral
7 source benefits. If a party elects to introduce such evi-
8 dence, any opposing party may introduce evidence of any
9 amount paid or contributed or reasonably likely to be paid
10 or contributed in the future by or on behalf of the oppos-
11 ing party to secure the right to such collateral source bene-
12 fits. No provider of collateral source benefits shall recover
13 any amount against the claimant or receive any lien or
14 credit against the claimant's recovery or be equitably or
15 legally subrogated to the right of the claimant in a health
16 care lawsuit involving injury or wrongful death. This sec-
17 tion shall apply to any health care lawsuit that is settled
18 as well as a health care lawsuit that is resolved by a fact
19 finder. This section shall not apply to section 1862(b) (42
20 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C.
21 1396a(a)(25)) of the Social Security Act.

22 **SEC. 7. PUNITIVE DAMAGES.**

23 (a) IN GENERAL.—Punitive damages may, if other-
24 wise permitted by applicable State or Federal law, be
25 awarded against any person in a health care lawsuit only

1 if it is proven by clear and convincing evidence that such
2 person acted with malicious intent to injure the claimant,
3 or that such person deliberately failed to avoid unneces-
4 sary injury that such person knew the claimant was sub-
5 stantially certain to suffer. In any health care lawsuit
6 where no judgment for compensatory damages is rendered
7 against such person, no punitive damages may be awarded
8 with respect to the claim in such lawsuit. No demand for
9 punitive damages shall be included in a health care lawsuit
10 as initially filed. A court may allow a claimant to file an
11 amended pleading for punitive damages only upon a mo-
12 tion by the claimant and after a finding by the court, upon
13 review of supporting and opposing affidavits or after a
14 hearing, after weighing the evidence, that the claimant has
15 established by a substantial probability that the claimant
16 will prevail on the claim for punitive damages. At the re-
17 quest of any party in a health care lawsuit, the trier of
18 fact shall consider in a separate proceeding—

19 (1) whether punitive damages are to be award-
20 ed and the amount of such award; and

21 (2) the amount of punitive damages following a
22 determination of punitive liability.

23 If a separate proceeding is requested, evidence relevant
24 only to the claim for punitive damages, as determined by
25 applicable State law, shall be inadmissible in any pro-

1 ceeding to determine whether compensatory damages are
2 to be awarded.

3 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
4 AGES.—

5 (1) FACTORS CONSIDERED.—In determining
6 the amount of punitive damages, if awarded, in a
7 health care lawsuit, the trier of fact shall consider
8 only the following—

9 (A) the severity of the harm caused by the
10 conduct of such party;

11 (B) the duration of the conduct or any
12 concealment of it by such party;

13 (C) the profitability of the conduct to such
14 party;

15 (D) the number of products sold or med-
16 ical procedures rendered for compensation, as
17 the case may be, by such party, of the kind
18 causing the harm complained of by the claim-
19 ant;

20 (E) any criminal penalties imposed on such
21 party, as a result of the conduct complained of
22 by the claimant; and

23 (F) the amount of any civil fines assessed
24 against such party as a result of the conduct
25 complained of by the claimant.

1 **SEC. 8. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
2 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
3 **SUITS.**

4 (a) **IN GENERAL.**—In any health care lawsuit, if an
5 award of future damages, without reduction to present
6 value, equaling or exceeding \$50,000 is made against a
7 party with sufficient insurance or other assets to fund a
8 periodic payment of such a judgment, the court shall, at
9 the request of any party, enter a judgment ordering that
10 the future damages be paid by periodic payments in ac-
11 cordance with the Uniform Periodic Payment of Judg-
12 ments Act promulgated by the National Conference of
13 Commissioners on Uniform State Laws.

14 (b) **APPLICABILITY.**—This section applies to all ac-
15 tions which have not been first set for trial or retrial be-
16 fore the effective date of this Act.

17 **SEC. 9. DEFINITIONS.**

18 In this Act:

19 (1) **ALTERNATIVE DISPUTE RESOLUTION SYS-**
20 **TEM; ADR.**—The term “alternative dispute resolution
21 system” or “ADR” means a system that provides
22 for the resolution of health care lawsuits in a man-
23 ner other than through a civil action brought in a
24 State or Federal court.

25 (2) **CLAIMANT.**—The term “claimant” means
26 any person who brings a health care lawsuit, includ-

1 ing a person who asserts or claims a right to legal
2 or equitable contribution, indemnity or subrogation,
3 arising out of a health care liability claim or action,
4 and any person on whose behalf such a claim is as-
5 serted or such an action is brought, whether de-
6 ceased, incompetent, or a minor.

7 (3) COLLATERAL SOURCE BENEFITS.—The
8 term “collateral source benefits” means any amount
9 paid or reasonably likely to be paid in the future to
10 or on behalf of the claimant, or any service, product
11 or other benefit provided or reasonably likely to be
12 provided in the future to or on behalf of the claim-
13 ant, as a result of the injury or wrongful death, pur-
14 suant to—

15 (A) any State or Federal health, sickness,
16 income-disability, accident, or workers’ com-
17 pensation law;

18 (B) any health, sickness, income-disability,
19 or accident insurance that provides health bene-
20 fits or income-disability coverage;

21 (C) any contract or agreement of any
22 group, organization, partnership, or corporation
23 to provide, pay for, or reimburse the cost of
24 medical, hospital, dental, or income disability
25 benefits; and

1 (D) any other publicly or privately funded
2 program.

3 (4) COMPENSATORY DAMAGES.—The term
4 “compensatory damages” means objectively verifi-
5 able monetary losses incurred as a result of the pro-
6 vision of, use of, or payment for (or failure to pro-
7 vide, use, or pay for) health care services or medical
8 products, such as past and future medical expenses,
9 loss of past and future earnings, cost of obtaining
10 domestic services, loss of employment, and loss of
11 business or employment opportunities, damages for
12 physical and emotional pain, suffering, inconven-
13 ience, physical impairment, mental anguish, dis-
14 figurement, loss of enjoyment of life, loss of society
15 and companionship, loss of consortium (other than
16 loss of domestic service), hedonic damages, injury to
17 reputation, and all other nonpecuniary losses of any
18 kind or nature. The term “compensatory damages”
19 includes economic damages and noneconomic dam-
20 ages, as such terms are defined in this section.

21 (5) CONTINGENT FEE.—The term “contingent
22 fee” includes all compensation to any person or per-
23 sons which is payable only if a recovery is effected
24 on behalf of one or more claimants.

1 (6) ECONOMIC DAMAGES.—The term “economic
2 damages” means objectively verifiable monetary
3 losses incurred as a result of the provision of, use
4 of, or payment for (or failure to provide, use, or pay
5 for) health care services or medical products, such as
6 past and future medical expenses, loss of past and
7 future earnings, cost of obtaining domestic services,
8 loss of employment, and loss of business or employ-
9 ment opportunities.

10 (7) HEALTH CARE INSTITUTION.—The term
11 “health care institution” means any entity licensed
12 under Federal or State law to provide health care
13 services (including but not limited to ambulatory
14 surgical centers, assisted living facilities, emergency
15 medical services providers, hospices, hospitals and
16 hospital systems, nursing homes, or other entities li-
17 censed to provide such services).

18 (8) HEALTH CARE LAWSUIT.—The term
19 “health care lawsuit” means any health care liability
20 claim concerning the provision of health care goods
21 or services or any medical product affecting inter-
22 state commerce, or any health care liability action
23 concerning the provision of health care goods or
24 services or any medical product affecting interstate
25 commerce, brought in a State or Federal court or

1 pursuant to an alternative dispute resolution system,
2 against a health care provider or a health care insti-
3 tution, regardless of the theory of liability on which
4 the claim is based, or the number of claimants,
5 plaintiffs, defendants, or other parties, or the num-
6 ber of claims or causes of action, in which the claim-
7 ant alleges a health care liability claim. Such term
8 does not include a claim or action which is based on
9 criminal liability; which seeks civil fines or penalties
10 paid to Federal, State, or local government; or which
11 is grounded in antitrust.

12 (9) HEALTH CARE LIABILITY ACTION.—The
13 term “health care liability action” means a civil ac-
14 tion brought in a State or Federal Court or pursu-
15 ant to an alternative dispute resolution system,
16 against a health care provider or a health care insti-
17 tution, regardless of the theory of liability on which
18 the claim is based, or the number of plaintiffs, de-
19 fendants, or other parties, or the number of causes
20 of action, in which the claimant alleges a health care
21 liability claim.

22 (10) HEALTH CARE LIABILITY CLAIM.—The
23 term “health care liability claim” means a demand
24 by any person, whether or not pursuant to ADR,
25 against a health care provider or health care institu-

1 tion, including, but not limited to, third-party
2 claims, cross-claims, counter-claims, or contribution
3 claims, which are based upon the provision of, use
4 of, or payment for (or the failure to provide, use, or
5 pay for) health care services or medical products, re-
6 gardless of the theory of liability on which the claim
7 is based, or the number of plaintiffs, defendants, or
8 other parties, or the number of causes of action.

9 (11) HEALTH CARE PROVIDER.—

10 (A) IN GENERAL.—The term “health care
11 provider” means any person (including but not
12 limited to a physician (as defined by section
13 1861(r) of the Social Security Act (42 U.S.C.
14 1395x(r)), registered nurse, dentist, podiatrist,
15 pharmacist, chiropractor, or optometrist) re-
16 quired by State or Federal law to be licensed,
17 registered, or certified to provide health care
18 services, and being either so licensed, reg-
19 istered, or certified, or exempted from such re-
20 quirement by other statute or regulation.

21 (B) TREATMENT OF CERTAIN PROFES-
22 SIONAL ASSOCIATIONS.—For purposes of this
23 Act, a professional association that is organized
24 under State law by an individual physician or
25 group of physicians, a partnership or limited li-

1 ability partnership formed by a group of physi-
2 cians, a nonprofit health corporation certified
3 under State law, or a company formed by a
4 group of physicians under State law shall be
5 treated as a health care provider under sub-
6 paragraph (A).

7 (12) HEALTH CARE GOODS OR SERVICES.—The
8 term “health care goods or services” means any
9 goods or services provided by a health care institu-
10 tion, a health care provider, or by any individual
11 working under the supervision of a health care pro-
12 vider, that relates to the diagnosis, prevention, or
13 treatment of any human disease or impairment, or
14 the assessment or care of the health of human
15 beings.

16 (13) MALICIOUS INTENT TO INJURE.—The
17 term “malicious intent to injure” means inten-
18 tionally causing or attempting to cause physical in-
19 jury other than providing health care goods or serv-
20 ices.

21 (14) MEDICAL PRODUCT.—The term “medical
22 product” means a drug, device, or biological product
23 intended for humans, and the terms “drug”, “de-
24 vice”, and “biological product” have the meanings
25 given such terms in sections 201(g)(1) and 201(h)

1 of the Federal Food, Drug and Cosmetic Act (21
2 U.S.C. 321) and section 351(a) of the Public Health
3 Service Act (42 U.S.C. 262(a)), respectively, includ-
4 ing any component or raw material used therein, but
5 excluding health care services.

6 (15) NONECONOMIC DAMAGES.—The term
7 “noneconomic damages” means damages for phys-
8 ical and emotional pain, suffering, inconvenience,
9 physical impairment, mental anguish, disfigurement,
10 loss of enjoyment of life, loss of society and compan-
11 ionship, loss of consortium (other than loss of do-
12 mestic service), hedonic damages, injury to reputa-
13 tion, and all other nonpecuniary losses of any kind
14 or nature.

15 (16) PUNITIVE DAMAGES.—The term “punitive
16 damages” means damages awarded, for the purpose
17 of punishment or deterrence, and not solely for com-
18 pensatory purposes, against a health care provider
19 or health care institution. Punitive damages are nei-
20 ther economic nor noneconomic damages.

21 (17) RECOVERY.—The term “recovery” means
22 the net sum recovered after deducting any disburse-
23 ments or costs incurred in connection with prosecu-
24 tion or settlement of the claim, including all costs
25 paid or advanced by any person. Costs of health care

1 incurred by the plaintiff and the attorney's office
2 overhead costs or charges for legal services are not
3 deductible disbursements or costs for such purpose.

4 (18) STATE.—The term “State” means each of
5 the several States, the District of Columbia, the
6 Commonwealth of Puerto Rico, the Virgin Islands,
7 Guam, American Samoa, the Northern Mariana Is-
8 lands, the Trust Territory of the Pacific Islands, and
9 any other territory or possession of the United
10 States, or any political subdivision thereof.

11 **SEC. 10. EFFECT ON OTHER LAWS.**

12 (a) VACCINE INJURY.—

13 (1) To the extent that title XXI of the Public
14 Health Service Act establishes a Federal rule of law
15 applicable to a civil action brought for a vaccine-re-
16 lated injury or death—

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

19 (B) any rule of law prescribed by this Act
20 in conflict with a rule of law of such title XXI
21 shall not apply to such action.

22 (2) If there is an aspect of a civil action
23 brought for a vaccine-related injury or death to
24 which a Federal rule of law under title XXI of the
25 Public Health Service Act does not apply, then this

1 Act or otherwise applicable law (as determined
2 under this Act) will apply to such aspect of such ac-
3 tion.

4 (b) OTHER FEDERAL LAW.—Except as provided in
5 this section, nothing in this Act shall be deemed to affect
6 any defense available to a defendant in a health care law-
7 suit or action under any other provision of Federal law.

8 **SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES'**
9 **RIGHTS.**

10 (a) HEALTH CARE LAWSUITS.—The provisions gov-
11 erning health care lawsuits set forth in this Act preempt,
12 subject to subsections (b) and (c), State law to the extent
13 that State law prevents the application of any provisions
14 of law established by or under this Act. The provisions
15 governing health care lawsuits set forth in this Act super-
16 sede chapter 171 of title 28, United States Code, to the
17 extent that such chapter—

18 (1) provides for a greater amount of damages
19 or contingent fees, a longer period in which a health
20 care lawsuit may be commenced, or a reduced appli-
21 cability or scope of periodic payment of future dam-
22 ages, than provided in this Act; or

23 (2) prohibits the introduction of evidence re-
24 garding collateral source benefits, or mandates or

1 permits subrogation or a lien on collateral source
2 benefits.

3 (b) PREEMPTION OF CERTAIN STATE LAWS.—The
4 provisions of this Act shall preempt any constitutional pro-
5 vision, statute, or rule of State law, whether enacted prior
6 to, on, or after the date of enactment of this Act, that—

7 (1) prohibits the application of any limitation
8 on the amount of compensatory, punitive, or total
9 damages in a health care lawsuit; or

10 (2) provides for a greater amount of compen-
11 satory, punitive, or total damages in a health care
12 lawsuit than those provided for under this Act.

13 (c) PROTECTION OF STATE’S RIGHTS AND OTHER
14 LAWS.—

15 (1) IN GENERAL.—Any issue that is not gov-
16 erned by a provision of law established by or under
17 this Act (including the State standards of neg-
18 ligence) shall be governed by otherwise applicable
19 Federal or State law.

20 (2) RULE OF CONSTRUCTION.—Nothing in this
21 Act shall be construed to—

22 (A) preempt or supersede any Federal or
23 State law that imposes greater procedural or
24 substantive protections (such as a shorter stat-
25 ute of limitations) for a health care provider or

1 health care institution from liability, loss, or
2 damages than those provided by this Act;

3 (B) create a cause of action that is not
4 otherwise available under Federal or State law;
5 or

6 (C) affect the scope of preemption of any
7 other Federal law.

8 **SEC. 12. APPLICABILITY; EFFECTIVE DATE.**

9 This Act shall apply to any health care lawsuit
10 brought in a Federal or State court, or subject to an alter-
11 native dispute resolution system, that is initiated on or
12 after the date of the enactment of this Act, except that
13 any health care lawsuit arising from an injury occurring
14 prior to the date of the enactment of this Act shall be
15 governed by the applicable statute of limitations provisions
16 in effect at the time the injury occurred.

○