

115TH CONGRESS  
1ST SESSION

# H. R. 1215

---

IN THE SENATE OF THE UNITED STATES

JUNE 29, 2017

Received; read twice and referred to the Committee on the Judiciary

---

## AN ACT

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.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Protecting Access to Care Act of 2017”.

4 (b) TABLE OF CONTENTS.—The table of contents of  
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Encouraging speedy resolution of claims.
- Sec. 3. Compensating patient injury.
- Sec. 4. Maximizing patient recovery.
- Sec. 5. Authorization of payment of future damages to claimants in health care lawsuits.
- Sec. 6. Product liability for health care providers.
- Sec. 7. Definitions.
- Sec. 8. Effect on other laws.
- Sec. 9. Rules of construction.
- Sec. 10. Effective date.
- Sec. 11. Limitation on expert witness testimony.
- Sec. 12. Communications following unanticipated outcome.
- Sec. 13. Expert witness qualifications.
- Sec. 14. Affidavit of merit.
- Sec. 15. Notice of intent to commence lawsuit.

6 **SEC. 2. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

7 (a) STATUTE OF LIMITATIONS.—

8 (1) IN GENERAL.—Except as provided in para-  
9 graph (2), the time for the commencement of a  
10 health care lawsuit shall be, whichever occurs first of  
11 the following:

12 (A) 3 years after the date of the occur-  
13 rence of the breach or tort;

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

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

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

11 (A) upon proof of fraud;

12 (B) intentional concealment; or

13 (C) the presence of a foreign body, which  
14 has no therapeutic or diagnostic purpose or ef-  
15 fect, in the person of the injured person.

16 (3) ACTIONS BY A MINOR.—Actions by a minor  
17 shall be commenced within 3 years after the date of  
18 the occurrence of the breach or tort or 3 years after  
19 the date of the medical or health care treatment that  
20 is the subject of the claim is completed (whichever  
21 occurs first) except that actions by a minor under  
22 the full age of 6 years shall be commenced within 3  
23 years after the date of the occurrence of the breach  
24 or tort, 3 years after the date of the medical or  
25 health care treatment that is the subject of the claim

1 is completed, or 1 year after the injury is discovered,  
2 or through the use of reasonable diligence should  
3 have been discovered, or prior to the minor's 8th  
4 birthday, whichever provides a longer period. Such  
5 time limitation shall be tolled for minors for any pe-  
6 riod during which a parent or guardian and a health  
7 care provider have committed fraud or collusion in  
8 the failure to bring an action on behalf of the in-  
9 jured minor.

10 (b) STATE FLEXIBILITY.—No provision of subsection  
11 (a) shall be construed to preempt any state law (whether  
12 effective before, on, or after the date of the enactment of  
13 this Act) that—

14 (1) specifies a time period of less than 3 years  
15 after the date of injury or less than 1 year after the  
16 claimant discovers, or through the use of reasonable  
17 diligence should have discovered, the injury, for the  
18 filing of a health care lawsuit;

19 (2) that specifies a different time period for the  
20 filing of lawsuits by a minor;

21 (3) that triggers the time period based on the  
22 date of the alleged negligence; or

23 (4) establishes a statute of repose for the filing  
24 of health care lawsuit.

1 **SEC. 3. COMPENSATING PATIENT INJURY.**

2 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL  
3 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any  
4 health care lawsuit, nothing in this Act shall limit a claim-  
5 ant’s recovery of the full amount of the available economic  
6 damages, notwithstanding the limitation in subsection (b).

7 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any  
8 health care lawsuit, the amount of noneconomic damages,  
9 if available, shall not exceed \$250,000, regardless of the  
10 number of parties against whom the action is brought or  
11 the number of separate claims or actions brought with re-  
12 spect to the same injury.

13 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC  
14 DAMAGES.—For purposes of applying the limitation in  
15 subsection (b), future noneconomic damages shall not be  
16 discounted to present value. The jury shall not be in-  
17 formed about the maximum award for noneconomic dam-  
18 ages. An award for noneconomic damages in excess of  
19 \$250,000 shall be reduced either before the entry of judg-  
20 ment, or by amendment of the judgment after entry of  
21 judgment, and such reduction shall be made before ac-  
22 counting for any other reduction in damages required by  
23 law. If separate awards are rendered for past and future  
24 noneconomic damages and the combined awards exceed  
25 \$250,000, the future noneconomic damages shall be re-  
26 duced first.

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

13       (e) STATE FLEXIBILITY.—No provision of this sec-  
14 tion shall be construed to preempt any State law (whether  
15 effective before, on, or after the date of the enactment of  
16 this Act) that specifies a particular monetary amount of  
17 economic or noneconomic damages (or the total amount  
18 of damages) that may be awarded in a health care lawsuit,  
19 regardless of whether such monetary amount is greater  
20 or lesser than is provided for under this section.

21 **SEC. 4. 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) Forty percent of the first \$50,000 recovered  
13 by the claimant(s).

14 (2) Thirty-three and one-third percent of the  
15 next \$50,000 recovered by the claimant(s).

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

18 (4) Fifteen percent of any amount by which the  
19 recovery 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 (c) STATE FLEXIBILITY.—No provision of this sec-  
 5 tion shall be construed to preempt any State law (whether  
 6 effective before, on, or after the date of the enactment of  
 7 this Act) that specifies a lesser percentage or lesser total  
 8 value of damages which may be claimed by an attorney  
 9 representing a claimant in a health care lawsuit.

10 **SEC. 5. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**  
 11 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**  
 12 **SUITS.**

13 (a) IN GENERAL.—In any health care lawsuit, if an  
 14 award of future damages, without reduction to present  
 15 value, equaling or exceeding \$50,000 is made against a  
 16 party with sufficient insurance or other assets to fund a  
 17 periodic payment of such a judgment, the court shall, at  
 18 the request of any party, enter a judgment ordering that  
 19 the future damages be paid by periodic payments, in ac-  
 20 cordance with the Uniform Periodic Payment of Judg-  
 21 ments Act promulgated by the National Conference of  
 22 Commissioners on Uniform State Laws.

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



1       (c) STATE FLEXIBILITY.—No provision of this sec-  
2 tion shall be construed to preempt any State law (whether  
3 effective before, on, or after the date of the enactment of  
4 this Act) that specifies periodic payments for future dam-  
5 ages at any amount other than \$50,000 or that mandates  
6 such payments absent the request of either party.

7 **SEC. 6. PRODUCT LIABILITY FOR HEALTH CARE PRO-**  
8 **VIDERS.**

9       A health care provider who prescribes, or who dis-  
10 penses pursuant to a prescription, a medical product ap-  
11 proved, licensed, or cleared by the Food and Drug Admin-  
12 istration shall not be named as a party to a product liabil-  
13 ity lawsuit involving such product and shall not be liable  
14 to a claimant in a class action lawsuit against the manu-  
15 facturer, distributor, or seller of such product.

16 **SEC. 7. DEFINITIONS.**

17       In this Act:

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

24           (2) CLAIMANT.—The term “claimant” means  
25 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) CONTINGENT FEE.—The term “contingent  
4 fee” includes all compensation to any person or per-  
5 sons which is payable only if a recovery is effected  
6 on behalf of one or more claimants.

7 (5) ECONOMIC DAMAGES.—The term “economic  
8 damages” means objectively verifiable monetary  
9 losses incurred as a result of the provision or use of  
10 (or failure to provide or use) health care services or  
11 medical products, such as past and future medical  
12 expenses, loss of past and future earnings, cost of  
13 obtaining domestic services, loss of employment, and  
14 loss of business or employment opportunities, unless  
15 otherwise defined under applicable state law. In no  
16 circumstances shall damages for health care services  
17 or medical products exceed the amount actually paid  
18 or incurred by or on behalf of the claimant.

19 (6) FUTURE DAMAGES.—The term “future  
20 damages” means any damages that are incurred  
21 after the date of judgment, settlement, or other reso-  
22 lution (including mediation, or any other form of al-  
23 ternative dispute resolution).

24 (7) HEALTH CARE LAWSUIT.—The term  
25 “health care lawsuit” means any health care liability

1 claim concerning the provision of goods or services  
2 for which coverage was provided in whole or in part  
3 via a Federal program, subsidy or tax benefit, or  
4 any health care liability action concerning the provi-  
5 sion of goods or services for which coverage was pro-  
6 vided in whole or in part via a Federal program,  
7 subsidy or tax benefit, brought in a State or Federal  
8 court or pursuant to an alternative dispute resolu-  
9 tion system, against a health care provider regard-  
10 less of the theory of liability on which the claim is  
11 based, or the number of claimants, plaintiffs, de-  
12 fendants, or other parties, or the number of claims  
13 or causes of action, in which the claimant alleges a  
14 health care liability claim. Such term does not in-  
15 clude a claim or action which is based on criminal  
16 liability; which seeks civil fines or penalties paid to  
17 Federal, State, or local government; or which is  
18 grounded in antitrust.

19 (8) HEALTH CARE LIABILITY ACTION.—The  
20 term “health care liability action” means a civil ac-  
21 tion brought in a State or Federal court or pursuant  
22 to an alternative dispute resolution system, against  
23 a health care provider regardless of the theory of li-  
24 ability on which the claim is based, or the number  
25 of plaintiffs, defendants, or other parties, or the

1 number of causes of action, in which the claimant al-  
2 leges a health care liability claim.

3 (9) HEALTH CARE LIABILITY CLAIM.—The  
4 term “health care liability claim” means a demand  
5 by any person, whether or not pursuant to ADR,  
6 against a health care provider, including, but not  
7 limited to, third-party claims, cross-claims, counter-  
8 claims, or contribution claims, which are based upon  
9 the provision or use of (or the failure to provide or  
10 use) health care services or medical products, re-  
11 gardless of the theory of liability on which the claim  
12 is based, or the number of plaintiffs, defendants, or  
13 other parties, or the number of causes of action.

14 (10) HEALTH CARE PROVIDER.—The term  
15 “health care provider” means any person or entity  
16 required by State or Federal laws or regulations to  
17 be licensed, registered, or certified to provide health  
18 care services, and being either so licensed, reg-  
19 istered, or certified, or exempted from such require-  
20 ment by other statute or regulation, as well as any  
21 other individual or entity defined as a health care  
22 provider, health care professional, or health care in-  
23 stitution under state law.

24 (11) HEALTH CARE SERVICES.—The term  
25 “health care services” means the provision of any

1 goods or services (including safety, professional, or  
2 administrative services directly related to health  
3 care) by a health care provider, or by any individual  
4 working under the supervision of a health care pro-  
5 vider, that relates to the diagnosis, prevention, or  
6 treatment of any human disease or impairment, or  
7 the assessment or care of the health of human  
8 beings.

9 (12) MEDICAL PRODUCT.—The term “medical  
10 product” means a drug, device, or biological product  
11 intended for humans, and the terms “drug”, “de-  
12 vice”, and “biological product” have the meanings  
13 given such terms in sections 201(g)(1) and 201(h)  
14 of the Federal Food, Drug and Cosmetic Act (21  
15 U.S.C. 321(g)(1) and (h)) and section 351(a) of the  
16 Public Health Service Act (42 U.S.C. 262(a)), re-  
17 spectively, including any component or raw material  
18 used therein, but excluding health care services.

19 (13) NONECONOMIC DAMAGES.—The term  
20 “noneconomic damages” means damages for phys-  
21 ical and emotional pain, suffering, inconvenience,  
22 physical impairment, mental anguish, disfigurement,  
23 loss of enjoyment of life, loss of society and compan-  
24 ionship, loss of consortium (other than loss of do-  
25 mestic service), hedonic damages, injury to reputa-

1       tion, and all other nonpecuniary losses of any kind  
2       or nature incurred as a result of the provision or use  
3       of (or failure to provide or use) health care services  
4       or medical products, unless otherwise defined under  
5       applicable state law.

6           (14) RECOVERY.—The term “recovery” means  
7       the net sum recovered after deducting any disburse-  
8       ments or costs incurred in connection with prosecu-  
9       tion or settlement of the claim, including all costs  
10      paid or advanced by any person. Costs of health care  
11      incurred by the plaintiff and the attorneys’ office  
12      overhead costs or charges for legal services are not  
13      deductible disbursements or costs for such purpose.

14          (15) REPRESENTATIVE.—The term “represent-  
15      ative” means a legal guardian, attorney, person des-  
16      ignated to make decisions on behalf of a patient  
17      under a medical power of attorney, or any person  
18      recognized in law or custom as a patient’s agent.

19          (16) STATE.—The term “State” means each of  
20      the several States, the District of Columbia, the  
21      Commonwealth of Puerto Rico, the Virgin Islands,  
22      Guam, American Samoa, the Northern Mariana Is-  
23      lands, the Trust Territory of the Pacific Islands, and  
24      any other territory or possession of the United  
25      States, or any political subdivision thereof.

1 **SEC. 8. EFFECT ON OTHER LAWS.**

2 (a) VACCINE INJURY.—

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

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

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

12 (2) If there is an aspect of a civil action  
13 brought for a vaccine-related injury or death to  
14 which a Federal rule of law under title XXI of the  
15 Public Health Service Act does not apply, then this  
16 Act or otherwise applicable law (as determined  
17 under this Act) will apply to such aspect of such ac-  
18 tion.

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

23 **SEC. 9. RULES OF CONSTRUCTION.**

24 (a) HEALTH CARE LAWSUITS.—Unless otherwise  
25 specified in this Act, the provisions governing health care  
26 lawsuits set forth in this Act preempt, subject to sub-



1 sections (b) and (c), State law to the extent that State  
2 law prevents the application of any provisions of law estab-  
3 lished by or under this Act. The provisions governing  
4 health care lawsuits set forth in this Act supersede chapter  
5 171 of title 28, United States Code, to the extent that  
6 such chapter—

7           (1) provides for a greater amount of damages  
8           or contingent fees, a longer period in which a health  
9           care lawsuit may be commenced, or a reduced appli-  
10          cability or scope of periodic payment of future dam-  
11          ages, than provided in this Act; or

12          (2) prohibits the introduction of evidence re-  
13          garding collateral source benefits, or mandates or  
14          permits subrogation or a lien on collateral source  
15          benefits.

16       (b) PROTECTION OF STATES' RIGHTS AND OTHER  
17 LAWS.—Any issue that is not governed by any provision  
18 of law established by or under this Act (including State  
19 standards of negligence) shall be governed by otherwise  
20 applicable State or Federal law.

21       (c) STATE FLEXIBILITY.—No provision of this Act  
22 shall be construed to preempt any defense available to a  
23 party in a health care lawsuit under any other provision  
24 of State or Federal law.

1 **SEC. 10. EFFECTIVE DATE.**

2       This Act shall apply to any health care lawsuit  
3 brought in a Federal or State court, or subject to an alter-  
4 native dispute resolution system, that is initiated on or  
5 after the date of the enactment of this Act, except that  
6 any health care lawsuit arising from an injury occurring  
7 prior to the date of the enactment of this Act shall be  
8 governed by the applicable statute of limitations provisions  
9 in effect at the time the cause of action accrued.

10 **SEC. 11. LIMITATION ON EXPERT WITNESS TESTIMONY.**

11       (a) IN GENERAL.—No person in a health care profes-  
12 sion requiring licensure under the laws of a State shall  
13 be competent to testify in any court of law to establish  
14 the following facts—

15           (1) the recognized standard of acceptable pro-  
16 fessional practice and the specialty thereof, if any,  
17 that the defendant practices, which shall be the type  
18 of acceptable professional practice recognized in the  
19 defendant's community or in a community similar to  
20 the defendant's community that was in place at the  
21 time the alleged injury or wrongful action occurred;

22           (2) that the defendant acted with less than or  
23 failed to act with ordinary and reasonable care in ac-  
24 cordance with the recognized standard; and

25           (3) that as a proximate result of the defend-  
26 ant's negligent act or omission, the claimant suf-

1       ferred injuries which would not otherwise have oc-  
2       curred,  
3 unless the person was licensed to practice, in the State  
4 or a contiguous bordering State, a profession or specialty  
5 which would make the person's expert testimony relevant  
6 to the issues in the case and had practiced this profession  
7 or specialty in one of these States during the year pre-  
8 ceding the date that the alleged injury or wrongful act  
9 occurred.

10       (b) APPLICABILITY.—The requirements set forth in  
11 subsection (a) shall also apply to expert witnesses testi-  
12 fying for the defendant as rebuttal witnesses.

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

16 **SEC. 12. COMMUNICATIONS FOLLOWING UNANTICIPATED**  
17 **OUTCOME.**

18       (a) PROVIDER COMMUNICATIONS.—In any health  
19 care liability action, any and all statements, affirmations,  
20 gestures, or conduct expressing apology, fault, sympathy,  
21 commiseration, condolence, compassion, or a general sense  
22 of benevolence which are made by a health care provider  
23 or an employee of a health care provider to the patient,  
24 a relative of the patient, or a representative of the patient  
25 and which relate to the discomfort, pain, suffering, injury,

1 or death of the patient as the result of the unanticipated  
2 outcome of medical care shall be inadmissible for any pur-  
3 pose as evidence of an admission of liability or as evidence  
4 of an admission against interest.

5 (b) STATE FLEXIBILITY.—No provision of this sec-  
6 tion shall be construed to preempt any State law (whether  
7 effective before, on, or after the date of the enactment of  
8 this Act) that makes additional communications inadmis-  
9 sible as evidence of an admission of liability or as evidence  
10 of an admission against interest.

11 **SEC. 13. EXPERT WITNESS QUALIFICATIONS.**

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

17 (1) If the party against whom or on whose be-  
18 half the testimony is to be offered is or claims to be  
19 a specialist, the expert witness shall specialize at the  
20 time of the occurrence that is the basis for the law-  
21 suit in the same specialty or claimed specialty as the  
22 party against whom or on whose behalf the testi-  
23 mony is to be offered. If the party against whom or  
24 on whose behalf the testimony is to be offered is or  
25 claims to be a specialist who is board certified, the

1 expert witness shall be a specialist who is board cer-  
2 tified in that specialty or claimed specialty.

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

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

12 (B) The instruction of students in an ac-  
13 credited health professional school or accredited  
14 residency or clinical research program in the  
15 same health profession as the defendant and, if  
16 the defendant is or claims to be a specialist, in  
17 an accredited health professional school or ac-  
18 credited residency or clinical research program  
19 in the same specialty or claimed specialty.

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

1 (A) Active clinical practice as a general  
2 practitioner.

3 (B) Instruction of students in an accred-  
4 ited health professional school or accredited  
5 residency or clinical research program in the  
6 same health profession as the defendant.

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

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

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

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

1 **SEC. 14. AFFIDAVIT OF MERIT.**

2 (a) REQUIRED FILING.—Subject to subsection (b),  
3 the plaintiff in a health care lawsuit alleging negligence  
4 or, if the plaintiff is represented by an attorney, the plain-  
5 tiff's attorney shall file simultaneously with the health  
6 care lawsuit an affidavit of merit signed by a health pro-  
7 fessional who meets the requirements for an expert wit-  
8 ness under section 14 of this Act. The affidavit of merit  
9 shall certify that the health professional has reviewed the  
10 notice and all medical records supplied to him or her by  
11 the plaintiff's attorney concerning the allegations con-  
12 tained in the notice and shall contain a statement of each  
13 of the following:

14 (1) The applicable standard of practice or care.

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

19 (3) The actions that should have been taken or  
20 omitted by the health professional or health facility  
21 in order to have complied with the applicable stand-  
22 ard of practice or care.

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

26 (5) A listing of the medical records reviewed.

1 (b) FILING EXTENSION.—Upon motion of a party for  
2 good cause shown, the court in which the complaint is filed  
3 may grant the plaintiff or, if the plaintiff is represented  
4 by an attorney, the plaintiff’s attorney an additional 28  
5 days in which to file the affidavit required under sub-  
6 section (a).

7 (c) STATE FLEXIBILITY.—No provision of this sec-  
8 tion shall be construed to preempt any State law (whether  
9 effective before, on, or after the date of the enactment of  
10 this Act) that establishes additional requirements for the  
11 filing of an affidavit of merit or similar pre-litigation docu-  
12 mentation.

13 **SEC. 15. NOTICE OF INTENT TO COMMENCE LAWSUIT.**

14 (a) ADVANCE NOTICE.—A person shall not com-  
15 mence a health care lawsuit against a health care provider  
16 unless the person has given the health care provider 90  
17 days written notice before the action is commenced.

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

23 (c) STATE FLEXIBILITY.—No provision of this sec-  
24 tion shall be construed to preempt any State law (whether  
25 effective before, on, or after the date of the enactment of



- 1 this Act) that establishes a different time period for the
- 2 filing of written notice.

Passed the House of Representatives June 28, 2017.

Attest:

KAREN L. HAAS,  
*Clerk.*