

RECOMMENDATIONS APPROVED BY THE COMMITTEE ON ENERGY AND COMMERCE FOR TRANSMITTAL TO THE COMMITTEE ON BUDGET PURSUANT TO SECTION 201(A) OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2013

1 **TITLE II—COMMITTEE ON**
2 **ENERGY AND COMMERCE**
3 **Subtitle A—Repeal of Certain ACA**
4 **Funding Provisions**

5 **SEC. 201. REPEALING MANDATORY FUNDING TO STATES TO**
6 **ESTABLISH AMERICAN HEALTH BENEFIT EX-**
7 **CHANGES.**

8 (a) **IN GENERAL.**—Section 1311(a) of the Patient
9 Protection and Affordable Care Act (42 U.S.C. 18031(a))
10 is repealed.

11 (b) **RESCISSION OF UNOBLIGATED FUNDS.**—Of the
12 funds made available under such section 1311(a), the un-
13 obligated balance is rescinded.

1 **SEC. 202. REPEALING PREVENTION AND PUBLIC HEALTH**
2 **FUND.**

3 (a) IN GENERAL.—Section 4002 of the Patient Pro-
4 tection and Affordable Care Act (42 U.S.C. 300u–11) is
5 repealed.

6 (b) RESCISSION OF UNOBLIGATED FUNDS.—Of the
7 funds made available by such section 4002, the unobli-
8 gated balance is rescinded.

9 **SEC. 203. RESCINDING UNOBLIGATED BALANCES FOR CO-**
10 **OP PROGRAM.**

11 Of the funds made available under section 1322(g)
12 of the Patient Protection and Affordable Care Act (42
13 U.S.C. 18042(g)), the unobligated balance is rescinded.

14 **Subtitle B—Medicaid**

15 **SEC. 211. REVISION OF PROVIDER TAX INDIRECT GUAR-**
16 **ANTEE THRESHOLD.**

17 Section 1903(w)(4)(C)(ii) of the Social Security Act
18 (42 U.S.C. 1396b(w)(4)(C)(ii)) is amended by inserting
19 “and for portions of fiscal years beginning on or after Oc-
20 tober 1, 2012,” after “October 1, 2011,”.

21 **SEC. 212. REBASING OF STATE DSH ALLOTMENTS FOR FIS-**
22 **CAL YEAR 2022.**

23 Section 1923(f) of the Social Security Act (42 U.S.C.
24 1396r-4(f)) is amended—

25 (1) by redesignating paragraph (9) as para-
26 graph (10);

1 (3) in the paragraph heading, by striking
2 “CONTINUATION OF ELIGIBILITY STANDARDS FOR
3 CHILDREN UNTIL OCTOBER 1, 2019” and inserting
4 “CONTINUITY OF COVERAGE”.

5 (c) CONFORMING AMENDMENTS.—

6 (1) Section 1902(a) of the Social Security Act
7 (42 U.S.C. 1396a(a)) is amended by striking para-
8 graph (74).

9 (2) Effective January 1, 2014, paragraph (14)
10 of section 1902(e) (as added by section 2002(a) of
11 Public Law 111–148) is amended by striking the
12 third sentence of subparagraph (A).

13 (d) EFFECTIVE DATE.—Except as provided in sub-
14 section (c)(2), the amendments made by this section shall
15 take effect on the date of the enactment of this section.

16 **SEC. 214. MEDICAID PAYMENTS TO TERRITORIES.**

17 (a) LIMIT ON PAYMENTS.—Section 1108(g) of the
18 Social Security Act (42 U.S.C. 1308(g)) is amended—

19 (1) in paragraph (2)—

20 (A) by striking “paragraphs (3) and (5)”;

21 and

22 (B) by inserting “paragraph (3)” after

23 “and subject to”;

1 (2) in paragraph (4), by striking “(3), and”
2 and all that follows through “of this subsection” and
3 inserting “and (3) of this subsection”; and

4 (3) by striking paragraph (5).

5 (b) FMAP.—The first sentence of section 1905(b) of
6 the Social Security Act (42 U.S.C. 1396d(b)) is amended
7 by striking “shall be 55 percent” and inserting “shall be
8 50 percent”.

9 **SEC. 215. REPEALING BONUS PAYMENTS FOR ENROLL-**
10 **MENT UNDER MEDICAID AND CHIP.**

11 (a) IN GENERAL.—Paragraphs (3) and (4) of section
12 2105(a) of the Social Security Act (42 U.S.C. 1397ee(a))
13 are repealed.

14 (b) RESCISSION OF UNOBLIGATED FUNDS.—Of the
15 funds made available by section 2105(a)(3) of the Social
16 Security Act, the unobligated balance is rescinded.

17 (c) CONFORMING CHANGES.—

18 (1) AVAILABILITY OF EXCESS FUNDS FOR PER-
19 FORMANCE BONUSES.—Section 2104(n)(2) of the
20 Social Security Act (42 U.S.C. 1397dd(n)(2)) is
21 amended by striking subparagraph (D).

22 (2) OUTREACH OR COVERAGE BENCHMARKS.—
23 Section 2111(b)(3) of the Social Security Act (42
24 U.S.C. 1397kk(b)(3)) is amended—

25 (A) in subparagraph (A)—

- 1 (i) in clause (i), by inserting “or”
2 after the semicolon at the end; and
3 (ii) by striking clause (ii); and
4 (B) by striking subparagraph (C).

5 **Subtitle C—Liability Reform**

6 **SEC. 221. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—

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

19 (2) EFFECT ON INTERSTATE COMMERCE.—

20 Congress finds that the health care and insurance
21 industries are industries affecting interstate com-
22 merce and the health care liability litigation systems
23 existing throughout the United States are activities
24 that affect interstate commerce by contributing to
25 the high costs of health care and premiums for

1 health care liability insurance purchased by health
2 care system providers.

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

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

11 (B) the large number of individuals who
12 benefit because of the exclusion from Federal
13 taxes of the amounts spent to provide them
14 with health insurance benefits; and

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

18 (b) PURPOSE.—It is the purpose of this subtitle to
19 implement reasonable, comprehensive, and effective health
20 care liability reforms designed to—

21 (1) improve the availability of health care serv-
22 ices in cases in which health care liability actions
23 have been shown to be a factor in the decreased
24 availability of services;

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

5 (3) ensure that persons with meritorious health
6 care injury claims receive fair and adequate com-
7 pensation, including reasonable noneconomic dam-
8 ages;

9 (4) improve the fairness and cost-effectiveness
10 of our current health care liability system to resolve
11 disputes over, and provide compensation for, health
12 care liability by reducing uncertainty in the amount
13 of compensation provided to injured individuals; and

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

17 **SEC. 222. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

18 The time for the commencement of a health care law-
19 suit shall be 3 years after the date of manifestation of
20 injury or 1 year after the claimant discovers, or through
21 the use of reasonable diligence should have discovered, the
22 injury, whichever occurs first. In no event shall the time
23 for commencement of a health care lawsuit exceed 3 years
24 after the date of manifestation of injury unless tolled for
25 any of the following—

- 1 (1) upon proof of fraud;
- 2 (2) intentional concealment; or
- 3 (3) the presence of a foreign body, which has no
- 4 therapeutic or diagnostic purpose or effect, in the
- 5 person of the injured person.

6 Actions by a minor shall be commenced within 3 years
7 from the date of the alleged manifestation of injury except
8 that actions by a minor under the full age of 6 years shall
9 be commenced within 3 years of manifestation of injury
10 or prior to the minor's 8th birthday, whichever provides
11 a longer period. Such time limitation shall be tolled for
12 minors for any period during which a parent or guardian
13 and a health care provider or health care organization
14 have committed fraud or collusion in the failure to bring
15 an action on behalf of the injured minor.

16 **SEC. 223. COMPENSATING PATIENT INJURY.**

17 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL
18 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any
19 health care lawsuit, nothing in this subtitle shall limit a
20 claimant's recovery of the full amount of the available eco-
21 nomic damages, notwithstanding the limitation in sub-
22 section (b).

23 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any
24 health care lawsuit, the amount of noneconomic damages,
25 if available, may be as much as \$250,000, regardless of

1 the number of parties against whom the action is brought
2 or the number of separate claims or actions brought with
3 respect to the same injury.

4 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
5 DAMAGES.—For purposes of applying the limitation in
6 subsection (b), future noneconomic damages shall not be
7 discounted to present value. The jury shall not be in-
8 formed about the maximum award for noneconomic dam-
9 ages. An award for noneconomic damages in excess of
10 \$250,000 shall be reduced either before the entry of judg-
11 ment, or by amendment of the judgment after entry of
12 judgment, and such reduction shall be made before ac-
13 counting for any other reduction in damages required by
14 law. If separate awards are rendered for past and future
15 noneconomic damages and the combined awards exceed
16 \$250,000, the future noneconomic damages shall be re-
17 duced first.

18 (d) FAIR SHARE RULE.—In any health care lawsuit,
19 each party shall be liable for that party's several share
20 of any damages only and not for the share of any other
21 person. Each party shall be liable only for the amount of
22 damages allocated to such party in direct proportion to
23 such party's percentage of responsibility. Whenever a
24 judgment of liability is rendered as to any party, a sepa-
25 rate judgment shall be rendered against each such party

1 for the amount allocated to such party. For purposes of
2 this section, the trier of fact shall determine the propor-
3 tion of responsibility of each party for the claimant's
4 harm.

5 **SEC. 224. MAXIMIZING PATIENT RECOVERY.**

6 (a) COURT SUPERVISION OF SHARE OF DAMAGES
7 ACTUALLY PAID TO CLAIMANTS.—In any health care law-
8 suit, the court shall supervise the arrangements for pay-
9 ment of damages to protect against conflicts of interest
10 that may have the effect of reducing the amount of dam-
11 ages awarded that are actually paid to claimants. In par-
12 ticular, in any health care lawsuit in which the attorney
13 for a party claims a financial stake in the outcome by vir-
14 tue of a contingent fee, the court shall have the power
15 to restrict the payment of a claimant's damage recovery
16 to such attorney, and to redirect such damages to the
17 claimant based upon the interests of justice and principles
18 of equity. In no event shall the total of all contingent fees
19 for representing all claimants in a health care lawsuit ex-
20 ceed the following limits:

21 (1) Forty percent of the first \$50,000 recovered
22 by the claimant(s).

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

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

3 (4) Fifteen percent of any amount by which the
4 recovery by the claimant(s) is in excess of \$600,000.

5 (b) **APPLICABILITY.**—The limitations in this section
6 shall apply whether the recovery is by judgment, settle-
7 ment, mediation, arbitration, or any other form of alter-
8 native dispute resolution. In a health care lawsuit involv-
9 ing a minor or incompetent person, a court retains the
10 authority to authorize or approve a fee that is less than
11 the maximum permitted under this section. The require-
12 ment for court supervision in the first two sentences of
13 subsection (a) applies only in civil actions.

14 **SEC. 225. ADDITIONAL HEALTH BENEFITS.**

15 In any health care lawsuit involving injury or wrong-
16 ful death, any party may introduce evidence of collateral
17 source benefits. If a party elects to introduce such evi-
18 dence, any opposing party may introduce evidence of any
19 amount paid or contributed or reasonably likely to be paid
20 or contributed in the future by or on behalf of the oppos-
21 ing party to secure the right to such collateral source bene-
22 fits. No provider of collateral source benefits shall recover
23 any amount against the claimant or receive any lien or
24 credit against the claimant's recovery or be equitably or
25 legally subrogated to the right of the claimant in a health

1 care lawsuit involving injury or wrongful death. This sec-
2 tion shall apply to any health care lawsuit that is settled
3 as well as a health care lawsuit that is resolved by a fact
4 finder. This section shall not apply to section 1862(b) (42
5 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C.
6 1396a(a)(25)) of the Social Security Act.

7 **SEC. 226. PUNITIVE DAMAGES.**

8 (a) IN GENERAL.—Punitive damages may, if other-
9 wise permitted by applicable State or Federal law, be
10 awarded against any person in a health care lawsuit only
11 if it is proven by clear and convincing evidence that such
12 person acted with malicious intent to injure the claimant,
13 or that such person deliberately failed to avoid unneces-
14 sary injury that such person knew the claimant was sub-
15 stantially certain to suffer. In any health care lawsuit
16 where no judgment for compensatory damages is rendered
17 against such person, no punitive damages may be awarded
18 with respect to the claim in such lawsuit. No demand for
19 punitive damages shall be included in a health care lawsuit
20 as initially filed. A court may allow a claimant to file an
21 amended pleading for punitive damages only upon a mo-
22 tion by the claimant and after a finding by the court, upon
23 review of supporting and opposing affidavits or after a
24 hearing, after weighing the evidence, that the claimant has
25 established by a substantial probability that the claimant

1 will prevail on the claim for punitive damages. At the re-
2 quest of any party in a health care lawsuit, the trier of
3 fact shall consider in a separate proceeding—

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

6 (2) the amount of punitive damages following a
7 determination of punitive liability.

8 If a separate proceeding is requested, evidence relevant
9 only to the claim for punitive damages, as determined by
10 applicable State law, shall be inadmissible in any pro-
11 ceeding to determine whether compensatory damages are
12 to be awarded.

13 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
14 AGES.—

15 (1) FACTORS CONSIDERED.—In determining
16 the amount of punitive damages, if awarded, in a
17 health care lawsuit, the trier of fact shall consider
18 only the following—

19 (A) the severity of the harm caused by the
20 conduct of such party;

21 (B) the duration of the conduct or any
22 concealment of it by such party;

23 (C) the profitability of the conduct to such
24 party;

1 (D) the number of products sold or med-
2 ical procedures rendered for compensation, as
3 the case may be, by such party, of the kind
4 causing the harm complained of by the claim-
5 ant;

6 (E) any criminal penalties imposed on such
7 party, as a result of the conduct complained of
8 by the claimant; and

9 (F) the amount of any civil fines assessed
10 against such party as a result of the conduct
11 complained of by the claimant.

12 (2) MAXIMUM AWARD.—The amount of punitive
13 damages, if awarded, in a health care lawsuit may
14 be as much as \$250,000 or as much as two times
15 the amount of economic damages awarded, which-
16 ever is greater. The jury shall not be informed of
17 this limitation.

18 (c) NO PUNITIVE DAMAGES FOR PRODUCTS THAT
19 COMPLY WITH FDA STANDARDS.—

20 (1) IN GENERAL.—

21 (A) No punitive damages may be awarded
22 against the manufacturer or distributor of a
23 medical product, or a supplier of any compo-
24 nent or raw material of such medical product,

1 based on a claim that such product caused the
2 claimant's harm where—

3 (i)(I) such medical product was sub-
4 ject to premarket approval, clearance, or li-
5 censure by the Food and Drug Administra-
6 tion with respect to the safety of the for-
7 mulation or performance of the aspect of
8 such medical product which caused the
9 claimant's harm or the adequacy of the
10 packaging or labeling of such medical
11 product; and

12 (II) such medical product was so ap-
13 proved, cleared, or licensed; or

14 (ii) such medical product is generally
15 recognized among qualified experts as safe
16 and effective pursuant to conditions estab-
17 lished by the Food and Drug Administra-
18 tion and applicable Food and Drug Admin-
19 istration regulations, including without
20 limitation those related to packaging and
21 labeling, unless the Food and Drug Admin-
22 istration has determined that such medical
23 product was not manufactured or distrib-
24 uted in substantial compliance with appli-

1 cable Food and Drug Administration stat-
2 utes and regulations.

3 (B) RULE OF CONSTRUCTION.—Subpara-
4 graph (A) may not be construed as establishing
5 the obligation of the Food and Drug Adminis-
6 tration to demonstrate affirmatively that a
7 manufacturer, distributor, or supplier referred
8 to in such subparagraph meets any of the con-
9 ditions described in such subparagraph.

10 (2) LIABILITY OF HEALTH CARE PROVIDERS.—
11 A health care provider who prescribes, or who dis-
12 penses pursuant to a prescription, a medical product
13 approved, licensed, or cleared by the Food and Drug
14 Administration shall not be named as a party to a
15 product liability lawsuit involving such product and
16 shall not be liable to a claimant in a class action
17 lawsuit against the manufacturer, distributor, or
18 seller of such product. Nothing in this paragraph
19 prevents a court from consolidating cases involving
20 health care providers and cases involving products li-
21 ability claims against the manufacturer, distributor,
22 or product seller of such medical product.

23 (3) PACKAGING.—In a health care lawsuit for
24 harm which is alleged to relate to the adequacy of
25 the packaging or labeling of a drug which is required

1 to have tamper-resistant packaging under regula-
2 tions of the Secretary of Health and Human Serv-
3 ices (including labeling regulations related to such
4 packaging), the manufacturer or product seller of
5 the drug shall not be held liable for punitive dam-
6 ages unless such packaging or labeling is found by
7 the trier of fact by clear and convincing evidence to
8 be substantially out of compliance with such regula-
9 tions.

10 (4) EXCEPTION.—Paragraph (1) shall not
11 apply in any health care lawsuit in which—

12 (A) a person, before or after premarket ap-
13 proval, clearance, or licensure of such medical
14 product, knowingly misrepresented to or with-
15 held from the Food and Drug Administration
16 information that is required to be submitted
17 under the Federal Food, Drug, and Cosmetic
18 Act (21 U.S.C. 301 et seq.) or section 351 of
19 the Public Health Service Act (42 U.S.C. 262)
20 that is material and is causally related to the
21 harm which the claimant allegedly suffered;

22 (B) a person made an illegal payment to
23 an official of the Food and Drug Administra-
24 tion for the purpose of either securing or main-

1 taining approval, clearance, or licensure of such
2 medical product; or

3 (C) the defendant caused the medical prod-
4 uct which caused the claimant's harm to be
5 misbranded or adulterated (as such terms are
6 used in chapter V of the Federal Food, Drug,
7 and Cosmetic Act (21 U.S.C. 351 et seq.)).

8 **SEC. 227. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
9 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
10 **SUITS.**

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

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

24 **SEC. 228. DEFINITIONS.**

25 In this subtitle:

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

7 (2) CLAIMANT.—The term “claimant” means
8 any person who brings a health care lawsuit, includ-
9 ing a person who asserts or claims a right to legal
10 or equitable contribution, indemnity, or subrogation,
11 arising out of a health care liability claim or action,
12 and any person on whose behalf such a claim is as-
13 serted or such an action is brought, whether de-
14 ceased, incompetent, or a minor.

15 (3) COLLATERAL SOURCE BENEFITS.—The
16 term “collateral source benefits” means any amount
17 paid or reasonably likely to be paid in the future to
18 or on behalf of the claimant, or any service, product,
19 or other benefit provided or reasonably likely to be
20 provided in the future to or on behalf of the claim-
21 ant, as a result of the injury or wrongful death, pur-
22 suant to—

23 (A) any State or Federal health, sickness,
24 income-disability, accident, or workers’ com-
25 pensation law;

1 (B) any health, sickness, income-disability,
2 or accident insurance that provides health bene-
3 fits or income-disability coverage;

4 (C) any contract or agreement of any
5 group, organization, partnership, or corporation
6 to provide, pay for, or reimburse the cost of
7 medical, hospital, dental, or income-disability
8 benefits; and

9 (D) any other publicly or privately funded
10 program.

11 (4) COMPENSATORY DAMAGES.—The term
12 “compensatory damages” means objectively
13 verifiable monetary losses incurred as a result of the
14 provision of, use of, or payment for (or failure to
15 provide, use, or pay for) health care services or med-
16 ical products, such as past and future medical ex-
17 penses, loss of past and future earnings, cost of ob-
18 taining domestic services, loss of employment, and
19 loss of business or employment opportunities, dam-
20 ages for physical and emotional pain, suffering, in-
21 convenience, physical impairment, mental anguish,
22 disfigurement, loss of enjoyment of life, loss of soci-
23 ety and companionship, loss of consortium (other
24 than loss of domestic service), hedonic damages, in-
25 jury to reputation, and all other nonpecuniary losses

1 of any kind or nature. The term “compensatory
2 damages” includes economic damages and non-
3 economic damages, as such terms are defined in this
4 section.

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

9 (6) ECONOMIC DAMAGES.—The term “economic
10 damages” means objectively verifiable monetary
11 losses incurred as a result of the provision of, use
12 of, or payment for (or failure to provide, use, or pay
13 for) health care services or medical products, such as
14 past and future medical expenses, loss of past and
15 future earnings, cost of obtaining domestic services,
16 loss of employment, and loss of business or employ-
17 ment opportunities.

18 (7) 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, a health care organi-
3 zation, or the manufacturer, distributor, supplier,
4 marketer, promoter, or seller of a medical product,
5 regardless of the theory of liability on which the
6 claim is based, or the number of claimants, plain-
7 tiffs, defendants, or other parties, or the number of
8 claims or causes of action, in which the claimant al-
9 leges a health care liability claim. Such term does
10 not include a claim or action which is based on
11 criminal liability; which seeks civil fines or penalties
12 paid to Federal, State, or local government; or which
13 is grounded in antitrust.

14 (8) HEALTH CARE LIABILITY ACTION.—The
15 term “health care liability action” means a civil ac-
16 tion brought in a State or Federal court or pursuant
17 to an alternative dispute resolution system, against
18 a health care provider, a health care organization, or
19 the manufacturer, distributor, supplier, marketer,
20 promoter, or seller of a medical product, regardless
21 of the theory of liability on which the claim is based,
22 or the number of plaintiffs, defendants, or other par-
23 ties, or the number of causes of action, in which the
24 claimant alleges a health care liability claim.

1 (9) HEALTH CARE LIABILITY CLAIM.—The
2 term “health care liability claim” means a demand
3 by any person, whether or not pursuant to ADR,
4 against a health care provider, health care organiza-
5 tion, or the manufacturer, distributor, supplier, mar-
6 keter, promoter, or seller of a medical product, in-
7 cluding, but not limited to, third-party claims, cross-
8 claims, counter-claims, or contribution claims, which
9 are based upon the provision of, use of, or payment
10 for (or the failure to provide, use, or pay for) health
11 care services or medical products, regardless of the
12 theory of liability on which the claim is based, or the
13 number of plaintiffs, defendants, or other parties, or
14 the number of causes of action.

15 (10) HEALTH CARE ORGANIZATION.—The term
16 “health care organization” means any person or en-
17 tity which is obligated to provide or pay for health
18 benefits under any health plan, including any person
19 or entity acting under a contract or arrangement
20 with a health care organization to provide or admin-
21 ister any health benefit.

22 (11) HEALTH CARE PROVIDER.—The term
23 “health care provider” means any person or entity
24 required by State or Federal laws or regulations to
25 be licensed, registered, or certified to provide health

1 care services, and being either so licensed, reg-
2 istered, or certified, or exempted from such require-
3 ment by other statute or regulation.

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

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

17 (14) MEDICAL PRODUCT.—The term “medical
18 product” means a drug, device, or biological product
19 intended for humans, and the terms “drug”, “de-
20 vice”, and “biological product” have the meanings
21 given such terms in sections 201(g)(1) and 201(h)
22 of the Federal Food, Drug and Cosmetic Act (21
23 U.S.C. 321(g)(1) and (h)) and section 351(a) of the
24 Public Health Service Act (42 U.S.C. 262(a)), re-

1 spectively, including any component or raw material
2 used therein, but excluding health care services.

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

12 (16) PUNITIVE DAMAGES.—The term “punitive
13 damages” means damages awarded, for the purpose
14 of punishment or deterrence, and not solely for com-
15 pensatory purposes, against a health care provider,
16 health care organization, or a manufacturer, dis-
17 tributor, or supplier of a medical product. Punitive
18 damages are neither economic nor noneconomic
19 damages.

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

1 overhead costs or charges for legal services are not
2 deductible disbursements or costs for such purpose.

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

10 **SEC. 229. EFFECT ON OTHER LAWS.**

11 (a) VACCINE INJURY.—

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

16 (A) this subtitle does not affect the appli-
17 cation of the rule of law to such an action; and

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

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

1 under this subtitle) will apply to such aspect of such
2 action.

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

7 **SEC. 230. STATE FLEXIBILITY AND PROTECTION OF**
8 **STATES' RIGHTS.**

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

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

22 (2) prohibits the introduction of evidence re-
23 garding collateral source benefits, or mandates or
24 permits subrogation or a lien on collateral source
25 benefits.

1 (b) PROTECTION OF STATES' RIGHTS AND OTHER
2 LAWS.—(1) Any issue that is not governed by any provi-
3 sion of law established by or under this subtitle (including
4 State standards of negligence) shall be governed by other-
5 wise applicable State or Federal law.

6 (2) This subtitle shall not preempt or supersede any
7 State or Federal law that imposes greater procedural or
8 substantive protections for health care providers and
9 health care organizations from liability, loss, or damages
10 than those provided by this subtitle or create a cause of
11 action.

12 (c) STATE FLEXIBILITY.—No provision of this sub-
13 title shall be construed to preempt—

14 (1) any State law (whether effective before, on,
15 or after the date of the enactment of this subtitle)
16 that specifies a particular monetary amount of com-
17 pensatory or punitive damages (or the total amount
18 of damages) that may be awarded in a health care
19 lawsuit, regardless of whether such monetary
20 amount is greater or lesser than is provided for
21 under this subtitle, notwithstanding section 223(a);
22 or

23 (2) any defense available to a party in a health
24 care lawsuit under any other provision of State or
25 Federal law.

1 **SEC. 231. APPLICABILITY; EFFECTIVE DATE.**

2 This subtitle 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 subtitle, except that
6 any health care lawsuit arising from an injury occurring
7 prior to the date of the enactment of this subtitle shall
8 be governed by the applicable statute of limitations provi-
9 sions in effect at the time the injury occurred.

