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(Original Signature of Member)

115TH CONGRESS
1ST SESSION

H. R. _____

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.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

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,*

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

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

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purpose.
- Sec. 3. Encouraging speedy resolution of claims.
- Sec. 4. Compensating patient injury.
- Sec. 5. Maximizing patient recovery.
- Sec. 6. Additional health benefits.
- Sec. 7. Authorization of payment of future damages to claimants in health care lawsuits.
- Sec. 8. Product liability for health care providers.
- Sec. 9. Definitions.
- Sec. 10. Effect on other laws.
- Sec. 11. Rules of construction.
- Sec. 12. Effective date.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—

3 (1) EFFECT ON HEALTH CARE ACCESS AND
4 COSTS.—Congress finds that the current civil justice
5 system is adversely affecting patient access to health
6 care services, better patient care, and cost-efficient
7 health care, in that the health care liability system
8 without reform is a costly and inefficient mechanism
9 for resolving claims of health care liability and com-
10 pensating injured patients, and is a deterrent to the
11 sharing of information among health care profes-
12 sionals which impedes efforts to improve patient
13 safety and quality of care.

14 (2) EFFECT ON FEDERAL SPENDING.—

15 (A) Congress finds that the health care li-
16 ability litigation systems existing throughout
17 the United States have a significant effect on
18 the amount, distribution, and use of Federal
19 funds because of—

1 (i) the large number of individuals
2 who receive health care benefits under pro-
3 grams operated or financed by the Federal
4 Government;

5 (ii) the large number of individuals
6 who benefit because of the exclusion from
7 Federal taxes of the amounts spent to pro-
8 vide them with health insurance benefits;
9 and

10 (iii) the large number of health care
11 providers who provide items or services for
12 which the Federal Government makes pay-
13 ments.

14 (B) Congress finds that the Federal deficit
15 would be reduced by \$62 billion over the next
16 decade if Federal health care liability reforms
17 were enacted, as verified by the Congressional
18 Budget Office.

19 (3) 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 (b) PURPOSE.—It is the purpose of this Act to imple-
4 ment reasonable, comprehensive, and effective health care
5 liability reforms designed to—

6 (1) improve the availability of health care serv-
7 ices in cases in which health care liability actions
8 have been shown to be a factor in the decreased
9 availability of services;

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

14 (3) ensure that persons with meritorious health
15 care injury claims receive fair and adequate com-
16 pensation, including reasonable noneconomic dam-
17 ages;

18 (4) improve the fairness and cost-effectiveness
19 of our current health care liability system to resolve
20 disputes over, and provide compensation for, health
21 care liability by reducing uncertainty in the amount
22 of compensation provided to injured individuals; and

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

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

2 (a) STATUTE OF LIMITATIONS.—The time for the
3 commencement of a health care lawsuit shall be 3 years
4 after the date of injury or 1 year after the claimant dis-
5 covers, or through the use of reasonable diligence should
6 have discovered, the injury, whichever occurs first. In no
7 event shall the time for commencement of a health care
8 lawsuit exceed 3 years after the date of injury unless tolled
9 for any of the following—

10 (1) upon proof of fraud;

11 (2) intentional concealment; or

12 (3) the presence of a foreign body, which has no
13 therapeutic or diagnostic purpose or effect, in the
14 person of the injured person.

15 Actions by a minor shall be commenced within 3 years
16 from the date of the injury except that actions by a minor
17 under the full age of 6 years shall be commenced within
18 3 years of injury, or 1 year after the injury is discovered,
19 or through the use of reasonable diligence should have
20 been discovered, or prior to the minor's 8th birthday,
21 whichever provides a longer period. Such time limitation
22 shall be tolled for minors for any period during which a
23 parent or guardian and a health care provider have com-
24 mitted fraud or collusion in the failure to bring an action
25 on behalf of the injured minor.

1 (b) STATE FLEXIBILITY.—No provision of subsection
2 (a) 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—

5 (1) specifies a time period of less than 3 years
6 after the date of injury or less than 1 year after the
7 claimant discovers, or through the use of reasonable
8 diligence should have discovered, the injury, for the
9 filing of a health care lawsuit;

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

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

14 (4) establishes a statute of repose for the filing
15 of health care lawsuit.

16 **SEC. 4. 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 Act shall limit a claim-
20 ant’s recovery of the full amount of the available economic
21 damages, notwithstanding the limitation in subsection (b).

22 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any
23 health care lawsuit, the amount of noneconomic damages,
24 if available, shall not exceed \$250,000, regardless of the
25 number of parties against whom the action is brought or

1 the number of separate claims or actions brought with re-
2 spect to the same injury.

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

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

1 this section, the trier of fact shall determine the propor-
2 tion of responsibility of each party for the claimant's
3 harm.

4 (e) 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 particular monetary amount of
8 economic or noneconomic damages (or the total amount
9 of damages) that may be awarded in a health care lawsuit,
10 regardless of whether such monetary amount is greater
11 or lesser than is provided for under this section.

12 **SEC. 5. MAXIMIZING PATIENT RECOVERY.**

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

1 for representing all claimants in a health care lawsuit ex-
2 ceed the following limits:

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

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

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

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

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

20 (c) STATE FLEXIBILITY.—No provision of this sec-
21 tion shall be construed to preempt any State law (whether
22 effective before, on, or after the date of the enactment of
23 this Act) that specifies a lesser percentage or lesser total
24 value of damages which may be claimed by an attorney
25 representing a claimant in a health care lawsuit.

1 **SEC. 6. ADDITIONAL HEALTH BENEFITS.**

2 (a) COLLATERAL SOURCE BENEFITS.—In any health
3 care lawsuit involving injury or wrongful death, any party
4 may introduce evidence of collateral source benefits. If a
5 party elects to introduce such evidence, any opposing party
6 may introduce evidence of any amount paid or contributed
7 or reasonably likely to be paid or contributed in the future
8 by or on behalf of the opposing party to secure the right
9 to such collateral source benefits.

10 (b) SUBROGATION.—No provider of collateral source
11 benefits shall recover any amount against the claimant or
12 receive any lien or credit against the claimant's recovery
13 or be equitably or legally subrogated to the right of the
14 claimant in a health care lawsuit involving injury or
15 wrongful death.

16 (c) APPLICABILITY.—This section shall apply to any
17 health care lawsuit that is settled as well as a health care
18 lawsuit that is resolved by a fact finder. This section shall
19 not apply to section 1862(b) (42 U.S.C. 1395y(b)) or sec-
20 tion 1902(a)(25) (42 U.S.C. 1396a(a)(25)) of the Social
21 Security Act.

22 (d) STATE FLEXIBILITY.—No provision of subsection
23 (a) shall be construed to preempt any State law (whether
24 effective before, on, or after the date of the enactment of
25 this Act) that specifies a mandatory offset of collateral

1 source benefits against an award in a health care liability
2 lawsuit.

3 **SEC. 7. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
4 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
5 **SUITS.**

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

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

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

1 **SEC. 8. PRODUCT LIABILITY FOR HEALTH CARE PRO-**
2 **VIDERS.**

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

10 **SEC. 9. DEFINITIONS.**

11 In this Act:

12 (1) **ALTERNATIVE DISPUTE RESOLUTION SYS-**
13 **TEM; ADR.**—The term “alternative dispute resolution
14 system” or “ADR” means a system that provides
15 for the resolution of health care lawsuits in a man-
16 ner other than through a civil action brought in a
17 State or Federal court.

18 (2) **CLAIMANT.**—The term “claimant” means
19 any person who brings a health care lawsuit, includ-
20 ing a person who asserts or claims a right to legal
21 or equitable contribution, indemnity, or subrogation,
22 arising out of a health care liability claim or action,
23 and any person on whose behalf such a claim is as-
24 serted or such an action is brought, whether de-
25 ceased, incompetent, or a minor.

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

9 (A) any State or Federal health, sickness,
10 income-disability, accident, or workers’ com-
11 pensation law;

12 (B) any health, sickness, income-disability,
13 or accident insurance that provides health bene-
14 fits or income-disability coverage;

15 (C) any contract or agreement of any
16 group, organization, partnership, or corporation
17 to provide, pay for, or reimburse the cost of
18 medical, hospital, dental, or income-disability
19 benefits; and

20 (D) any other publicly or privately funded
21 program.

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

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

13 (6) FUTURE DAMAGES.—The term “future
14 damages” means any damages that are incurred
15 after the date of judgment, settlement, or other reso-
16 lution (including mediation, or any other form of al-
17 ternative dispute resolution).

18 (7) HEALTH CARE LAWSUIT.—The term
19 “health care lawsuit” means any health care liability
20 claim concerning the provision of goods or services
21 for which coverage was provided in whole or in part
22 via a Federal program, subsidy or tax benefit, or
23 any health care liability action concerning the provi-
24 sion of goods or services for which coverage was pro-
25 vided in whole or in part via a Federal program,

1 subsidy or tax benefit, brought in a State or Federal
2 court or pursuant to an alternative dispute resolu-
3 tion system, against a health care provider regard-
4 less of the theory of liability on which the claim is
5 based, or the number of claimants, plaintiffs, de-
6 fendants, or other parties, or the number of claims
7 or causes of action, in which the claimant alleges a
8 health care liability claim. Such term does not in-
9 clude a claim or action which is based on criminal
10 liability; which seeks civil fines or penalties paid to
11 Federal, State, or local government; or which is
12 grounded in antitrust.

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

22 (9) 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, including, but not

1 limited to, third-party claims, cross-claims, counter-
2 claims, or contribution claims, which are based upon
3 the provision or use of (or the failure to provide or
4 use) health care services or medical products, re-
5 gardless of the theory of liability on which the claim
6 is based, or the number of plaintiffs, defendants, or
7 other parties, or the number of causes of action.

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

18 (11) HEALTH CARE SERVICES.—The term
19 “health care services” means the provision of any
20 goods or services by a health care provider, or by
21 any individual working under the supervision of a
22 health care provider, that relates to the diagnosis,
23 prevention, or treatment of any human disease or
24 impairment, or the assessment or care of the health
25 of human beings.

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

11 (13) NONECONOMIC DAMAGES.—The term
12 “noneconomic damages” means damages for phys-
13 ical and emotional pain, suffering, inconvenience,
14 physical impairment, mental anguish, disfigurement,
15 loss of enjoyment of life, loss of society and compan-
16 ionship, loss of consortium (other than loss of do-
17 mestic service), hedonic damages, injury to reputa-
18 tion, and all other nonpecuniary losses of any kind
19 or nature incurred as a result of the provision or use
20 of (or failure to provide or use) health care services
21 or medical products, unless otherwise defined under
22 applicable state law.

23 (14) RECOVERY.—The term “recovery” means
24 the net sum recovered after deducting any disburse-
25 ments or costs incurred in connection with prosecu-

1 tion or settlement of the claim, including all costs
2 paid or advanced by any person. Costs of health care
3 incurred by the plaintiff and the attorneys' office
4 overhead costs or charges for legal services are not
5 deductible disbursements or costs for such purpose.

6 (15) REPRESENTATIVE.—The term “represent-
7 ative” means a legal guardian, attorney, person des-
8 ignated to make decisions on behalf of a patient
9 under a medical power of attorney, or any person
10 recognized in law or custom as a patient's agent.

11 (16) STATE.—The term “State” means each of
12 the several States, the District of Columbia, the
13 Commonwealth of Puerto Rico, the Virgin Islands,
14 Guam, American Samoa, the Northern Mariana Is-
15 lands, the Trust Territory of the Pacific Islands, and
16 any other territory or possession of the United
17 States, or any political subdivision thereof.

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

19 (a) VACCINE INJURY.—

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

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

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

4 (2) If there is an aspect of a civil action
5 brought for a vaccine-related injury or death to
6 which a Federal rule of law under title XXI of the
7 Public Health Service Act does not apply, then this
8 Act or otherwise applicable law (as determined
9 under this Act) will apply to such aspect of such ac-
10 tion.

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

15 **SEC. 11. RULES OF CONSTRUCTION.**

16 (a) HEALTH CARE LAWSUITS.—Unless otherwise
17 specified in this Act, the provisions governing health care
18 lawsuits set forth in this Act preempt, subject to sub-
19 sections (b) and (c), State law to the extent that State
20 law prevents the application of any provisions of law estab-
21 lished by or under this Act. The provisions governing
22 health care lawsuits set forth in this Act supersede chapter
23 171 of title 28, United States Code, to the extent that
24 such chapter—

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

6 (2) prohibits the introduction of evidence re-
7 garding collateral source benefits, or mandates or
8 permits subrogation or a lien on collateral source
9 benefits.

10 (b) **PROTECTION OF STATES' RIGHTS AND OTHER**
11 **LAWS.**—Any issue that is not governed by any provision
12 of law established by or under this Act (including State
13 standards of negligence) shall be governed by otherwise
14 applicable State or Federal law

15 (c) **STATE FLEXIBILITY.**—No provision of this Act
16 shall be construed to preempt any defense available to a
17 party in a health care lawsuit under any other provision
18 of State or Federal law.

19 **SEC. 12. EFFECTIVE DATE.**

20 This Act shall apply to any health care lawsuit
21 brought in a Federal or State court, or subject to an alter-
22 native dispute resolution system, that is initiated on or
23 after the date of the enactment of this Act, except that
24 any health care lawsuit arising from an injury occurring
25 prior to the date of the enactment of this Act shall be

- 1 governed by the applicable statute of limitations provisions
- 2 in effect at the time the cause of action accrued.