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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Protecting Access to Care Act of 2017”.

(b) Table of Contents.—The table of contents of 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.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that the current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system without reform is a costly and inefficient mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON FEDERAL SPENDING.—

(A) Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—
(i) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

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

(iii) the large number of health care providers who provide items or services for which the Federal Government makes payments.

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

(3) Effect on Interstate Commerce.—

Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for
health care liability insurance purchased by health care system providers.

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

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of “defensive medicine” and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

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

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.
SEC. 3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

(a) Statute of Limitations.—The time for the
commencement of a health care lawsuit shall be 3 years
after the date of injury or 1 year after the claimant discov-
ers, or through the use of reasonable diligence should
have discovered, the injury, whichever occurs first. In no
event shall the time for commencement of a health care
lawsuit exceed 3 years after the date of injury unless tolled
for any of the following—

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

Actions by a minor shall be commenced within 3 years
from the date of the injury except that actions by a minor
under the full age of 6 years shall be commenced within
3 years of injury, or 1 year after the injury is discovered,
or through the use of reasonable diligence should have
been discovered, or prior to the minor’s 8th birthday,
whichever provides a longer period. Such time limitation
shall be tolled for minors for any period during which a
parent or guardian and a health care provider have com-
mitted fraud or collusion in the failure to bring an action
on behalf of the injured minor.
(b) **STATE FLEXIBILITY.**—No provision of subsection (a) shall be construed to preempt any state law (whether effective before, on, or after the date of the enactment of this Act) that—

1. specifies a time period of less than 3 years after the date of injury or less than 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, for the filing of a health care lawsuit;
2. that specifies a different time period for the filing of lawsuits by a minor;
3. that triggers the time period based on the date of the alleged negligence; or
4. establishes a statute of repose for the filing of health care lawsuit.

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

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

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

(c) No Discount of Award for Noneconomic Damages.—For purposes of applying the limitation in subsection (b), future noneconomic damages shall not be discounted to present value. The jury shall not be in-
formed about the maximum award for noneconomic dam-
ages. An award for noneconomic damages in excess of
$250,000 shall be reduced either before the entry of judg-
ment, or by amendment of the judgment after entry of
judgment, and such reduction shall be made before ac-
counting for any other reduction in damages required by
law. If separate awards are rendered for past and future
noneconomic damages and the combined awards exceed
$250,000, the future noneconomic damages shall be re-
duced first.

(d) Fair Share Rule.—In any health care lawsuit,
each party shall be liable for that party’s several share
of any damages only and not for the share of any other
person. Each party shall be liable only for the amount of
damages allocated to such party in direct proportion to
such party’s percentage of responsibility. Whenever a
judgment of liability is rendered as to any party, a sepa-
rate judgment shall be rendered against each such party
for the amount allocated to such party. For purposes of
this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant’s harm.

(e) State Flexibility.—No provision of this section shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of economic or noneconomic damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this section.

SEC. 5. MAXIMIZING PATIENT RECOVERY.

(a) Court Supervision of Share of Damages Actually Paid to Claimants.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants. In particular, in any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant’s damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity. In no event shall the total of all contingent fees
for representing all claimants in a health care lawsuit exceed the following limits:

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

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

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

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

(b) Applicability.—The limitations in this section shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution. In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section. The requirement for court supervision in the first two sentences of subsection (a) applies only in civil actions.

(c) State Flexibility.—No provision of this section shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a lesser percentage or lesser total value of damages which may be claimed by an attorney representing a claimant in a health care lawsuit.
SEC. 6. ADDITIONAL HEALTH BENEFITS.

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

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

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

(d) STATE FLEXIBILITY.—No provision of subsection (a) shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a mandatory offset of collateral
source benefits against an award in a health care liability
lawsuit.

SEC. 7. AUTHORIZATION OF PAYMENT OF FUTURE DAM-
AGES TO CLAIMANTS IN HEALTH CARE LAW-
SUIT.

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

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

(c) State Flexibility.—No provision of this sec-
tion shall be construed to preempt any State law (whether
effective before, on, or after the date of the enactment of
this Act) that specifies periodic payments for future dam-
ages at any amount other than $50,000 or that mandates
such payments absent the request of either party.
SEC. 8. PRODUCT LIABILITY FOR HEALTH CARE PROVIDERS.

A health care provider who prescribes, or who dispenses pursuant to a prescription, a medical product approved, licensed, or cleared by the Food and Drug Administration shall not be named as a party to a product liability lawsuit involving such product and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or seller of such product.

SEC. 9. DEFINITIONS.

In this Act:

(1) **Alternative dispute resolution system; ADR.**—The term “alternative dispute resolution system” or “ADR” means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) **Claimant.**—The term “claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity, or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.
(3) Collateral Source Benefits.—The term “collateral source benefits” means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product, or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers’ compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

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

(D) any other publicly or privately funded program.

(4) Contingent Fee.—The term “contingent fee” includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.
(5) **ECONOMIC DAMAGES.**—The term “economic damages” means objectively verifiable monetary losses incurred as a result of the provision or use of (or failure to provide or use) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, unless otherwise defined under applicable state law. In no circumstances shall damages for health care services or medical products exceed the amount actually paid or incurred by or on behalf of the claimant.

(6) **FUTURE DAMAGES.**—The term “future damages” means any damages that are incurred after the date of judgment, settlement, or other resolution (including mediation, or any other form of alternative dispute resolution).

(7) **HEALTH CARE LAWSUIT.**—The term “health care lawsuit” means any health care liability claim concerning the provision of goods or services for which coverage was provided in whole or in part via a Federal program, subsidy or tax benefit, or any health care liability action concerning the provision of goods or services for which coverage was provided in whole or in part via a Federal program,
subsidy or tax benefit, brought in a State or Federal

court or pursuant to an alternative dispute resolu-
tion system, against a health care provider regard-
less of the theory of liability on which the claim is
based, or the number of claimants, plaintiffs, de-
fendants, or other parties, or the number of claims
or causes of action, in which the claimant alleges a
health care liability claim. Such term does not in-
clude a claim or action which is based on criminal
liability; which seeks civil fines or penalties paid to
Federal, State, or local government; or which is
grounded in antitrust.

(8) Health care liability action.—The
term “health care liability action” means a civil ac-
tion brought in a State or Federal court or pursuant
to an alternative dispute resolution system, against
a health care provider regardless of the theory of li-
ability on which the claim is based, or the number
of plaintiffs, defendants, or other parties, or the
number of causes of action, in which the claimant al-
leges a health care liability claim.

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

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

(11) HEALTH CARE SERVICES.—The term
“health care services” means the provision of any
goods or services by a health care provider, or by
any individual working under the supervision of a
health care provider, that relates to the diagnosis,
prevention, or treatment of any human disease or
impairment, or the assessment or care of the health
of human beings.
(12) **MEDICAL PRODUCT.**—The term “medical product” means a drug, device, or biological product intended for humans, and the terms “drug”, “device”, and “biological product” have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(g)(1) and (h)) and section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)), respectively, including any component or raw material used therein, but excluding health care services.

(13) **NONECONOMIC DAMAGES.**—The term “noneconomic damages” means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature incurred as a result of the provision or use of (or failure to provide or use) health care services or medical products, unless otherwise defined under applicable state law.

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

(15) REPRESENTATIVE.—The term “representative” means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a medical power of attorney, or any person recognized in law or custom as a patient’s agent.

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

SEC. 10. EFFECT ON OTHER LAWS.

(a) VACCINE INJURY.—

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

(A) this Act does not affect the application of the rule of law to such an action; and
(B) any rule of law prescribed by this Act in conflict with a rule of law of such title XXI shall not apply to such action.

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

(b) Other Federal Law.—Except as provided in this section, nothing in this Act shall be deemed to affect any defense available to a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. 11. RULES OF CONSTRUCTION.

(a) Health Care Lawsuits.—Unless otherwise specified in this Act, the provisions governing health care lawsuits set forth in this Act preempt, subject to subsections (b) and (e), State law to the extent that State law prevents the application of any provisions of law established by or under this Act. The provisions governing health care lawsuits set forth in this Act supersede chapter 171 of title 28, United States Code, to the extent that such chapter—
(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this Act; or

(2) prohibits the introduction of evidence regarding collateral source benefits, or mandates or permits subrogation or a lien on collateral source benefits.

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

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

SEC. 12. EFFECTIVE DATE.

This Act shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring 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.