

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO COMMITTEE PRINT**

**(H.R. 5, as Reported from the Subcommittee)**

**OFFERED BY MR. BILIRAKIS**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Help Efficient, Acces-  
3 sible, Low-cost, Timely Healthcare (HEALTH) Act of  
4 2003”.

**5 SEC. 2. FINDINGS AND PURPOSE.**

6 (a) FINDINGS.—

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

1           (2) EFFECT ON INTERSTATE COMMERCE.—  
2           Congress finds that the health care and insurance  
3           industries are industries affecting interstate com-  
4           merce and the health care liability litigation systems  
5           existing throughout the United States are activities  
6           that affect interstate commerce by contributing to  
7           the high costs of health care and premiums for  
8           health care liability insurance purchased by health  
9           care system providers.

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

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

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

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

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

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

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

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

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

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

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

2 The time for the commencement of a health care law-  
3 suit shall be 3 years after the date of manifestation of  
4 injury or 1 year after the claimant discovers, or through  
5 the use of reasonable diligence should have discovered, the  
6 injury, whichever occurs first. In no event shall the time  
7 for commencement of a health care lawsuit exceed 3 years  
8 after the date of manifestation of injury unless tolled for  
9 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  
13 no 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 alleged manifestation of injury except  
17 that actions by a minor under the full age of 6 years shall  
18 be commenced within 3 years of manifestation of injury  
19 or prior to the minor's 8th birthday, whichever provides  
20 a longer period. Such time limitation shall be tolled for  
21 minors for any period during which a parent or guardian  
22 and a health care provider or health care organization  
23 have committed fraud or collusion in the failure to bring  
24 an action on behalf of the injured minor.

1 **SEC. 4. 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, may be as much as \$250,000, regardless of  
10 the number of parties against whom the action is brought  
11 or the number of separate claims or actions brought with  
12 respect 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 **SEC. 5. MAXIMIZING PATIENT RECOVERY.**

14 (a) COURT SUPERVISION OF SHARE OF DAMAGES  
15 ACTUALLY PAID TO CLAIMANTS.—In any health care law-  
16 suit, the court shall supervise the arrangements for pay-  
17 ment of damages to protect against conflicts of interest  
18 that may have the effect of reducing the amount of dam-  
19 ages awarded that are actually paid to claimants. In par-  
20 ticular, in any health care lawsuit in which the attorney  
21 for a party claims a financial stake in the outcome by vir-  
22 tue of a contingent fee, the court shall have the power  
23 to restrict the payment of a claimant's damage recovery  
24 to such attorney, and to redirect such damages to the  
25 claimant based upon the interests of justice and principles

1 of equity. In no event shall the total of all contingent fees  
2 for representing all claimants in a health care lawsuit ex-  
3 ceed the following limits:

4 (1) 40 percent of the first \$50,000 recovered by  
5 the claimant(s).

6 (2) 33 $\frac{1}{3}$  percent of the next \$50,000 recovered  
7 by the claimant(s).

8 (3) 25 percent of the next \$500,000 recovered  
9 by the claimant(s).

10 (4) 15 percent of any amount by which the re-  
11 covery by the claimant(s) is in excess of \$600,000.

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

21 **SEC. 6. ADDITIONAL HEALTH BENEFITS.**

22 In any health care lawsuit involving injury or wrong-  
23 ful death, any party may introduce evidence of collateral  
24 source benefits. If a party elects to introduce such evi-  
25 dence, any opposing party may introduce evidence of any

1 amount paid or contributed or reasonably likely to be paid  
2 or contributed in the future by or on behalf of the oppos-  
3 ing party to secure the right to such collateral source bene-  
4 fits. No provider of collateral source benefits shall recover  
5 any amount against the claimant or receive any lien or  
6 credit against the claimant's recovery or be equitably or  
7 legally subrogated to the right of the claimant in a health  
8 care lawsuit involving injury or wrongful death. This sec-  
9 tion shall apply to any health care lawsuit that is settled  
10 as well as a health care lawsuit that is resolved by a fact  
11 finder. This section shall not apply to section 1862(b) (42  
12 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C.  
13 1396a(a)(25)) of the Social Security Act.

14 **SEC. 7. PUNITIVE DAMAGES.**

15 (a) IN GENERAL.—Punitive damages may, if other-  
16 wise permitted by applicable State or Federal law, be  
17 awarded against any person in a health care lawsuit only  
18 if it is proven by clear and convincing evidence that such  
19 person acted with malicious intent to injure the claimant,  
20 or that such person deliberately failed to avoid unneces-  
21 sary injury that such person knew the claimant was sub-  
22 stantially certain to suffer. In any health care lawsuit  
23 where no judgment for compensatory damages is rendered  
24 against such person, no punitive damages may be awarded  
25 with respect to the claim in such lawsuit. No demand for



1 punitive damages shall be included in a health care lawsuit  
2 as initially filed. A court may allow a claimant to file an  
3 amended pleading for punitive damages only upon a mo-  
4 tion by the claimant and after a finding by the court, upon  
5 review of supporting and opposing affidavits or after a  
6 hearing, after weighing the evidence, that the claimant has  
7 established by a substantial probability that the claimant  
8 will prevail on the claim for punitive damages. At the re-  
9 quest of any party in a health care lawsuit, the trier of  
10 fact shall consider in a separate proceeding—

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

13 (2) the amount of punitive damages following a  
14 determination of punitive liability.

15 If a separate proceeding is requested, evidence relevant  
16 only to the claim for punitive damages, as determined by  
17 applicable State law, shall be inadmissible in any pro-  
18 ceeding to determine whether compensatory damages are  
19 to be awarded.

20 (b) DETERMINING AMOUNT OF PUNITIVE DAM-  
21 AGES.—

22 (1) FACTORS CONSIDERED.—In determining  
23 the amount of punitive damages, if awarded, in a  
24 health care lawsuit, the trier of fact shall consider  
25 only the following:

1 (A) the severity of the harm caused by the  
2 conduct of such party;

3 (B) the duration of the conduct or any  
4 concealment of it by such party;

5 (C) the profitability of the conduct to such  
6 party;

7 (D) the number of products sold or med-  
8 ical procedures rendered for compensation, as  
9 the case may be, by such party, of the kind  
10 causing the harm complained of by the claim-  
11 ant;

12 (E) any criminal penalties imposed on such  
13 party, as a result of the conduct complained of  
14 by the claimant; and

15 (F) the amount of any civil fines assessed  
16 against such party as a result of the conduct  
17 complained of by the claimant.

18 (2) MAXIMUM AWARD.—The amount of punitive  
19 damages, if awarded, in a health care lawsuit may  
20 be as much as \$250,000 or as much as two times  
21 the amount of economic damages awarded, which-  
22 ever is greater. The jury shall not be informed of  
23 this limitation.

24 (c) NO PUNITIVE DAMAGES FOR PRODUCTS IN COM-  
25 PLIANCE WITH FDA STANDARDS.—

1 (1) PUNITIVE DAMAGES.—

2 (A) IN GENERAL.—In addition to the re-  
3 quirements of subsections (a) and (b), punitive  
4 damages may not be awarded against the man-  
5 ufacturer or distributor of a medical product, or  
6 a supplier of any component or raw material of  
7 such medical product, on the basis that the  
8 harm to the claimant was caused by the lack of  
9 safety or effectiveness of the particular medical  
10 product involved, unless, the claimant dem-  
11 onstrates by clear and convincing evidence  
12 that—

13 (i) the manufacturer or distributor of  
14 the particular medical product, or supplier  
15 of any component or raw material of such  
16 medical product, failed to comply with a  
17 specific requirement of the Federal Food,  
18 Drug, and Cosmetic Act, section 351 of  
19 the Public Health Service Act, or the regu-  
20 lations promulgated thereunder; and

21 (ii) the harm attributed to the par-  
22 ticular medical product resulted from such  
23 failure to comply with such specific statu-  
24 tory requirement or regulation.

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

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

21           (3) EXCEPTION.—Paragraph (1) shall not  
22 apply in any health care lawsuit in which—

23           (A) a person knowingly misrepresented to  
24 the Food and Drug Administration information  
25 which is required to be submitted under the

1 Federal Food, Drug, and Cosmetic Act (21  
2 U.S.C. 301 et seq.) or section 351 of the Public  
3 Health Service Act (42 U.S.C. 262); or

4 (B) a person made an illegal payment to a  
5 governmental official for the purpose of either  
6 (i) securing or maintaining approval, clearance,  
7 or licensure of such medical product or (ii) pre-  
8 venting an enforcement action.

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

12 (a) IN GENERAL.—In any health care lawsuit, if an  
13 award of future damages, without reduction to present  
14 value, equaling or exceeding \$50,000 is made against a  
15 party with sufficient insurance or other assets to fund a  
16 periodic payment of such a judgment, the court shall, at  
17 the request of any party, enter a judgment ordering that  
18 the future damages be paid by periodic payments.

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

22 **SEC. 9. DEFINITIONS.**

23 In this Act:

24 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-  
25 TEM; ADR.—The term “alternative dispute resolution

1 system” or “ADR” means a system that provides  
2 for the resolution of health care lawsuits in a man-  
3 ner other than through a civil action brought in a  
4 State or Federal court.

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

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

21 (A) any State or Federal health, sickness,  
22 income-disability, accident, or workers’ com-  
23 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 verifi-  
13 able monetary losses incurred as a result of the pro-  
14 vision of, use of, or payment for (or failure to pro-  
15 vide, use, or pay for) health care services or medical  
16 products, such as past and future medical expenses,  
17 loss of past and future earnings, cost of obtaining  
18 domestic services, loss of employment, and loss of  
19 business or employment opportunities, damages for  
20 physical and emotional pain, suffering, inconven-  
21 ience, physical impairment, mental anguish, dis-  
22 figurement, loss of enjoyment of life, loss of society  
23 and companionship, loss of consortium (other than  
24 loss of domestic service), hedonic damages, injury to  
25 reputation, and all other nonpecuniary losses of any

1 kind or nature. The term “compensatory damages”  
2 includes economic damages and noneconomic dam-  
3 ages, as such terms are defined in this section.

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

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

17 (7) HEALTH CARE LAWSUIT.—The term  
18 “health care lawsuit” means any health care liability  
19 claim concerning the provision of health care goods  
20 or services affecting interstate commerce, or any  
21 health care liability action concerning the provision  
22 of health care goods or services affecting interstate  
23 commerce, brought in a State or Federal court or  
24 pursuant to an alternative dispute resolution system,  
25 against a health care provider, a health care organi-



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

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 pursu-  
16 ant to an alternative dispute resolution system,  
17 against a health care provider, a health care organi-  
18 zation, or the manufacturer, distributor, supplier,  
19 marketer, promoter, or seller of a medical product,  
20 regardless of the theory of liability on which the  
21 claim is based, or the number of plaintiffs, defend-  
22 ants, or other parties, or the number of causes of ac-  
23 tion, in which the claimant alleges a health care li-  
24 ability 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) and section 351(a) of the Public Health  
24 Service Act (42 U.S.C. 262(a)), respectively, includ-

1       ing any component or raw material used therein, but  
2       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. 10. 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 Act does not affect the application  
17 of the rule of law to such an action; and

18 (B) any rule of law prescribed by this Act  
19 in conflict with a rule of law of such title XXI  
20 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 Act or otherwise applicable law (as determined

1 under this Act) will apply to such aspect of such ac-  
2 tion.

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

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

9 (a) HEALTH CARE LAWSUITS.—The provisions gov-  
10 erning health care lawsuits set forth in this Act preempt,  
11 subject to subsections (b) and (c), State law to the extent  
12 that State law prevents the application of any provisions  
13 of law established by or under this Act. The provisions  
14 governing health care lawsuits set forth in this Act super-  
15 sede chapter 171 of title 28, United States Code, to the  
16 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 Act; 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 Act (including  
4 State standards of negligence) shall be governed by other-  
5 wise applicable State or Federal law.

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

11 (c) STATE FLEXIBILITY.—No provision of this Act  
12 shall be construed to preempt—

13 (1) any State law (whether effective before, on,  
14 or after the date of the enactment of this Act) that  
15 specifies a particular monetary amount of compen-  
16 satory or punitive damages (or the total amount of  
17 damages) that may be awarded in a health care law-  
18 suit, regardless of whether such monetary amount is  
19 greater or lesser than is provided for under this Act,  
20 notwithstanding section 4(a); or

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

1 **SEC. 12. APPLICABILITY; 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 injury occurred.

10 **SEC. 13. SENSE OF CONGRESS.**

11 It is the sense of Congress that a health insurer  
12 should be liable for damages for harm caused when it  
13 makes a decision as to what care is medically necessary  
14 and appropriate.