



Legislative Bulletin.....September 26, 2002

Contents:

Motion to Instruct on H.R. 3295 – Help America Vote Act

H.R. 4600—Help Efficient, Accessible, Low Cost, Timely Health Care (HEALTH) Act of 2002

NOTE: A follow-up Legislative Bulletin covering the Justice Department Authorization Conference Report and the final Continuing Resolution will be released later today.

Motion to Instruct Conferees on H.R. 3295 (Help America Vote Act) *(Eddie Bernice Johnson)*

Order of Business: On Wednesday, September 25th, Rep. Eddie Bernice Johnson of Texas offered a motion to instruct conferees on H.R. 3295, the “Help America Vote Act.” A recorded vote will be taken on the motion today.

Summary: The Waters motion would instruct House conferees to take appropriate actions as needed to ensure that a conference report on the bill is filed before October 1, 2002.

Additional Background: Last week, the House voted on an identical motion to instruct offered by Rep. Waters:

<http://clerkweb.house.gov/cgi-bin/vote.exe?year=2002&rollnumber=403>

For detailed information on H.R. 3295 as it passed the House, please visit these websites:

<http://www.house.gov/burton/RSC/electionreform.PDF>

<http://www.house.gov/burton/RSC/ElectionRefMgrsAmnd.PDF>

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H.R. 4600— Help Efficient, Accessible, Low Cost, Timely Health Care (HEALTH) Act of 2002 (Greenwood)

Order of Business: The bill is scheduled for consideration on Thursday, September 26th, under a closed rule.

Summary: H.R. 4600 makes a variety of reforms to the health care liability system for any lawsuit filed in a federal or state court.

The legislation requires that health care lawsuits commence no later than 3 years after the date of injury or 1 year after the claimant discovers the injury, whichever occurs first. The only exceptions to the limit are in cases of fraud, intentional concealment, the presence of a foreign body in the injured person, or if the injury occurred to a minor while under the age of 6.

The bill sets a cap on noneconomic damages (pain and suffering) of \$250,000 for any lawsuit. A jury is not to be informed of the maximum award, but any amount over \$250,000 must be reduced either before the judgment is entered or by amendment after the judgment is entered. No limit is set on actual economic damages.

The bill also establishes a “fair share” rule, under which each party in a lawsuit is liable only for that party’s share of damages based on the degree of responsibility. Currently, a defendant is liable for the entire sum of the damages even when only partially at fault. Under the bill, the “trier of fact” (a judge in a bench trial or a jury in a jury trial) would determine the proportion of responsibility of each party involved in the claim.

H.R. 4600 establishes a system under which the court shall supervise the payment of damages. Under this system, the court may limit contingent fee payments (where an attorney receives a percentage of the damages) to the claimant’s attorney and redirect the payment to the claimant “based upon the interests of justice and principles of equity.” Contingent fees may not exceed:

- 40 percent of the first \$50,000 in damages
- 33 1/3 percent of the next \$50,000 in damages
- 25 percent of the next \$500,000 in damages
- 15 percent of any amount over \$600,000.

Under the bill, punitive damages (if otherwise permitted by state or federal law) may be awarded against any person in a health care lawsuit if “it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.” No punitive damages can be awarded in a suit where compensatory damages are not awarded. Any party in a lawsuit can request that a separate proceeding be used to determine whether punitive damages are to be awarded and the amount of such damages. The maximum award is set at two times the economic damages or \$250,000, whichever is greater. Factors to be used when considering punitive damages may only include:

- severity of harm;
- duration of the conduct;
- profitability of the conduct;
- number of products sold or procedures rendered that caused harm;
- any criminal penalties imposed; and
- the amount of any civil fines.

No punitive damages may be awarded against the manufacturer or distributor of a medical product if the product was approved by the Food and Drug Administration (FDA) or is generally recognized by experts as safe and effective under conditions established by the FDA. Similarly, a health care provider who provides a drug or device approved by the FDA cannot be named in a product liability lawsuit or held liable in a class action lawsuit. An exception is made in cases of fraud or bribery of FDA officials.

The bill also allows the payment of future damages totaling \$50,000 or more to be paid in periodic payments and allows evidence of collateral source benefits (such as disability payments, workers' compensation, or medical benefits) to be introduced in any lawsuit.

H.R. 4600 includes language that the bill preempts state law if state law prevents the application of its provisions, but does not preempt or supersede laws that provide greater protections for health care providers and health care organizations from liability. The bill also does not preempt any state statutory limit on the amount of compensatory or punitive damages that may be awarded in a health care lawsuit.

The bill also includes a sense of Congress that "a health insurer should be liable for damages for harm caused when it makes a decision as to what care is medically necessary and appropriate."

Additional Background: According to the legislation, the reforms in H.R. 4600 are needed because "our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost efficient health care" and liability litigation systems in the U.S. effect the distribution of federal funds because of federal health benefit programs and payments to providers. The purpose of the bill as outlined is to improve the availability of health care services, reduce the cost of liability insurance, and ensure that those with legitimate claims receive fair compensation.

H.R. 4600 is based on California's Medical Injury Compensation Reform Act (MICRA).

The following links may be helpful in providing additional talking points on the necessity of the bill:

<http://www.atra.org/show/7338>

<http://www.ama-assn.org/ama/pub/category/6282.html>

<http://www.ama-assn.org/ama/pub/article/6282-5928.html>

Bush Administration Position: The Administration has indicated its support for H.R. 4600.

Outside Support: H.R. 4600 is supported by a variety of health care and business groups, including the American Medical Association, the American Hospital Association, and the U.S. Chamber of Commerce.

Cost to Taxpayers: A cost estimate is not available. However, nothing in the bill indicates any federal expenditure and would likely save taxpayers money through reduced costs for federal health programs.

Does the Bill Create New Federal Programs or Rules?: Yes, the bill creates new federal rules for health care liability lawsuits.

Constitutional Authority: A committee report citing constitutional authority is not available.

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