

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4600, AS REPORTED
CONSIDERED AS ADOPTED**

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 2002”.

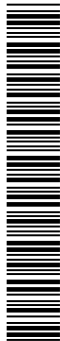
5 SEC. 2. FINDINGS AND PURPOSE.

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.

18 (2) EFFECT ON INTERSTATE COMMERCE.—

19 Congress finds that the health care and insurance



1 industries are industries affecting interstate com-
2 merce and the health care liability litigation systems
3 existing throughout the United States are activities
4 that affect interstate commerce by contributing to
5 the high costs of health care and premiums for
6 health care liability insurance purchased by health
7 care system providers.

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

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

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

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

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



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

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

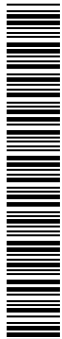
9 (3) ensure that persons with meritorious health
10 care injury claims receive fair and adequate com-
11 pensation, including reasonable noneconomic dam-
12 ages;

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

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

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

22 The time for the commencement of a health care law-
23 suit shall be 3 years after the date of manifestation of
24 injury or 1 year after the claimant discovers, or through
25 the use of reasonable diligence should have discovered, the



1 injury, whichever occurs first. In no event shall the time
2 for commencement of a health care lawsuit exceed 3 years
3 after the date of manifestation of injury unless tolled for
4 any of the following:

5 (1) Upon proof of fraud;

6 (2) Intentional concealment; or

7 (3) The presence of a foreign body, which has
8 no therapeutic or diagnostic purpose or effect, in the
9 person of the injured person.

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

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

21 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL
22 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any
23 health care lawsuit, the full amount of a claimant's eco-
24 nomic loss may be fully recovered without limitation.



1 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any
2 health care lawsuit, the amount of noneconomic damages
3 recovered may be as much as \$250,000, regardless of the
4 number of parties against whom the action is brought or
5 the number of separate claims or actions brought with re-
6 spect to the same occurrence.

7 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
8 DAMAGES.—In any health care lawsuit, an award for fu-
9 ture noneconomic damages shall not be discounted to
10 present value. The jury shall not be informed about the
11 maximum award for noneconomic damages. An award for
12 noneconomic damages in excess of \$250,000 shall be re-
13 duced either before the entry of judgment, or by amend-
14 ment of the judgment after entry of judgment, and such
15 reduction shall be made before accounting for any other
16 reduction in damages required by law. If separate awards
17 are rendered for past and future noneconomic damages
18 and the combined awards exceed \$250,000, the future
19 noneconomic damages shall be reduced first.

20 (d) FAIR SHARE RULE.—In any health care lawsuit,
21 each party shall be liable for that party's several share
22 of any damages only and not for the share of any other
23 person. Each party shall be liable only for the amount of
24 damages allocated to such party in direct proportion to
25 such party's percentage of responsibility. A separate judg-



1 ment shall be rendered against each such party for the
2 amount allocated to such party. For purposes of this sec-
3 tion, the trier of fact shall determine the proportion of
4 responsibility of each party for the claimant's harm.

5 **SEC. 5. 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) 40 percent of the first \$50,000 recovered by
22 the claimant(s).

23 (2) 33 $\frac{1}{3}$ percent of the next \$50,000 recovered
24 by the claimant(s).



1 (3) 25 percent of the next \$500,000 recovered
2 by the claimant(s).

3 (4) 15 percent of any amount by which the re-
4 covery 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.

12 **SEC. 6. ADDITIONAL HEALTH BENEFITS.**

13 In any health care lawsuit, any party may introduce
14 evidence of collateral source benefits. If a party elects to
15 introduce such evidence, any opposing party may intro-
16 duce evidence of any amount paid or contributed or rea-
17 sonably likely to be paid or contributed in the future by
18 or on behalf of the opposing party to secure the right to
19 such collateral source benefits. No provider of collateral
20 source benefits shall recover any amount against the
21 claimant or receive any lien or credit against the claim-
22 ant's recovery or be equitably or legally subrogated to the
23 right of the claimant in a health care lawsuit. This section
24 shall apply to any health care lawsuit that is settled as
25 well as a health care lawsuit that is resolved by a fact



1 finder. This section shall not apply to section 1862(b) (42
2 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C.
3 1396a(a)(25)) of the Social Security Act.

4 **SEC. 7. PUNITIVE DAMAGES.**

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



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

3 (2) the amount of punitive damages following a
4 determination of punitive liability.

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

10 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
11 AGES.—

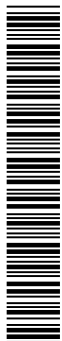
12 (1) FACTORS CONSIDERED.—In determining
13 the amount of punitive damages, the trier of fact
14 shall consider only the following:

15 (A) the severity of the harm caused by the
16 conduct of such party;

17 (B) the duration of the conduct or any
18 concealment of it by such party;

19 (C) the profitability of the conduct to such
20 party;

21 (D) the number of products sold or med-
22 ical procedures rendered for compensation, as
23 the case may be, by such party, of the kind
24 causing the harm complained of by the claim-
25 ant;



1 (E) any criminal penalties imposed on such
 2 party, as a result of the conduct complained of
 3 by the claimant; and

4 (F) the amount of any civil fines assessed
 5 against such party as a result of the conduct
 6 complained of by the claimant.

7 (2) MAXIMUM AWARD.—The amount of punitive
 8 damages awarded in a health care lawsuit may be up
 9 to as much as two times the amount of economic
 10 damages awarded or \$250,000, whichever is greater.
 11 The jury shall not be informed of this limitation.

12 (c) NO CIVIL MONETARY PENALTIES FOR PRODUCTS
 13 THAT COMPLY WITH FDA STANDARDS.—

14 (1) IN GENERAL.—No punitive damages may be
 15 awarded against the manufacturer or distributor of
 16 a medical product based on a claim that such prod-
 17 uct caused the claimant’s harm where—

18 (A)(i) such medical product was subject to
 19 premarket approval or clearance by the Food
 20 and Drug Administration with respect to the
 21 safety of the formulation or performance of the
 22 aspect of such medical product which caused
 23 the claimant’s harm or the adequacy of the
 24 packaging or labeling of such medical product;
 25 and



1 (ii) such medical product was so approved
2 or cleared; or

3 (B) such medical product is generally rec-
4 ognized among qualified experts as safe and ef-
5 fective pursuant to conditions established by the
6 Food and Drug Administration and applicable
7 Food and Drug Administration regulations, in-
8 cluding without limitation those related to pack-
9 aging and labeling, unless the Food and Drug
10 Administration has determined that such med-
11 ical product was not manufactured or distrib-
12 uted in substantial compliance with applicable
13 Food and Drug Administration statutes and
14 regulations.

15 (2) LIABILITY OF HEALTH CARE PROVIDERS.—

16 A health care provider who prescribes a drug or de-
17 vice (including blood products) approved by the
18 Food and Drug Administration shall not be named
19 as a party to a product liability lawsuit involving
20 such drug or device and shall not be liable to a
21 claimant in a class action lawsuit against the manu-
22 facturer, distributor, or product seller of such drug
23 or device.

24 (3) PACKAGING.—In a health care lawsuit for
25 harm which is alleged to relate to the adequacy of



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

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

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

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



1 taining approval or clearance of such medical
2 product.

3 **SEC. 8. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
4 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
5 **SUITS.**

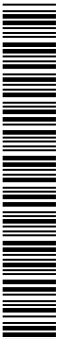
6 (a) IN GENERAL.—In any health care lawsuit, if an
7 award of future damages, without reduction to present
8 value, equaling or exceeding \$50,000 is made against a
9 party with sufficient insurance or other assets to fund a
10 periodic payment of such a judgment, the court shall, at
11 the request 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 **SEC. 9. DEFINITIONS.**

20 In this Act:

21 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-
22 TEM; ADR.—The term “alternative dispute resolution
23 system” or “ADR” means a system that provides
24 for the resolution of health care lawsuits in a man-



1 ner other than through a civil action brought in a
2 State or Federal court.

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

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

19 (A) any State or Federal health, sickness,
20 income-disability, accident, or workers’ com-
21 pensation law;

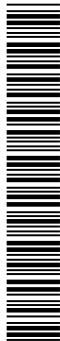
22 (B) any health, sickness, income-disability,
23 or accident insurance that provides health bene-
24 fits or income-disability coverage;



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

6 (D) any other publicly or privately funded
7 program.

8 (4) COMPENSATORY DAMAGES.—The term
9 “compensatory damages” means objectively verifi-
10 able monetary losses incurred as a result of the pro-
11 vision of, use of, or payment for (or failure to pro-
12 vide, use, or pay for) health care services or medical
13 products, such as past and future medical expenses,
14 loss of past and future earnings, cost of obtaining
15 domestic services, loss of employment, and loss of
16 business or employment opportunities, damages for
17 physical and emotional pain, suffering, inconven-
18 ience, physical impairment, mental anguish, dis-
19 figurement, loss of enjoyment of life, loss of society
20 and companionship, loss of consortium (other than
21 loss of domestic service), hedonic damages, injury to
22 reputation, and all other nonpecuniary losses of any
23 kind or nature. The term “compensatory damages”
24 includes economic damages and noneconomic dam-
25 ages, as such terms are defined in this section.



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

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

14 (7) HEALTH CARE LAWSUIT.—The term
15 “health care lawsuit” means any health care liability
16 claim concerning the provision of health care goods
17 or services affecting interstate commerce, or any
18 health care liability action concerning the provision
19 of health care goods or services affecting interstate
20 commerce, brought in a State or Federal court or
21 pursuant to an alternative dispute resolution system,
22 against a health care provider, a health care organi-
23 zation, or the manufacturer, distributor, supplier,
24 marketer, promoter, or seller of a medical product,
25 regardless of the theory of liability on which the



1 claim is based, or the number of claimants, plain-
2 tiffs, defendants, or other parties, or the number of
3 claims or causes of action, in which the claimant al-
4 leges a health care liability claim.

5 (8) HEALTH CARE LIABILITY ACTION.—The
6 term “health care liability action” means a civil ac-
7 tion brought in a State or Federal Court or pursu-
8 ant to an alternative dispute resolution system,
9 against a health care provider, a health care organi-
10 zation, or the manufacturer, distributor, supplier,
11 marketer, promoter, or seller of a medical product,
12 regardless of the theory of liability on which the
13 claim is based, or the number of plaintiffs, defend-
14 ants, or other parties, or the number of causes of ac-
15 tion, in which the claimant alleges a health care li-
16 ability claim.

17 (9) HEALTH CARE LIABILITY CLAIM.—The
18 term “health care liability claim” means a demand
19 by any person, whether or not pursuant to ADR,
20 against a health care provider, health care organiza-
21 tion, or the manufacturer, distributor, supplier, mar-
22 keter, promoter, or seller of a medical product, in-
23 cluding, but not limited to, third-party claims, cross-
24 claims, counter-claims, or contribution claims, which
25 are based upon the provision of, use of, or payment



1 for (or the failure to provide, use, or pay for) health
2 care services or medical products, regardless of the
3 theory of liability on which the claim is based, or the
4 number of plaintiffs, defendants, or other parties, or
5 the number of causes of action.

6 (10) HEALTH CARE ORGANIZATION.—The term
7 “health care organization” means any person or en-
8 tity which is obligated to provide or pay for health
9 benefits under any health plan, including any person
10 or entity acting under a contract or arrangement
11 with a health care organization to provide or admin-
12 ister any health benefit.

13 (11) HEALTH CARE PROVIDER.—The term
14 “health care provider” means any person or entity
15 required by State or Federal laws or regulations to
16 be licensed, registered, or certified to provide health
17 care services, and being either so licensed, reg-
18 istered, or certified, or exempted from such require-
19 ment by other statute or regulation.

20 (12) HEALTH CARE GOODS OR SERVICES.—The
21 term “health care goods or services” means any
22 goods or services provided by a health care organiza-
23 tion, provider, or by any individual working under
24 the supervision of a health care provider, that relates
25 to the diagnosis, prevention, or treatment of any



1 human disease or impairment, or the assessment of
2 the health of human beings.

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

8 (14) MEDICAL PRODUCT.—The term “medical
9 product” means a drug or device intended for hu-
10 mans, and the terms “drug” and “device” have the
11 meanings given such terms in sections 201(g)(1) and
12 201(h) of the Federal Food, Drug and Cosmetic Act
13 (21 U.S.C. 321), respectively, including any compo-
14 nent or raw material used therein, but excluding
15 health care services.

16 (15) NONECONOMIC DAMAGES.—The term
17 “noneconomic damages” means damages for phys-
18 ical and emotional pain, suffering, inconvenience,
19 physical impairment, mental anguish, disfigurement,
20 loss of enjoyment of life, loss of society and compan-
21 ionship, loss of consortium (other than loss of do-
22 mestic service), hedonic damages, injury to reputa-
23 tion, and all other nonpecuniary losses of any kind
24 or nature.



1 (16) PUNITIVE DAMAGES.—The term “punitive
2 damages” means damages awarded, for the purpose
3 of punishment or deterrence, and not solely for com-
4 pensatory purposes, against a health care provider,
5 health care organization, or a manufacturer, dis-
6 tributor, or supplier of a medical product. Punitive
7 damages are neither economic nor noneconomic
8 damages.

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

17 (18) STATE.—The term “State” means each of
18 the several States, the District of Columbia, the
19 Commonwealth of Puerto Rico, the Virgin Islands,
20 Guam, American Samoa, the Northern Mariana Is-
21 lands, the Trust Territory of the Pacific Islands, and
22 any other territory or possession of the United
23 States, or any political subdivision thereof.

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

25 (a) VACCINE INJURY.—



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

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

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

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

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

21 **SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES'**

22 **RIGHTS.**

23 (a) HEALTH CARE LAWSUITS.—The provisions gov-
24 erning health care lawsuits set forth in this Act preempt,
25 subject to subsections (b) and (c), State law to the extent



1 that State law prevents the application of any provisions
2 of law established by or under this Act. The provisions
3 governing health care lawsuits set forth in this Act super-
4 sede chapter 171 of title 28, United States Code, to the
5 extent that such chapter—

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

11 (2) prohibits the introduction of evidence re-
12 garding collateral source benefits, or mandates or
13 permits subrogation or a lien on collateral source
14 benefits.

15 (b) PROTECTION OF STATES' RIGHTS.—Any issue
16 that is not governed by any provision of law established
17 by or under this Act (including State standards of neg-
18 ligence) shall be governed by otherwise applicable State
19 or Federal law. This Act does not preempt or supersede
20 any law that imposes greater protections (such as a short-
21 er statute of limitations) for health care providers and
22 health care organizations from liability, loss, or damages
23 than those provided by this Act.

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



1 (1) any State statutory limit (whether enacted
2 before, on, or after the date of the enactment of this
3 Act) on the amount of compensatory or punitive
4 damages (or the total amount of damages) that may
5 be awarded in a health care lawsuit, whether or not
6 such State limit permits the recovery of a specific
7 dollar amount of damages that is greater or lesser
8 than is provided for under this Act, notwithstanding
9 section 4(a); or

10 (2) any defense available to a party in a health
11 care lawsuit under any other provision of State or
12 Federal law.

13 **SEC. 12. APPLICABILITY; EFFECTIVE DATE.**

14 This Act shall apply to any health care lawsuit
15 brought in a Federal or State court, or subject to an alter-
16 native dispute resolution system, that is initiated on or
17 after the date of the enactment of this Act, except that
18 any health care lawsuit arising from an injury occurring
19 prior to the date of the enactment of this Act shall be
20 governed by the applicable statute of limitations provisions
21 in effect at the time the injury occurred.

22 **SEC. 13. SENSE OF CONGRESS.**

23 It is the sense of Congress that a health insurer
24 should be liable for damages for harm caused when it



- 1 makes a decision as to what care is medically necessary
- 2 and appropriate.

