

107TH CONGRESS  
1ST SESSION

# H. R. 2463

To provide limits on contingency fees in health care liability actions.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2001

Mr. BRADY of Texas introduced the following bill; which was referred to the  
Committee on the Judiciary

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## A BILL

To provide limits on contingency fees in health care liability  
actions.

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.**

4       This Act may be cited as the “Patients’ Right to Fair  
5       Compensation and Protection Against Predatory Contin-  
6       gency Fee Practices Act”.

7       **SEC. 2. ASSURING PATIENTS FAIR COMPENSATION AND**  
8                               **PROTECTION AGAINST PREDATORY CONTIN-**  
9                               **GENCY FEE PRACTICES.**

10       (a) IN GENERAL.—An attorney may not enter into  
11       or enforce a contract, whether express or implied, for at-

1 torney fees in connection with a health care liability action  
2 to the extent that the amount or payment of such fees  
3 is—

4 (1) contingent upon the resolution of the action;  
5 and

6 (2) in excess of the maximum allowed percent-  
7 age specified in subsection (b).

8 (b) MAXIMUM ALLOWED PERCENTAGE.—

9 (1) IN GENERAL.—Except as provided in para-  
10 graph (2), the maximum allowed percentage referred  
11 to in subsection (a) shall be 10 percent of the  
12 amount recovered by the claimant in connection with  
13 the action.

14 (2) UNREASONABLE PROTRACTION.—If the op-  
15 posing party during the course of the action so un-  
16 reasonably protracts the final resolution of the con-  
17 troversy that the claimant’s attorney is required to  
18 render additional services of a degree not reasonably  
19 contemplated at the time the contract was made, the  
20 maximum allowed percentage referred to in sub-  
21 section (a) shall be the amount specified in para-  
22 graph (1), plus any additional amount necessary and  
23 appropriate to adequately account for the additional  
24 services.

25 (c) CIVIL ACTION.—

1           (1) IN GENERAL.—Any person aggrieved by the  
2           act of an attorney in violation of subsection (a) may  
3           bring a civil action in a United States district court  
4           or other appropriate court to rescind the contract to  
5           the extent it violates such subsection and to compel  
6           the disgorgement of any fees paid in violation of  
7           such subsection.

8           (2) REMEDIES NOT EXCLUSIVE.—The remedies  
9           provided in paragraph (1) are in addition to any  
10          other remedies that may be available.

11         (d) SANCTIONS.—

12           (1) IN GENERAL.—A court with jurisdiction  
13           over the health care liability action referred to in  
14           subsection (a) shall sanction an attorney who vio-  
15           lates such subsection.

16           (2) MAXIMUM.—The amount of the sanction  
17           shall not exceed the amount by which the fee sought  
18           under the contract exceeds the maximum fee per-  
19           mitted by subsection (a).

20           (3) MINIMUM.—Notwithstanding paragraph  
21           (2), the amount of the sanction shall be not less  
22           than \$2,000.

23         (e) DEFINITIONS.—For purposes of this section:

24           (1) CLAIMANT.—The term “claimant” means  
25           any person who brings a health care liability action

1 and any person on whose behalf such an action is  
2 brought. If such action is brought through or on be-  
3 half of an estate, the term includes the claimant's  
4 decedent. If such action is brought through or on be-  
5 half of a minor or incompetent, the term includes  
6 the claimant's legal guardian.

7 (2) HEALTH BENEFIT PLAN.—The term  
8 “health benefit plan” means—

9 (A) a hospital or medical expense incurred  
10 policy or certificate,

11 (B) a hospital or medical service plan con-  
12 tract,

13 (C) a health maintenance subscriber con-  
14 tract, or

15 (D) a MedicarePlus product (offered under  
16 part C of title XVIII of the Social Security  
17 Act), that provides benefits with respect to  
18 health care services.

19 (3) HEALTH CARE LIABILITY ACTION.—The  
20 term “health care liability action” means a civil ac-  
21 tion brought in a State or Federal court or pursuant  
22 to alternative dispute resolution against a health  
23 care provider, health insurance issuer, plan sponsor,  
24 or any other entity which is obligated to provide or  
25 pay for health benefits under any health benefit plan

1 (including any person or entity acting under a con-  
2 tract or arrangement to provide or administer any  
3 health benefit), based upon the provision of (or the  
4 failure to provide or pay for) health care services or  
5 the use of a medical product, regardless of the the-  
6 ory of liability on which the claim is based or the  
7 number of plaintiffs, defendants, or causes of action.

8 (4) HEALTH CARE PROVIDER.—The term  
9 “health care provider” means any person that is en-  
10 gaged in the delivery of health care services in a  
11 State and that is required by the laws or regulations  
12 of the State to be licensed or certified by the State  
13 to engage in the delivery of such services in the  
14 State.

15 (5) STATE.—The term “State” means each of  
16 the several States, the District of Columbia, Puerto  
17 Rico, the Virgin Islands, Guam, American Samoa,  
18 the Northern Mariana Islands, and any other terri-  
19 tory or possession of the United States.

20 (f) PREEMPTION.—

21 (1) IN GENERAL.—Subject to paragraph (2),  
22 this section shall preempt any State law to the ex-  
23 tent such law is inconsistent with this section.

24 (2) ADDITIONAL LIMITATIONS.—This section  
25 shall not preempt any State law to the extent such

- 1 law imposes additional limitations on attorney con-
- 2 tingency fees.

