

107TH CONGRESS
2D SESSION

H. R. 4600

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

APRIL 25, 2002

Mr. GREENWOOD (for himself, Mr. COX, Mr. MURTHA, Mr. TOOMEY, Mr. MORAN of Virginia, Mr. PETERSON of Minnesota, Mr. STENHOLM, Mr. LUCAS of Kentucky, Mr. PICKERING, and Mr. WELDON of Florida) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Help Efficient, Acces-
3 sible, Low Cost, Timely Health Care (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
20 industries are industries affecting interstate com-
21 merce and the health care liability litigation systems
22 existing throughout the United States are activities
23 that affect interstate commerce by contributing to
24 the high costs of health care and premiums for
25 health care liability insurance purchased by health
26 care system providers.

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

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

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

23 (2) reduce the incidence of “defensive medi-
24 cine” and lower the cost of health care liability in-

1 surance, all of which contribute to the escalation of
2 health care costs;

3 (3) ensure that persons with meritorious health
4 care injury claims receive fair and adequate com-
5 pensation, including reasonable noneconomic dam-
6 ages;

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

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

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

16 A health care lawsuit may be commenced no later
17 than 3 years after the date of injury or 1 year after the
18 claimant discovers, or through the use of reasonable dili-
19 gence should have discovered, the injury, whichever occurs
20 first. In no event shall the time for commencement of a
21 health care lawsuit exceed 3 years, except that in the case
22 of an alleged injury sustained by a minor before the age
23 of 6, a health care lawsuit may be commenced by or on
24 behalf of the minor until the later of 3 years from the

1 date of injury, or the date on which the minor attains the
2 age of 8.

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

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

8 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any
9 health care lawsuit, the amount of noneconomic damages
10 recovered may be as much as \$250,000, regardless of the
11 number of parties against whom the action is brought or
12 the number of separate claims or actions brought with re-
13 spect to the same occurrence.

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

1 and the combined awards exceed \$250,000, the future
2 noneconomic damages shall be reduced first.

3 (d) FAIR SHARE RULE.—In any health care lawsuit,
4 each party shall be liable for that party's several share
5 of any damages only and not for the share of any other
6 person. Each party shall be liable only for the amount of
7 damages allocated to such party in direct proportion to
8 such party's percentage of responsibility. A separate judg-
9 ment shall be rendered against each such party for the
10 amount allocated to such party. For purposes of this sec-
11 tion, the trier of fact shall determine the proportion of
12 responsibility of each party for the claimant's 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) 33½ 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.

19 **SEC. 6. ADDITIONAL HEALTH BENEFITS.**

20 In any health care lawsuit, any party may introduce
21 evidence of collateral source benefits. If a party elects to
22 introduce such evidence, any opposing party may intro-
23 duce evidence of any amount paid or contributed or rea-
24 sonably likely to be paid or contributed in the future by
25 or on behalf of the opposing party to secure the right to

1 such collateral source benefits. No provider of collateral
2 source benefits shall recover any amount against the
3 claimant or receive any lien or credit against the claim-
4 ant's recovery or be equitably or legally subrogated to the
5 right of the claimant in a health care lawsuit. This section
6 shall apply to any health care lawsuit that is settled as
7 well as a health care lawsuit that is resolved by a fact
8 finder.

9 **SEC. 7. PUNITIVE DAMAGES.**

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

1 hearing, after weighing the evidence, that the claimant has
2 established by a substantial probability that the claimant
3 will prevail on the claim for punitive damages. At the re-
4 quest of any party in a health care lawsuit, the trier of
5 fact shall consider in a separate proceeding—

6 (1) whether punitive damages are to be award-
7 ed and the amount of such award; and
8 (2) the amount of punitive damages following a
9 determination of punitive liability.

10 If a separate proceeding is requested, evidence relevant
11 only to the claim for punitive damages, as determined by
12 applicable State law, shall be inadmissible in any pro-
13 ceeding to determine whether compensatory damages are
14 to be awarded.

15 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
16 AGES.—

17 (1) FACTORS CONSIDERED.—In determining
18 the amount of punitive damages, the trier of fact
19 shall consider only the following:

20 (A) the severity of the harm caused by the
21 conduct of such party;

22 (B) the duration of the conduct or any
23 concealment of it by such party;

24 (C) the profitability of the conduct to such
25 party;

1 (D) the number of products sold or med-
2 ical procedures rendered for compensation, as
3 the case may be, by such party, of the kind
4 causing the harm complained of by the claim-
5 ant;

6 (E) any criminal penalties imposed on such
7 party, as a result of the conduct complained of
8 by the claimant; and

9 (F) the amount of any civil fines assessed
10 against such party as a result of the conduct
11 complained of by the claimant.

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

23 (A)(i) such medical product was subject to
24 premarket approval or clearance by the Food
25 and Drug Administration with respect to the

1 safety of the formulation or performance of the
2 aspect of such medical product which caused
3 the claimant's harm or the adequacy of the
4 packaging or labeling of such medical product;
5 and

6 (ii) such medical product was so approved
7 or cleared; or

8 (B) such medical product is generally rec-
9 ognized among qualified experts as safe and ef-
10 fective pursuant to conditions established by the
11 Food and Drug Administration and applicable
12 Food and Drug Administration regulations, in-
13 cluding without limitation those related to pack-
14 aging and labeling.

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

(D) any other publicly or privately funded program.

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

1 economic damages, as such terms are defined in this
2 section.

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

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

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

1 marketer, promoter, or seller of a medical product,
2 regardless of the theory of liability on which the
3 claim is based, or the number of claimants, plain-
4 tiffs, defendants, or other parties, or the number of
5 claims or causes of action, in which the claimant al-
6 leges a health care liability claim.

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

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

1 claims, counter-claims, or contribution claims, which
2 are based upon the provision of, use of, or payment
3 for (or the failure to provide, use, or pay for) health
4 care services or medical products, regardless of the
5 theory of liability on which the claim is based, or the
6 number of plaintiffs, defendants, or other parties, or
7 the number of causes of action.

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

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

22 (12) HEALTH CARE GOODS OR SERVICES.—The
23 term “health care goods or services” means any
24 goods or services provided by a health care organiza-
25 tion, provider, or by any individual working under

1 the supervision of a health care provider, that relates
2 to the diagnosis, prevention, or treatment of any
3 human disease or impairment, or the assessment of
4 the health of human beings.

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

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

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

1 tion, and all other nonpecuniary losses of any kind
2 or nature.

(17) RECOVERY.—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution 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.

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

2 (a) VACCINE INJURY.—

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

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

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

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

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

23 **SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES'**
24 **RIGHTS.**

25 (a) HEALTH CARE LAWSUITS.—The provisions gov-
26 erning health care lawsuits set forth in this Act preempt,

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

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

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

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

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

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

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

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

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

