

Union Calendar No. 31

115TH CONGRESS
1ST SESSION

H. R. 1215

[Report No. 115–55, Part I]

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

FEBRUARY 24, 2017

Mr. KING of Iowa 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

MARCH 22, 2017

Additional sponsors: Mr. GOODLATTE, Mr. SMITH of Texas, and Mr. FLORES

MARCH 22, 2017

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

MARCH 22, 2017

The Committee on Energy and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on February 24, 2017]

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,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the “Pro-*
 5 *tecting Access to Care Act of 2017”.*

6 (b) *TABLE OF CONTENTS.*—*The table of contents of this*
 7 *Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Encouraging speedy resolution of claims.

Sec. 3. Compensating patient injury.

Sec. 4. Maximizing patient recovery.

Sec. 5. Authorization of payment of future damages to claimants in health care lawsuits.

Sec. 6. Product liability for health care providers.

Sec. 7. Definitions.

Sec. 8. Effect on other laws.

Sec. 9. Rules of construction.

Sec. 10. Effective date.

8 **SEC. 2. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

9 (a) *STATUTE OF LIMITATIONS.*—*The time for the com-*
 10 *mencement of a health care lawsuit shall be 3 years after*
 11 *the date of injury or 1 year after the claimant discovers,*
 12 *or through the use of reasonable diligence should have dis-*
 13 *covered, the injury, whichever occurs first. In no event shall*
 14 *the time for commencement of a health care lawsuit exceed*
 15 *3 years after the date of injury unless tolled for any of the*
 16 *following—*

17 (1) *upon proof of fraud;*

18 (2) *intentional concealment; or*

1 (3) *the presence of a foreign body, which has no*
2 *therapeutic or diagnostic purpose or effect, in the per-*
3 *son of the injured person.*

4 *Actions by a minor shall be commenced within 3 years from*
5 *the date of the injury except that actions by a minor under*
6 *the full age of 6 years shall be commenced within 3 years*
7 *of injury, or 1 year after the injury is discovered, or through*
8 *the use of reasonable diligence should have been discovered,*
9 *or prior to the minor's 8th birthday, whichever provides a*
10 *longer period. Such time limitation shall be tolled for mi-*
11 *nors for any period during which a parent or guardian*
12 *and a health care provider have committed fraud or collu-*
13 *sion in the failure to bring an action on behalf of the in-*
14 *jured minor.*

15 (b) *STATE FLEXIBILITY.—No provision of subsection*
16 *(a) shall be construed to preempt any state law (whether*
17 *effective before, on, or after the date of the enactment of this*
18 *Act) that—*

19 (1) *specifies a time period of less than 3 years*
20 *after the date of injury or less than 1 year after the*
21 *claimant discovers, or through the use of reasonable*
22 *diligence should have discovered, the injury, for the*
23 *filing of a health care lawsuit;*

24 (2) *that specifies a different time period for the*
25 *filing of lawsuits by a minor;*

1 (3) that triggers the time period based on the
2 date of the alleged negligence; or

3 (4) establishes a statute of repose for the filing of
4 health care lawsuit.

5 **SEC. 3. COMPENSATING PATIENT INJURY.**

6 (a) *UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL*
7 *ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.*—In any
8 health care lawsuit, nothing in this Act shall limit a claim-
9 ant’s recovery of the full amount of the available economic
10 damages, notwithstanding the limitation in subsection (b).

11 (b) *ADDITIONAL NONECONOMIC DAMAGES.*—In any
12 health care lawsuit, the amount of noneconomic damages,
13 if available, shall not exceed \$250,000, regardless of the
14 number of parties against whom the action is brought or
15 the number of separate claims or actions brought with re-
16 spect to the same injury.

17 (c) *NO DISCOUNT OF AWARD FOR NONECONOMIC DAM-*
18 *AGES.*—For purposes of applying the limitation in sub-
19 section (b), future noneconomic damages shall not be dis-
20 counted to present value. The jury shall not be informed
21 about the maximum award for noneconomic damages. An
22 award for noneconomic damages in excess of \$250,000 shall
23 be reduced either before the entry of judgment, or by amend-
24 ment of the judgment after entry of judgment, and such re-
25 duction shall be made before accounting for any other re-

1 *duction in damages required by law. If separate awards*
2 *are rendered for past and future noneconomic damages and*
3 *the combined awards exceed \$250,000, the future non-*
4 *economic damages shall be reduced first.*

5 *(d) FAIR SHARE RULE.—In any health care lawsuit,*
6 *each party shall be liable for that party’s several share of*
7 *any damages only and not for the share of any other person.*
8 *Each party shall be liable only for the amount of damages*
9 *allocated to such party in direct proportion to such party’s*
10 *percentage of responsibility. Whenever a judgment of liabil-*
11 *ity is rendered as to any party, a separate judgment shall*
12 *be rendered against each such party for the amount allo-*
13 *cated to such party. For purposes of this section, the trier*
14 *of fact shall determine the proportion of responsibility of*
15 *each party for the claimant’s harm.*

16 *(e) STATE FLEXIBILITY.—No provision of this section*
17 *shall be construed to preempt any State law (whether effec-*
18 *tive before, on, or after the date of the enactment of this*
19 *Act) that specifies a particular monetary amount of eco-*
20 *nomie or noneconomic damages (or the total amount of*
21 *damages) that may be awarded in a health care lawsuit,*
22 *regardless of whether such monetary amount is greater or*
23 *lesser than is provided for under this section.*

1 **SEC. 4. MAXIMIZING PATIENT RECOVERY.**

2 (a) *COURT SUPERVISION OF SHARE OF DAMAGES AC-*
3 *TUALLY PAID TO CLAIMANTS.*—*In any health care lawsuit,*
4 *the court shall supervise the arrangements for payment of*
5 *damages to protect against conflicts of interest that may*
6 *have the effect of reducing the amount of damages awarded*
7 *that are actually paid to claimants. In particular, in any*
8 *health care lawsuit in which the attorney for a party claims*
9 *a financial stake in the outcome by virtue of a contingent*
10 *fee, the court shall have the power to restrict the payment*
11 *of a claimant’s damage recovery to such attorney, and to*
12 *redirect such damages to the claimant based upon the inter-*
13 *ests of justice and principles of equity. In no event shall*
14 *the total of all contingent fees for representing all claimants*
15 *in a health care lawsuit exceed the following limits:*

16 (1) *Forty percent of the first \$50,000 recovered*
17 *by the claimant(s).*

18 (2) *Thirty-three and one-third percent of the next*
19 *\$50,000 recovered by the claimant(s).*

20 (3) *Twenty-five percent of the next \$500,000 re-*
21 *covered by the claimant(s).*

22 (4) *Fifteen percent of any amount by which the*
23 *recovery by the claimant(s) is in excess of \$600,000.*

24 (b) *APPLICABILITY.*—*The limitations in this section*
25 *shall apply whether the recovery is by judgment, settlement,*
26 *mediation, arbitration, or any other form of alternative dis-*

1 *pute resolution. In a health care lawsuit involving a minor*
2 *or incompetent person, a court retains the authority to au-*
3 *thorize or approve a fee that is less than the maximum per-*
4 *mitted under this section. The requirement for court super-*
5 *vision in the first two sentences of subsection (a) applies*
6 *only in civil actions.*

7 (c) *STATE FLEXIBILITY.*—No provision of this section
8 shall be construed to preempt any State law (whether effec-
9 tive before, on, or after the date of the enactment of this
10 Act) that specifies a lesser percentage or lesser total value
11 of damages which may be claimed by an attorney rep-
12 resenting a claimant in a health care lawsuit.

13 **SEC. 5. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
14 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
15 **SUITS.**

16 (a) *IN GENERAL.*—In any health care lawsuit, if an
17 award of future damages, without reduction to present
18 value, equaling or exceeding \$50,000 is made against a
19 party with sufficient insurance or other assets to fund a
20 periodic payment of such a judgment, the court shall, at
21 the request of any party, enter a judgment ordering that
22 the future damages be paid by periodic payments, in ac-
23 cordance with the Uniform Periodic Payment of Judgments
24 Act promulgated by the National Conference of Commis-
25 sioners on Uniform State Laws.

1 (b) *APPLICABILITY.*—*This section applies to all ac-*
2 *tions which have not been first set for trial or retrial before*
3 *the effective date of this Act.*

4 (c) *STATE FLEXIBILITY.*—*No provision of this section*
5 *shall be construed to preempt any State law (whether effec-*
6 *tive before, on, or after the date of the enactment of this*
7 *Act) that specifies periodic payments for future damages*
8 *at any amount other than \$50,000 or that mandates such*
9 *payments absent the request of either party.*

10 **SEC. 6. PRODUCT LIABILITY FOR HEALTH CARE PRO-**
11 **VIDERS.**

12 *A health care provider who prescribes, or who dis-*
13 *poses pursuant to a prescription, a medical product ap-*
14 *proved, licensed, or cleared by the Food and Drug Adminis-*
15 *tration shall not be named as a party to a product liability*
16 *lawsuit involving such product and shall not be liable to*
17 *a claimant in a class action lawsuit against the manufac-*
18 *turer, distributor, or seller of such product.*

19 **SEC. 7. DEFINITIONS.**

20 *In this Act:*

21 (1) *ALTERNATIVE DISPUTE RESOLUTION SYSTEM;*
22 *ADR.*—*The term “alternative dispute resolution sys-*
23 *tem” or “ADR” means a system that provides for the*
24 *resolution of health care lawsuits in a manner other*

1 *than through a civil action brought in a State or Fed-*
2 *eral 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 or*
6 *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 deceased,*
10 *incompetent, or a minor.*

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

19 (A) *any State or Federal health, sickness,*
20 *income-disability, accident, or workers’ com-*
21 *ensation 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 med-
4 ical, hospital, dental, or income-disability bene-
5 fits; and

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

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

12 (5) *ECONOMIC DAMAGES.*—The term “economic
13 damages” means objectively verifiable monetary losses
14 incurred as a result of the provision or use of (or fail-
15 ure to provide or use) health care services or medical
16 products, such as past and future medical expenses,
17 loss of past and future earnings, cost of obtaining do-
18 mestic services, loss of employment, and loss of busi-
19 ness or employment opportunities, unless otherwise
20 defined under applicable state law. In no cir-
21 cumstances shall damages for health care services or
22 medical products exceed the amount actually paid or
23 incurred by or on behalf of the claimant.

24 (6) *FUTURE DAMAGES.*—The term “future dam-
25 ages” means any damages that are incurred after the

1 *date of judgment, settlement, or other resolution (in-*
2 *cluding mediation, or any other form of alternative*
3 *dispute resolution).*

4 (7) *HEALTH CARE LAWSUIT.*—*The term “health*
5 *care lawsuit” means any health care liability claim*
6 *concerning the provision of goods or services for which*
7 *coverage was provided in whole or in part via a Fed-*
8 *eral program, subsidy or tax benefit, or any health*
9 *care liability action concerning the provision of goods*
10 *or services for which coverage was provided in whole*
11 *or in part via a Federal program, subsidy or tax ben-*
12 *efit, brought in a State or Federal court or pursuant*
13 *to an alternative dispute resolution system, against a*
14 *health care provider regardless of the theory of liabil-*
15 *ity on which the claim is based, or the number of*
16 *claimants, plaintiffs, defendants, or other parties, or*
17 *the number of claims or causes of action, in which the*
18 *claimant alleges a health care liability claim. Such*
19 *term does not include a claim or action which is*
20 *based on criminal liability; which seeks civil fines or*
21 *penalties paid to Federal, State, or local government;*
22 *or which is grounded in antitrust.*

23 (8) *HEALTH CARE LIABILITY ACTION.*—*The term*
24 *“health care liability action” means a civil action*
25 *brought in a State or Federal court or pursuant to*

1 *an alternative dispute resolution system, against a*
2 *health care provider regardless of the theory of liabil-*
3 *ity on which the claim is based, or the number of*
4 *plaintiffs, defendants, or other parties, or the number*
5 *of causes of action, in which the claimant alleges a*
6 *health care liability claim.*

7 (9) *HEALTH CARE LIABILITY CLAIM.*—*The term*
8 *“health care liability claim” means a demand by any*
9 *person, whether or not pursuant to ADR, against a*
10 *health care provider, including, but not limited to,*
11 *third-party claims, cross-claims, counter-claims, or*
12 *contribution claims, which are based upon the provi-*
13 *sion or use of (or the failure to provide or use) health*
14 *care services or medical products, regardless of the*
15 *theory of liability on which the claim is based, or the*
16 *number of plaintiffs, defendants, or other parties, or*
17 *the number of causes of action.*

18 (10) *HEALTH CARE PROVIDER.*—*The term*
19 *“health care provider” means any person or entity re-*
20 *quired by State or Federal laws or regulations to be*
21 *licensed, registered, or certified to provide health care*
22 *services, and being either so licensed, registered, or*
23 *certified, or exempted from such requirement by other*
24 *statute or regulation, as well as any other individual*
25 *or entity defined as a health care provider, health*

1 *care professional, or health care institution under*
2 *state law.*

3 (11) *HEALTH CARE SERVICES.*—*The term*
4 *“health care services” means the provision of any*
5 *goods or services by a health care provider, or by any*
6 *individual working under the supervision of a health*
7 *care provider, that relates to the diagnosis, preven-*
8 *tion, or treatment of any human disease or impair-*
9 *ment, or the assessment or care of the health of*
10 *human beings.*

11 (12) *MEDICAL PRODUCT.*—*The term “medical*
12 *product” means a drug, device, or biological product*
13 *intended for humans, and the terms “drug”, “device”,*
14 *and “biological product” have the meanings given*
15 *such terms in sections 201(g)(1) and 201(h) of the*
16 *Federal Food, Drug and Cosmetic Act (21 U.S.C.*
17 *321(g)(1) and (h)) and section 351(a) of the Public*
18 *Health Service Act (42 U.S.C. 262(a)), respectively,*
19 *including any component or raw material used there-*
20 *in, but excluding health care services.*

21 (13) *NONECONOMIC DAMAGES.*—*The term “non-*
22 *economic damages” means damages for physical and*
23 *emotional pain, suffering, inconvenience, physical im-*
24 *pairment, mental anguish, disfigurement, loss of en-*
25 *joyment of life, loss of society and companionship,*

1 *loss of consortium (other than loss of domestic serv-*
2 *ice), hedonic damages, injury to reputation, and all*
3 *other nonpecuniary losses of any kind or nature in-*
4 *curring as a result of the provision or use of (or failure*
5 *to provide or use) health care services or medical*
6 *products, unless otherwise defined under applicable*
7 *state law.*

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

16 (15) *REPRESENTATIVE.*—*The term “representa-*
17 *tive” means a legal guardian, attorney, person des-*
18 *ignated to make decisions on behalf of a patient*
19 *under a medical power of attorney, or any person rec-*
20 *ognized in law or custom as a patient’s agent.*

21 (16) *STATE.*—*The term “State” means each of*
22 *the several States, the District of Columbia, the Com-*
23 *monwealth of Puerto Rico, the Virgin Islands, Guam,*
24 *American Samoa, the Northern Mariana Islands, the*
25 *Trust Territory of the Pacific Islands, and any other*

1 *territory or possession of the United States, or any*
2 *political subdivision thereof.*

3 **SEC. 8. EFFECT ON OTHER LAWS.**

4 *(a) VACCINE INJURY.—*

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

9 *(A) this Act does not affect the application*
10 *of the rule of law to such an action; and*

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

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

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

1 **SEC. 9. RULES OF CONSTRUCTION.**

2 (a) *HEALTH CARE LAWSUITS.*—Unless otherwise spec-
3 ified in this Act, the provisions governing health care law-
4 suits set forth in this Act preempt, subject to subsections
5 (b) and (c), State law to the extent that State law prevents
6 the application of any provisions of law established by or
7 under this Act. The provisions governing health care law-
8 suits set forth in this Act supersede chapter 171 of title 28,
9 United States Code, to the extent that such chapter—

10 (1) provides for a greater amount of damages or
11 contingent fees, a longer period in which a health care
12 lawsuit may be commenced, or a reduced applica-
13 bility or scope of periodic payment of future damages,
14 than provided in this Act; or

15 (2) prohibits the introduction of evidence regard-
16 ing collateral source benefits, or mandates or permits
17 subrogation or a lien on collateral source benefits.

18 (b) *PROTECTION OF STATES' RIGHTS AND OTHER*
19 *LAWS.*—Any issue that is not governed by any provision
20 of law established by or under this Act (including State
21 standards of negligence) shall be governed by otherwise ap-
22 plicable State or Federal law

23 (c) *STATE FLEXIBILITY.*—No provision of this Act
24 shall be construed to preempt any defense available to a
25 party in a health care lawsuit under any other provision
26 of State or Federal law.

1 **SEC. 10. 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 any*
6 *health care lawsuit arising from an injury occurring prior*
7 *to the date of the enactment of this Act shall be governed*
8 *by the applicable statute of limitations provisions in effect*
9 *at the time the cause of action accrued.*

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115TH CONGRESS
1ST Session

H. R. 1215

[Report No. 115-55, Part I]

A BILL

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