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2<sup>D</sup> SESSION

# H. R. 4600

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26, 2002

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

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 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  
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.

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

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

9                   (B) the large number of individuals who  
10                  benefit because of the exclusion from Federal  
11                  taxes of the amounts spent to provide them  
12                  with health insurance benefits; and

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—

19                   (1) improve the availability of health care serv-  
20                   ices in cases in which health care liability actions  
21                   have been shown to be a factor in the decreased  
22                   availability of services;

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;

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 The time for the commencement of a health care law-  
17 suit shall be 3 years after the date of manifestation of  
18 injury or 1 year after the claimant discovers, or through  
19 the use of reasonable diligence should have discovered, the  
20 injury, whichever occurs first. In no event shall the time  
21 for commencement of a health care lawsuit exceed 3 years  
22 after the date of manifestation of injury unless tolled for  
23 any of the following:

24 (1) Upon proof of fraud;

25 (2) Intentional concealment; or

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

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

14 **SEC. 4. COMPENSATING PATIENT INJURY.**

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

19           (b) ADDITIONAL NONECONOMIC DAMAGES.—In any  
20 health care lawsuit, the amount of noneconomic damages  
21 recovered may be as much as \$250,000, regardless of the  
22 number of parties against whom the action is brought or  
23 the number of separate claims or actions brought with re-  
24 spect to the same occurrence.

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

14           (d) FAIR SHARE RULE.—In any health care lawsuit,  
15 each party shall be liable for that party's several share  
16 of any damages only and not for the share of any other  
17 person. Each party shall be liable only for the amount of  
18 damages allocated to such party in direct proportion to  
19 such party's percentage of responsibility. A separate judg-  
20 ment shall be rendered against each such party for the  
21 amount allocated to such party. For purposes of this sec-  
22 tion, the trier of fact shall determine the proportion of  
23 responsibility of each party for the claimant's harm.

1 **SEC. 5. MAXIMIZING PATIENT RECOVERY.**

2 (a) COURT SUPERVISION OF SHARE OF DAMAGES  
3 ACTUALLY PAID TO CLAIMANTS.—In any health care law-  
4 suit, the court shall supervise the arrangements for pay-  
5 ment of damages to protect against conflicts of interest  
6 that may have the effect of reducing the amount of dam-  
7 ages awarded that are actually paid to claimants. In par-  
8 ticular, in any health care lawsuit in which the attorney  
9 for a party claims a financial stake in the outcome by vir-  
10 tue of a contingent fee, the court shall have the power  
11 to restrict the payment of a claimant's damage recovery  
12 to such attorney, and to redirect such damages to the  
13 claimant based upon the interests of justice and principles  
14 of equity. In no event shall the total of all contingent fees  
15 for representing all claimants in a health care lawsuit ex-  
16 ceed the following limits:

17 (1) 40 percent of the first \$50,000 recovered by  
18 the claimant(s).

19 (2) 33 $\frac{1}{3}$  percent of the next \$50,000 recovered  
20 by the claimant(s).

21 (3) 25 percent of the next \$500,000 recovered  
22 by the claimant(s).

23 (4) 15 percent of any amount by which the re-  
24 covery by the claimant(s) is in excess of \$600,000.

25 (b) APPLICABILITY.—The limitations in this section  
26 shall apply whether the recovery is by judgment, settle-

1 ment, mediation, arbitration, or any other form of alter-  
2 native dispute resolution. In a health care lawsuit involv-  
3 ing a minor or incompetent person, a court retains the  
4 authority to authorize or approve a fee that is less than  
5 the maximum permitted under this section.

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

7 In any health care lawsuit, any party may introduce  
8 evidence of collateral source benefits. If a party elects to  
9 introduce such evidence, any opposing party may intro-  
10 duce evidence of any amount paid or contributed or rea-  
11 sonably likely to be paid or contributed in the future by  
12 or on behalf of the opposing party to secure the right to  
13 such collateral source benefits. No provider of collateral  
14 source benefits shall recover any amount against the  
15 claimant or receive any lien or credit against the claim-  
16 ant's recovery or be equitably or legally subrogated to the  
17 right of the claimant in a health care lawsuit. This section  
18 shall apply to any health care lawsuit that is settled as  
19 well as a health care lawsuit that is resolved by a fact  
20 finder. This section shall not apply to section 1862(b) (42  
21 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C.  
22 1396a(a)(25)) of the Social Security Act.

23 **SEC. 7. PUNITIVE DAMAGES.**

24 (a) IN GENERAL.—Punitive damages may, if other-  
25 wise permitted by applicable State or Federal law, be

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

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

22 (2) the amount of punitive damages following a  
23 determination of punitive liability.

24 If a separate proceeding is requested, evidence relevant  
25 only to the claim for punitive damages, as determined by

1 applicable State law, shall be inadmissible in any pro-  
2 ceeding to determine whether compensatory damages are  
3 to be awarded.

4 (b) DETERMINING AMOUNT OF PUNITIVE DAM-  
5 AGES.—

6 (1) FACTORS CONSIDERED.—In determining  
7 the amount of punitive damages, the trier of fact  
8 shall consider only the following:

9 (A) the severity of the harm caused by the  
10 conduct of such party;

11 (B) the duration of the conduct or any  
12 concealment of it by such party;

13 (C) the profitability of the conduct to such  
14 party;

15 (D) the number of products sold or med-  
16 ical procedures rendered for compensation, as  
17 the case may be, by such party, of the kind  
18 causing the harm complained of by the claim-  
19 ant;

20 (E) any criminal penalties imposed on such  
21 party, as a result of the conduct complained of  
22 by the claimant; and

23 (F) the amount of any civil fines assessed  
24 against such party as a result of the conduct  
25 complained of by the claimant.

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

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

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

12                   (A)(i) such medical product was subject to  
13 premarket approval or clearance by the Food  
14 and Drug Administration with respect to the  
15 safety of the formulation or performance of the  
16 aspect of such medical product which caused  
17 the claimant’s harm or the adequacy of the  
18 packaging or labeling of such medical product;  
19 and

20                   (ii) such medical product was so approved  
21 or cleared; or

22                   (B) such medical product is generally rec-  
23 ognized among qualified experts as safe and ef-  
24 fective pursuant to conditions established by the  
25 Food and Drug Administration and applicable

1 Food and Drug Administration regulations, in-  
2 cluding without limitation those related to pack-  
3 aging and labeling, unless the Food and Drug  
4 Administration has determined that such med-  
5 ical product was not manufactured or distrib-  
6 uted in substantial compliance with applicable  
7 Food and Drug Administration statutes and  
8 regulations.

9 (2) LIABILITY OF HEALTH CARE PROVIDERS.—

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

18 (3) PACKAGING.—In a health care lawsuit for  
19 harm which is alleged to relate to the adequacy of  
20 the packaging or labeling of a drug which is required  
21 to have tamper-resistant packaging under regula-  
22 tions of the Secretary of Health and Human Serv-  
23 ices (including labeling regulations related to such  
24 packaging), the manufacturer or product seller of  
25 the drug shall not be held liable for punitive dam-

1       ages unless such packaging or labeling is found by  
2       the trier of fact by clear and convincing evidence to  
3       be substantially out of compliance with such regula-  
4       tions.

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

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

17          (B) a person made an illegal payment to  
18      an official of the Food and Drug Administra-  
19      tion for the purpose of either securing or main-  
20      taining approval or clearance of such medical  
21      product.

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

4 (a) **IN GENERAL.**—In any health care lawsuit, if an  
5 award of future damages, without reduction to present  
6 value, equaling or exceeding \$50,000 is made against a  
7 party with sufficient insurance or other assets to fund a  
8 periodic payment of such a judgment, the court shall, at  
9 the request of any party, enter a judgment ordering that  
10 the future damages be paid by periodic payments in ac-  
11 cordance with the Uniform Periodic Payment of Judg-  
12 ments Act promulgated by the National Conference of  
13 Commissioners on Uniform State Laws.

14 (b) **APPLICABILITY.**—This section applies to all ac-  
15 tions which have not been first set for trial or retrial be-  
16 fore the effective date of this Act.

17 **SEC. 9. DEFINITIONS.**

18 In this Act:

19 (1) **ALTERNATIVE DISPUTE RESOLUTION SYS-**  
20 **TEM; ADR.**—The term “alternative dispute resolution  
21 system” or “ADR” means a system that provides  
22 for the resolution of health care lawsuits in a man-  
23 ner other than through a civil action brought in a  
24 State or Federal court.

25 (2) **CLAIMANT.**—The term “claimant” means  
26 any person who brings a health care lawsuit, includ-

1       ing a person who asserts or claims a right to legal  
2       or equitable contribution, indemnity or subrogation,  
3       arising out of a health care liability claim or action,  
4       and any person on whose behalf such a claim is as-  
5       serted or such an action is brought, whether de-  
6       ceased, incompetent, or a minor.

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

15               (A) any State or Federal health, sickness,  
16      income-disability, accident, or workers’ com-  
17      pensation law;

18               (B) any health, sickness, income-disability,  
19      or accident insurance that provides health bene-  
20      fits or income-disability coverage;

21               (C) any contract or agreement of any  
22      group, organization, partnership, or corporation  
23      to provide, pay for, or reimburse the cost of  
24      medical, hospital, dental, or income disability  
25      benefits; and

1 (D) any other publicly or privately funded  
2 program.

3 (4) COMPENSATORY DAMAGES.—The term  
4 “compensatory damages” means objectively  
5 verifiable monetary losses incurred as a result of the  
6 provision of, use of, or payment for (or failure to  
7 provide, use, or pay for) health care services or med-  
8 ical products, such as past and future medical ex-  
9 penses, loss of past and future earnings, cost of ob-  
10 taining domestic services, loss of employment, and  
11 loss of business or employment opportunities, dam-  
12 ages for physical and emotional pain, suffering, in-  
13 convenience, physical impairment, mental anguish,  
14 disfigurement, loss of enjoyment of life, loss of soci-  
15 ety and companionship, loss of consortium (other  
16 than loss of domestic service), hedonic damages, in-  
17 jury to reputation, and all other nonpecuniary losses  
18 of any kind or nature. The term “compensatory  
19 damages” includes economic damages and non-  
20 economic damages, as such terms are defined in this  
21 section.

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

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

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

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

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

1 number of plaintiffs, defendants, or other parties, or  
2 the number of causes of action.

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

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

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

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

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

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

23           (16) PUNITIVE DAMAGES.—The term “punitive  
24 damages” means damages awarded, for the purpose  
25 of punishment or deterrence, and not solely for com-

1       pensatory purposes, against a health care provider,  
2       health care organization, or a manufacturer, dis-  
3       tributor, or supplier of a medical product. Punitive  
4       damages are neither economic nor noneconomic  
5       damages.

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

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

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

22              (a) VACCINE INJURY.—

23                   (1) To the extent that title XXI of the Public  
24      Health Service Act establishes a Federal rule of law

1 applicable to a civil action brought for a vaccine-re-  
2 lated injury or death—

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

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

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

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

19 **SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES'**  
20 **RIGHTS.**

21 (a) HEALTH CARE LAWSUITS.—The provisions gov-  
22 erning health care lawsuits set forth in this Act preempt,  
23 subject to subsections (b) and (c), State law to the extent  
24 that State law prevents the application of any provisions  
25 of law established by or under this Act. The provisions

1 governing health care lawsuits set forth in this Act super-  
2 sede chapter 171 of title 28, United States Code, to the  
3 extent that such chapter—

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

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

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

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

24 (1) any State statutory limit (whether enacted  
25 before, on, or after the date of the enactment of this

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

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

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

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

20 **SEC. 13. SENSE OF CONGRESS.**

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

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

Passed the House of Representatives September 26,  
2002.

Attest:

JEFF TRANDAHL,

*Clerk.*