

112TH CONGRESS
2D SESSION

H. R. 5

IN THE SENATE OF THE UNITED STATES

MARCH 22, 2012

Received and read the first time

MARCH 26, 2012

Read the second time and placed on the calendar

MARCH 27, 2012

Ordered returned to the House

MARCH 29, 2012

Received and read the first time

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 “Protecting Access to
3 Healthcare Act”.

4 **TITLE I—HEALTH ACT**

5 **SEC. 101. SHORT TITLE.**

6 This title may be cited as the “Help Efficient, Acces-
7 sible, Low-cost, Timely Healthcare (HEALTH) Act of
8 2012”.

9 **SEC. 102. PURPOSE.**

10 It is the purpose of this title to implement reasonable,
11 comprehensive, and effective health care liability reforms
12 designed to—

13 (1) improve the availability of health care serv-
14 ices in cases in which health care liability actions
15 have been shown to be a factor in the decreased
16 availability of services;

17 (2) reduce the incidence of “defensive medi-
18 cine” and lower the cost of health care liability in-
19 surance, all of which contribute to the escalation of
20 health care costs;

21 (3) ensure that persons with meritorious health
22 care injury claims receive fair and adequate com-
23 pensation, including reasonable noneconomic dam-
24 ages;

25 (4) improve the fairness and cost-effectiveness
26 of our current health care liability system to resolve

1 disputes over, and provide compensation for, health
2 care liability by reducing uncertainty in the amount
3 of compensation provided to injured individuals; and

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

7 **SEC. 103. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

8 The time for the commencement of a health care law-
9 suit shall be 3 years after the date of manifestation of
10 injury or 1 year after the claimant discovers, or through
11 the use of reasonable diligence should have discovered, the
12 injury, whichever occurs first. In no event shall the time
13 for commencement of a health care lawsuit exceed 3 years
14 after the date of manifestation of injury unless tolled for
15 any of the following—

16 (1) upon proof of fraud;

17 (2) intentional concealment; or

18 (3) the presence of a foreign body, which has no
19 therapeutic or diagnostic purpose or effect, in the
20 person of the injured person.

21 Actions by a minor shall be commenced within 3 years
22 from the date of the alleged manifestation of injury except
23 that actions by a minor under the full age of 6 years shall
24 be commenced within 3 years of manifestation of injury
25 or prior to the minor's 8th birthday, whichever provides

1 a longer period. Such time limitation shall be tolled for
2 minors for any period during which a parent or guardian
3 and a health care provider or health care organization
4 have committed fraud or collusion in the failure to bring
5 an action on behalf of the injured minor.

6 **SEC. 104. COMPENSATING PATIENT INJURY.**

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

12 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any
13 health care lawsuit, the amount of noneconomic damages,
14 if available, may be as much as \$250,000, regardless of
15 the number of parties against whom the action is brought
16 or the number of separate claims or actions brought with
17 respect to the same injury.

18 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
19 DAMAGES.—For purposes of applying the limitation in
20 subsection (b), future noneconomic damages shall not be
21 discounted to present value. The jury shall not be in-
22 formed about the maximum award for noneconomic dam-
23 ages. An award for noneconomic damages in excess of
24 \$250,000 shall be reduced either before the entry of judg-
25 ment, or by amendment of the judgment after entry of

1 judgment, and such reduction shall be made before ac-
2 counting for any other reduction in damages required by
3 law. If separate awards are rendered for past and future
4 noneconomic damages and the combined awards exceed
5 \$250,000, the future noneconomic damages shall be re-
6 duced first.

7 (d) FAIR SHARE RULE.—In any health care lawsuit,
8 each party shall be liable for that party's several share
9 of any damages only and not for the share of any other
10 person. Each party shall be liable only for the amount of
11 damages allocated to such party in direct proportion to
12 such party's percentage of responsibility. Whenever a
13 judgment of liability is rendered as to any party, a sepa-
14 rate judgment shall be rendered against each such party
15 for the amount allocated to such party. For purposes of
16 this section, the trier of fact shall determine the propor-
17 tion of responsibility of each party for the claimant's
18 harm.

19 **SEC. 105. MAXIMIZING PATIENT RECOVERY.**

20 (a) COURT SUPERVISION OF SHARE OF DAMAGES
21 ACTUALLY PAID TO CLAIMANTS.—In any health care law-
22 suit, the court shall supervise the arrangements for pay-
23 ment of damages to protect against conflicts of interest
24 that may have the effect of reducing the amount of dam-
25 ages awarded that are actually paid to claimants. In par-

1 ticular, in any health care lawsuit in which the attorney
2 for a party claims a financial stake in the outcome by vir-
3 tue of a contingent fee, the court shall have the power
4 to restrict the payment of a claimant's damage recovery
5 to such attorney, and to redirect such damages to the
6 claimant based upon the interests of justice and principles
7 of equity. In no event shall the total of all contingent fees
8 for representing all claimants in a health care lawsuit ex-
9 ceed the following limits:

10 (1) Forty percent of the first \$50,000 recovered
11 by the claimant(s).

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

14 (3) Twenty-five percent of the next \$500,000
15 recovered by the claimant(s).

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

18 (b) APPLICABILITY.—The limitations in this section
19 shall apply whether the recovery is by judgment, settle-
20 ment, mediation, arbitration, or any other form of alter-
21 native dispute resolution. In a health care lawsuit involv-
22 ing a minor or incompetent person, a court retains the
23 authority to authorize or approve a fee that is less than
24 the maximum permitted under this section. The require-

1 ment for court supervision in the first two sentences of
2 subsection (a) applies only in civil actions.

3 **SEC. 106. PUNITIVE DAMAGES.**

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

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

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

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

22 (D) the number of products sold or med-
23 ical procedures rendered for compensation, as
24 the case may be, by such party, of the kind

1 causing the harm complained of by the claim-
2 ant;

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

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

9 (2) MAXIMUM AWARD.—The amount of punitive
10 damages, if awarded, in a health care lawsuit may
11 be as much as \$250,000 or as much as two times
12 the amount of economic damages awarded, which-
13 ever is greater. The jury shall not be informed of
14 this limitation.

15 (c) NO PUNITIVE DAMAGES FOR PRODUCTS THAT
16 COMPLY WITH FDA STANDARDS.—

17 (1) IN GENERAL.—

18 (A) No punitive damages may be awarded
19 against the manufacturer or distributor of a
20 medical product, or a supplier of any compo-
21 nent or raw material of such medical product,
22 based on a claim that such product caused the
23 claimant's harm where—

24 (i)(I) such medical product was sub-
25 ject to premarket approval, clearance, or li-

1 censure by the Food and Drug Administra-
2 tion with respect to the safety of the for-
3 mulation or performance of the aspect of
4 such medical product which caused the
5 claimant's harm or the adequacy of the
6 packaging or labeling of such medical
7 product; and

8 (II) such medical product was so ap-
9 proved, cleared, or licensed; or

10 (ii) such medical product is generally
11 recognized among qualified experts as safe
12 and effective pursuant to conditions estab-
13 lished by the Food and Drug Administra-
14 tion and applicable Food and Drug Admin-
15 istration regulations, including without
16 limitation those related to packaging and
17 labeling, unless the Food and Drug Admin-
18 istration has determined that such medical
19 product was not manufactured or distrib-
20 uted in substantial compliance with appli-
21 cable Food and Drug Administration stat-
22 utes and regulations.

23 (B) RULE OF CONSTRUCTION.—Subpara-
24 graph (A) may not be construed as establishing
25 the obligation of the Food and Drug Adminis-

1 tration to demonstrate affirmatively that a
2 manufacturer, distributor, or supplier referred
3 to in such subparagraph meets any of the con-
4 ditions described in such subparagraph.

5 (2) LIABILITY OF HEALTH CARE PROVIDERS.—

6 A health care provider who prescribes, or who dis-
7 penses pursuant to a prescription, a medical product
8 approved, licensed, or cleared by the Food and Drug
9 Administration shall not be named as a party to a
10 product liability lawsuit involving such product and
11 shall not be liable to a claimant in a class action
12 lawsuit against the manufacturer, distributor, or
13 seller of such product. Nothing in this paragraph
14 prevents a court from consolidating cases involving
15 health care providers and cases involving products li-
16 ability claims against the manufacturer, distributor,
17 or product seller of such medical product.

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, clearance, or licensure of such medical
9 product, knowingly misrepresented to or with-
10 held from the Food and Drug Administration
11 information that is required to be submitted
12 under the Federal Food, Drug, and Cosmetic
13 Act (21 U.S.C. 301 et seq.) or section 351 of
14 the Public Health Service Act (42 U.S.C. 262)
15 that is material and is causally related to the
16 harm which the claimant allegedly suffered;

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, clearance, or licensure of such
21 medical product; or

22 (C) the defendant caused the medical prod-
23 uct which caused the claimant's harm to be
24 misbranded or adulterated (as such terms are

1 used in chapter V of the Federal Food, Drug,
2 and Cosmetic Act (21 U.S.C. 351 et seq.)).

3 **SEC. 107. 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 title.

19 **SEC. 108. DEFINITIONS.**

20 In this title:

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) COMPENSATORY DAMAGES.—The term
12 “compensatory damages” means objectively
13 verifiable monetary losses incurred as a result of the
14 provision of, use of, or payment for (or failure to
15 provide, use, or pay for) health care services or med-
16 ical products, such as past and future medical ex-
17 penses, loss of past and future earnings, cost of ob-
18 taining domestic services, loss of employment, and
19 loss of business or employment opportunities, dam-
20 ages for physical and emotional pain, suffering, in-
21 convenience, physical impairment, mental anguish,
22 disfigurement, loss of enjoyment of life, loss of soci-
23 ety and companionship, loss of consortium (other
24 than loss of domestic service), hedonic damages, in-
25 jury to reputation, and all other nonpecuniary losses

1 of any kind or nature. The term “compensatory
2 damages” includes economic damages and non-
3 economic damages, as such terms are defined in this
4 section.

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

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

18 (6) HEALTH CARE LAWSUIT.—The term
19 “health care lawsuit” means any health care liability
20 claim concerning the provision of health care goods
21 or services or any medical product affecting inter-
22 state commerce, or any health care liability action
23 concerning the provision of health care goods or
24 services or any medical product affecting interstate
25 commerce, brought in a State or Federal court or

1 pursuant to an alternative dispute resolution system,
2 against a health care provider, a health care organi-
3 zation, or the manufacturer, distributor, supplier,
4 marketer, promoter, or seller of a medical product,
5 regardless of the theory of liability on which the
6 claim is based, or the number of claimants, plain-
7 tiffs, defendants, or other parties, or the number of
8 claims or causes of action, in which the claimant al-
9 leges a health care liability claim. Such term does
10 not include a claim or action which is based on
11 criminal liability; which seeks civil fines or penalties
12 paid to Federal, State, or local government; or which
13 is grounded in antitrust.

14 (7) HEALTH CARE LIABILITY ACTION.—The
15 term “health care liability action” means a civil ac-
16 tion brought in a State or Federal court or pursuant
17 to an alternative dispute resolution system, against
18 a health care provider, a health care organization, or
19 the manufacturer, distributor, supplier, marketer,
20 promoter, or seller of a medical product, regardless
21 of the theory of liability on which the claim is based,
22 or the number of plaintiffs, defendants, or other par-
23 ties, or the number of causes of action, in which the
24 claimant alleges a health care liability claim.

1 (8) HEALTH CARE LIABILITY CLAIM.—The
2 term “health care liability claim” means a demand
3 by any person, whether or not pursuant to ADR,
4 against a health care provider, health care organiza-
5 tion, or the manufacturer, distributor, supplier, mar-
6 keter, promoter, or seller of a medical product, in-
7 cluding, but not limited to, third-party claims, cross-
8 claims, counter-claims, or contribution claims, which
9 are based upon the provision of, use of, or payment
10 for (or the failure to provide, use, or pay for) health
11 care services or medical products, regardless of the
12 theory of liability on which the claim is based, or the
13 number of plaintiffs, defendants, or other parties, or
14 the number of causes of action.

15 (9) HEALTH CARE ORGANIZATION.—The term
16 “health care organization” means any person or en-
17 tity which is obligated to provide or pay for health
18 benefits under any health plan, including any person
19 or entity acting under a contract or arrangement
20 with a health care organization to provide or admin-
21 ister any health benefit.

22 (10) HEALTH CARE PROVIDER.—The term
23 “health care provider” means any person or entity
24 required by State or Federal laws or regulations to
25 be licensed, registered, or certified to provide health

1 care services, and being either so licensed, reg-
2 istered, or certified, or exempted from such require-
3 ment by other statute or regulation.

4 (11) HEALTH CARE GOODS OR SERVICES.—The
5 term “health care goods or services” means any
6 goods or services provided by a health care organiza-
7 tion, provider, or by any individual working under
8 the supervision of a health care provider, that relates
9 to the diagnosis, prevention, or treatment of any
10 human disease or impairment, or the assessment or
11 care of the health of human beings.

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

17 (13) MEDICAL PRODUCT.—The term “medical
18 product” means a drug, device, or biological product
19 intended for humans, and the terms “drug”, “de-
20 vice”, and “biological product” have the meanings
21 given such terms in sections 201(g)(1) and 201(h)
22 of the Federal Food, Drug and Cosmetic Act (21
23 U.S.C. 321(g)(1) and (h)) and section 351(a) of the
24 Public Health Service Act (42 U.S.C. 262(a)), re-

1 spectively, including any component or raw material
2 used therein, but excluding health care services.

3 (14) NONECONOMIC DAMAGES.—The term
4 “noneconomic damages” means damages for phys-
5 ical and emotional pain, suffering, inconvenience,
6 physical impairment, mental anguish, disfigurement,
7 loss of enjoyment of life, loss of society and compan-
8 ionship, loss of consortium (other than loss of do-
9 mestic service), hedonic damages, injury to reputa-
10 tion, and all other nonpecuniary losses of any kind
11 or nature.

12 (15) PUNITIVE DAMAGES.—The term “punitive
13 damages” means damages awarded, for the purpose
14 of punishment or deterrence, and not solely for com-
15 pensatory purposes, against a health care provider,
16 health care organization, or a manufacturer, dis-
17 tributor, or supplier of a medical product. Punitive
18 damages are neither economic nor noneconomic
19 damages.

20 (16) RECOVERY.—The term “recovery” means
21 the net sum recovered after deducting any disburse-
22 ments or costs incurred in connection with prosecu-
23 tion or settlement of the claim, including all costs
24 paid or advanced by any person. Costs of health care
25 incurred by the plaintiff and the attorneys’ office

1 overhead costs or charges for legal services are not
2 deductible disbursements or costs for such purpose.

3 (17) STATE.—The term “State” means each of
4 the several States, the District of Columbia, the
5 Commonwealth of Puerto Rico, the Virgin Islands,
6 Guam, American Samoa, the Northern Mariana Is-
7 lands, the Trust Territory of the Pacific Islands, and
8 any other territory or possession of the United
9 States, or any political subdivision thereof.

10 **SEC. 109. EFFECT ON OTHER LAWS.**

11 (a) VACCINE INJURY.—

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

16 (A) this title does not affect the application
17 of the rule of law to such an action; and

18 (B) any rule of law prescribed by this title
19 in conflict with a rule of law of such title XXI
20 shall not apply to such action.

21 (2) If there is an aspect of a civil action
22 brought for a vaccine-related injury or death to
23 which a Federal rule of law under title XXI of the
24 Public Health Service Act does not apply, then this
25 title or otherwise applicable law (as determined

1 under this title) will apply to such aspect of such ac-
2 tion.

3 (b) OTHER FEDERAL LAW.—Except as provided in
4 this section, nothing in this title shall be deemed to affect
5 any defense available to a defendant in a health care law-
6 suit or action under any other provision of Federal law.

7 **SEC. 110. STATE FLEXIBILITY AND PROTECTION OF**
8 **STATES' RIGHTS.**

9 (a) HEALTH CARE LAWSUITS.—The provisions gov-
10 erning health care lawsuits set forth in this title preempt,
11 subject to subsections (b) and (c), State law to the extent
12 that State law prevents the application of any provisions
13 of law established by or under this title. The provisions
14 governing health care lawsuits set forth in this title super-
15 sede chapter 171 of title 28, United States Code, to the
16 extent that such chapter—

17 (1) provides for a greater amount of damages
18 or contingent fees, a longer period in which a health
19 care lawsuit may be commenced, or a reduced appli-
20 cability or scope of periodic payment of future dam-
21 ages, than provided in this title; or

22 (2) prohibits the introduction of evidence re-
23 garding collateral source benefits, or mandates or
24 permits subrogation or a lien on collateral source
25 benefits.

1 (b) PROTECTION OF STATES' RIGHTS AND OTHER
2 LAWS.—(1) Any issue that is not governed by any provi-
3 sion of law established by or under this title (including
4 State standards of negligence) shall be governed by other-
5 wise applicable State or Federal law.

6 (2) This title shall not preempt or supersede any
7 State or Federal law that imposes greater procedural or
8 substantive protections for health care providers and
9 health care organizations from liability, loss, or damages
10 than those provided by this title or create a cause of ac-
11 tion.

12 (c) STATE FLEXIBILITY.—No provision of this title
13 shall be construed to preempt—

14 (1) any State law (whether effective before, on,
15 or after the date of the enactment of this title) that
16 specifies a particular monetary amount of compen-
17 satory or punitive damages (or the total amount of
18 damages) that may be awarded in a health care law-
19 suit, regardless of whether such monetary amount is
20 greater or lesser than is provided for under this title,
21 notwithstanding section 4(a); or

22 (2) any defense available to a party in a health
23 care lawsuit under any other provision of State or
24 Federal law.

1 **SEC. 111. APPLICABILITY; EFFECTIVE DATE.**

2 This title 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 title, except that
6 any health care lawsuit arising from an injury occurring
7 prior to the date of the enactment of this title shall be
8 governed by the applicable statute of limitations provisions
9 in effect at the time the injury occurred.

10 **TITLE II—REPEAL OF INDE-**
11 **PENDENT PAYMENT ADVI-**
12 **SORY BOARD**

13 **SEC. 201. SHORT TITLE.**

14 This title may be cited as the “Medicare Decisions
15 Accountability Act of 2012”.

16 **SEC. 202. REPEAL OF THE INDEPENDENT PAYMENT ADVI-**
17 **SORY BOARD.**

18 Effective as of the enactment of the Patient Protec-
19 tion and Affordable Care Act (Public Law 111–148), sec-
20 tions 3403 and 10320 of such Act (including the amend-
21 ments made by such sections, but excluding subsection (d)
22 of section 1899A of the Social Security Act, as added and
23 amended by such sections) are repealed, and any provision
24 of law amended by such sections is hereby restored as if
25 such sections had not been enacted into law.

1 **TITLE III—HEALTH CARE**
2 **SAFETY NET ENHANCEMENT**

3 **SEC. 301. SHORT TITLE.**

4 This title may be cited as the “Health Care Safety
5 Net Enhancement Act of 2012”.

6 **SEC. 302. PROTECTION FOR EMERGENCY AND RELATED**
7 **SERVICES FURNISHED PURSUANT TO**
8 **EMTALA.**

9 Section 224(g) of the Public Health Service Act (42
10 U.S.C. 233(g)) is amended—

11 (1) in paragraph (4), by striking “An entity”
12 and inserting “Subject to paragraph (6), an entity”;
13 and

14 (2) by adding at the end the following:

15 “(6)(A) For purposes of this section—

16 “(i) an entity described in subparagraph
17 (B) shall be considered to be an entity de-
18 scribed in paragraph (4); and

19 “(ii) the provisions of this section shall
20 apply to an entity described in subparagraph
21 (B) in the same manner as such provisions
22 apply to an entity described in paragraph (4),
23 except that—

24 “(I) notwithstanding paragraph
25 (1)(B), the deeming of any entity described

1 in subparagraph (B), or of an officer, gov-
2 erning board member, employee, con-
3 tractor, or on-call provider of such an enti-
4 ty, to be an employee of the Public Health
5 Service for purposes of this section shall
6 apply only with respect to items and serv-
7 ices that are furnished to an individual
8 pursuant to section 1867 of the Social Se-
9 curity Act and to post stabilization services
10 (as defined in subparagraph (D)) furnished
11 to such an individual;

12 “(II) nothing in paragraph (1)(D)
13 shall be construed as preventing a physi-
14 cian or physician group described in sub-
15 paragraph (B)(ii) from making the appli-
16 cation referred to in such paragraph or as
17 conditioning the deeming of a physician or
18 physician group that makes such an appli-
19 cation upon receipt by the Secretary of an
20 application from the hospital or emergency
21 department that employs or contracts with
22 the physician or group, or enlists the phy-
23 sician or physician group as an on-call pro-
24 vider;

1 “(III) notwithstanding paragraph (3),
2 this paragraph shall apply only with re-
3 spect to causes of action arising from acts
4 or omissions that occur on or after Janu-
5 ary 1, 2012;

6 “(IV) paragraph (5) shall not apply to
7 a physician or physician group described in
8 subparagraph (B)(ii);

9 “(V) the Attorney General, in con-
10 sultation with the Secretary, shall make
11 separate estimates under subsection (k)(1)
12 with respect to entities described in sub-
13 paragraph (B) and entities described in
14 paragraph (4) (other than those described
15 in subparagraph (B)), and the Secretary
16 shall establish separate funds under sub-
17 section (k)(2) with respect to such groups
18 of entities, and any appropriations under
19 this subsection for entities described in
20 subparagraph (B) shall be separate from
21 the amounts authorized by subsection
22 (k)(2);

23 “(VI) notwithstanding subsection
24 (k)(2), the amount of the fund established
25 by the Secretary under such subsection

1 with respect to entities described in sub-
2 paragraph (B) may exceed a total of
3 \$10,000,000 for a fiscal year; and

4 “(VII) subsection (m) shall not apply
5 to entities described in subparagraph (B).

6 “(B) An entity described in this subparagraph
7 is—

8 “(i) a hospital or an emergency depart-
9 ment to which section 1867 of the Social Secu-
10 rity Act applies; and

11 “(ii) a physician or physician group that is
12 employed by, is under contract with, or is an
13 on-call provider of such hospital or emergency
14 department, to furnish items and services to in-
15 dividuals under such section.

16 “(C) For purposes of this paragraph, the term
17 ‘on-call provider’ means a physician or physician
18 group that—

19 “(i) has full, temporary, or locum tenens
20 staff privileges at a hospital or emergency de-
21 partment to which section 1867 of the Social
22 Security Act applies; and

23 “(ii) is not employed by or under contract
24 with such hospital or emergency department,
25 but agrees to be ready and available to provide

1 services pursuant to section 1867 of the Social
2 Security Act or post-stabilization services to in-
3 dividuals being treated in the hospital or emer-
4 gency department with or without compensation
5 from the hospital or emergency department.

6 “(D) For purposes of this paragraph, the term
7 ‘post stabilization services’ means, with respect to an
8 individual who has been treated by an entity de-
9 scribed in subparagraph (B) for purposes of com-
10 plying with section 1867 of the Social Security Act,
11 services that are—

12 “(i) related to the condition that was so
13 treated; and

14 “(ii) provided after the individual is sta-
15 bilized in order to maintain the stabilized condi-
16 tion or to improve or resolve the condition of
17 the individual.

18 “(E)(i) Nothing in this paragraph (or in any
19 other provision of this section as such provision ap-
20 plies to entities described in subparagraph (B) by
21 operation of subparagraph (A)) shall be construed as
22 authorizing or requiring the Secretary to make pay-
23 ments to such entities, the budget authority for
24 which is not provided in advance by appropriation
25 Acts.

1 “(ii) The Secretary shall limit the total amount
2 of payments under this paragraph for a fiscal year
3 to the total amount appropriated in advance by ap-
4 propriation Acts for such purpose for such fiscal
5 year. If the total amount of payments that would
6 otherwise be made under this paragraph for a fiscal
7 year exceeds such total amount appropriated, the
8 Secretary shall take such steps as may be necessary
9 to ensure that the total amount of payments under
10 this paragraph for such fiscal year does not exceed
11 such total amount appropriated.”.

12 **SEC. 303. CONSTITUTIONAL AUTHORITY.**

13 The constitutional authority upon which this title
14 rests is the power of the Congress to provide for the gen-
15 eral welfare, to regulate commerce, and to make all laws
16 which shall be necessary and proper for carrying into exe-
17 cution Federal powers, as enumerated in section 8 of arti-
18 cle I of the Constitution of the United States.

19 **TITLE IV—RESTORING THE AP-**
20 **PLICATION OF ANTITRUST**
21 **LAWS TO HEALTH SECTOR IN-**
22 **SURERS**

23 **SEC. 401. SHORT TITLE.**

24 This title may be cited as the “Health Insurance In-
25 dustry Fair Competition Act of 2012”.

1 **SEC. 402. APPLICATION OF THE ANTITRUST LAWS TO THE**
2 **BUSINESS OF HEALTH INSURANCE.**

3 (a) AMENDMENT TO McCARRAN-FERGUSON ACT.—
4 Section 3 of the Act of March 9, 1945 (15 U.S.C. 1013),
5 commonly known as the McCarran-Ferguson Act, is
6 amended by adding at the end the following:

7 “(c) Nothing contained in this Act shall modify, im-
8 pair, or supersede the operation of any of the antitrust
9 laws with respect to the business of health insurance. For
10 purposes of the preceding sentence, the term ‘antitrust
11 laws’ has the meaning given it in subsection (a) of the
12 first section of the Clayton Act, except that such term in-
13 cludes section 5 of the Federal Trade Commission Act to
14 the extent that such section 5 applies to unfair methods
15 of competition. For the purposes of this subsection, the
16 term ‘business of health insurance’ shall—

17 “(1) mean ‘health insurance coverage’ offered
18 by a ‘health insurance issuer’ as those terms are de-
19 fined in section 9001 of the Patient Protection and
20 Affordable Care Act, which incorporates by reference
21 and utilizes the definitions included in section 9832
22 of the Internal Revenue Code (26 U.S.C. 9832); and

23 “(2) not include—

24 “(A) life insurance and annuities;

25 “(B) property or casualty insurance, in-
26 cluding but not limited to, automobile, medical

1 malpractice or workers' compensation insur-
2 ance; or

3 “(C) any insurance or benefits defined as
4 ‘excepted benefits’ under section 9832(c) of the
5 Internal Revenue Code (26 U.S.C. 9832(c)),
6 whether offered separately or in combination
7 with products described in subparagraph (A).”.

8 (b) RELATED PROVISION.—For purposes of section
9 5 of the Federal Trade Commission Act (15 U.S.C. 45)
10 to the extent such section applies to unfair methods of
11 competition, section 3(c) of the McCarran-Ferguson Act
12 shall apply with respect to the business of health insurance
13 without regard to whether such business is carried on for
14 profit, notwithstanding the definition of “Corporation”
15 contained in section 4 of the Federal Trade Commission
16 Act.

17 (c) LIMITATION ON CLASS ACTIONS.—

18 (1) LIMITATION.—No class action may be
19 heard in a Federal or State court on a claim against
20 a person engaged in the business of health insurance
21 for a violation of any of the antitrust laws (as de-
22 fined in section 3(e) of the Act of March 9, 1945
23 (15 U.S.C. 1013), commonly known as the
24 McCarran-Ferguson Act).

1 (2) EXEMPTION.—Paragraph (1) shall not
2 apply with respect to any action commenced—

3 (A) by the United States or any State; or

4 (B) by a named claimant for an injury
5 only to itself.

6 **TITLE V—PROTECTIONS FOR**
7 **GOOD SAMARITAN HEALTH**
8 **PROFESSIONALS**

9 **SEC. 501. SHORT TITLE.**

10 This title may be cited as the “Good Samaritan
11 Health Professionals Act of 2012”.

12 **SEC. 502. LIMITATION ON LIABILITY FOR VOLUNTEER**
13 **HEALTH CARE PROFESSIONALS.**

14 (a) IN GENERAL.—Title II of the Public Health Serv-
15 ice Act (42 U.S.C. 202 et seq.) is amended by inserting
16 after section 224 the following:

17 **“SEC. 224A. LIMITATION ON LIABILITY FOR VOLUNTEER**
18 **HEALTH CARE PROFESSIONALS.**

19 “(a) LIMITATION ON LIABILITY.—Except as provided
20 in subsection (b), a health care professional shall not be
21 liable under Federal or State law for any harm caused
22 by an act or omission of the professional if—

23 “(1) the professional is serving as a volunteer
24 for purposes of responding to a disaster; and

25 “(2) the act or omission occurs—

1 “(A) during the period of the disaster, as
2 determined under the laws listed in subsection
3 (e)(1);

4 “(B) in the health care professional’s ca-
5 pacity as such a volunteer; and

6 “(C) in a good faith belief that the indi-
7 vidual being treated is in need of health care
8 services.

9 “(b) EXCEPTIONS.—Subsection (a) does not apply
10 if—

11 “(1) the harm was caused by an act or omission
12 constituting willful or criminal misconduct, gross
13 negligence, reckless misconduct, or a conscious fla-
14 grant indifference to the rights or safety of the indi-
15 vidual harmed by the health care professional; or

16 “(2) the health care professional rendered the
17 health care services under the influence (as deter-
18 mined pursuant to applicable State law) of intoxi-
19 cating alcohol or an intoxicating drug.

20 “(c) STANDARD OF PROOF.—In any civil action or
21 proceeding against a health care professional claiming that
22 the limitation in subsection (a) applies, the plaintiff shall
23 have the burden of proving by clear and convincing evi-
24 dence the extent to which limitation does not apply.

25 “(d) PREEMPTION.—

1 “(1) IN GENERAL.—This section preempts the
2 laws of a State or any political subdivision of a State
3 to the extent that such laws are inconsistent with
4 this section, unless such laws provide greater protec-
5 tion from liability.

6 “(2) VOLUNTEER PROTECTION ACT.—Protec-
7 tions afforded by this section are in addition to those
8 provided by the Volunteer Protection Act of 1997.

9 “(e) DEFINITIONS.—In this section:

10 “(1) The term ‘disaster’ means—

11 “(A) a national emergency declared by the
12 President under the National Emergencies Act;

13 “(B) an emergency or major disaster de-
14 clared by the President under the Robert T.
15 Stafford Disaster Relief and Emergency Assist-
16 ance Act; or

17 “(C) a public health emergency determined
18 by the Secretary under section 319 of this Act.

19 “(2) The term ‘harm’ includes physical, non-
20 physical, economic, and noneconomic losses.

21 “(3) The term ‘health care professional’ means
22 an individual who is licensed, certified, or authorized
23 in one or more States to practice a health care pro-
24 fession.

1 “(4) The term ‘State’ includes each of the sev-
2 eral States, the District of Columbia, the Common-
3 wealth of Puerto Rico, the Virgin Islands, Guam,
4 American Samoa, the Northern Mariana Islands,
5 and any other territory or possession of the United
6 States.

7 “(5)(A) The term ‘volunteer’ means a health
8 care professional who, with respect to the health
9 care services rendered, does not receive—

10 “(i) compensation; or

11 “(ii) any other thing of value in lieu of
12 compensation, in excess of \$500 per year.

13 “(B) For purposes of subparagraph (A), the
14 term ‘compensation’—

15 “(i) includes payment under any insurance
16 policy or health plan, or under any Federal or
17 State health benefits program; and

18 “(ii) excludes—

19 “(I) reasonable reimbursement or al-
20 lowance for expenses actually incurred;

21 “(II) receipt of paid leave; and

22 “(III) receipt of items to be used ex-
23 clusively for rendering the health services
24 in the health care professional’s capacity

1 as a volunteer described in subsection
2 (a)(1).”.

3 (b) EFFECTIVE DATE.—

4 (1) IN GENERAL.—This title and the amend-
5 ment made by subsection (a) shall take effect 90
6 days after the date of the enactment of this title.

7 (2) APPLICATION.—This title applies to any
8 claim for harm caused by an act or omission of a
9 health care professional where the claim is filed on
10 or after the effective date of this title, but only if the
11 harm that is the subject of the claim or the conduct
12 that caused such harm occurred on or after such ef-
13 fective date.

 Passed the House of Representatives March 22,
2012.

Attest:

KAREN L. HAAS,
Clerk.