

111TH CONGRESS
2^D SESSION

S. 2997

To amend title XVIII of the Social Security Act to provide for the update under the Medicare physician fee schedule for years beginning with 2010 and to sunset the application of the sustainable growth rate formula, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2010

Mr. WICKER introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to provide for the update under the Medicare physician fee schedule for years beginning with 2010 and to sunset the application of the sustainable growth rate formula, and for other purposes.

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

3 **TITLE I—PHYSICIAN PAYMENT**
4 **UPDATE COMMISSION**

5 **SECTION 1. SHORT TITLE.**

6 This title may be cited as the “Physician Payment
7 Update Commission Act”.

1 **SEC. 2. ESTABLISHMENT OF PHYSICIAN PAYMENT UPDATE**
2 **COMMISSION.**

3 (a) **MEDICARE PHYSICIAN FEE SCHEDULE UPDATE**
4 **AND SUNSET OF MEDICARE SUSTAINABLE GROWTH RATE**
5 **FORMULA.—**

6 (1) **UPDATE FOR 2010 AND 2011.—**Section
7 1848(d)(10) of the Social Security Act (42 U.S.C.
8 1395w-4(d)(10)) is amended to read as follows:

9 “(10) **UPDATE FOR 2010 AND 2011.—**

10 “(A) **IN GENERAL.—**The update to the sin-
11 gle conversion factor established in paragraph
12 (1)(C) for 2010 and 2011 shall be 0 percent.

13 “(B) **NO EFFECT ON COMPUTATION OF**
14 **CONVERSION FACTOR FOR 2012 AND SUBSE-**
15 **QUENT YEARS.—**The conversion factor under
16 this subsection shall be computed under para-
17 graph (1)(A) for 2012 and subsequent years as
18 if subparagraph (A) had never applied.”.

19 (2) **SUNSET OF MEDICARE SUSTAINABLE**
20 **GROWTH RATE FORMULA.—**Effective January 1,
21 2012, subsection (f) of section 1848 of the Social
22 Security Act (42 U.S.C. 1395w-4) is repealed.

23 (b) **ESTABLISHMENT OF PHYSICIAN PAYMENT UP-**
24 **DATE COMMISSION.—**

25 (1) **IN GENERAL.—**There is established a com-
26 mission to be known as the “Physician Payment Up-

1 date Commission” (referred to in this section as the
2 “Commission”).

3 (2) MEMBERSHIP.—

4 (A) COMPOSITION.—The Commission shall
5 be composed of 17 members appointed by the
6 Comptroller General of the United States, upon
7 the recommendation of the majority and minor-
8 ity leaders of the Senate and the Speaker and
9 minority leader of the House of Representa-
10 tives.

11 (B) DATE OF APPOINTMENTS.—Members
12 of the Commission shall be appointed not later
13 than 2 months after the date of enactment of
14 this Act.

15 (3) QUALIFICATIONS.—

16 (A) IN GENERAL.—The membership of the
17 Commission shall include individuals with na-
18 tional recognition for their expertise in health
19 finance and economics, actuarial science, inte-
20 grated delivery systems, allopathic and osteo-
21 pathic medicine and other areas of health serv-
22 ices, and other related fields, who provide a mix
23 of different professionals, broad geographic rep-
24 resentation, and a balance between urban and
25 rural representatives.

1 (B) INCLUSION.—The members of the
2 Commission shall include (but not be limited to)
3 physicians and other health professionals, em-
4 ployers, third-party payers, individuals skilled
5 in the conduct and interpretation of biomedical,
6 health services, and health economics research
7 and technology assessment. Such membership
8 shall also include representatives of consumers
9 and the elderly.

10 (C) MAJORITY PHYSICIANS AND OTHER
11 HEALTH PROFESSIONALS.—Individuals who are
12 physicians or other health professionals shall
13 constitute a majority of the membership of the
14 Commission.

15 (4) TERM; VACANCIES.—

16 (A) TERM.—A member shall be appointed
17 for the life of the Commission.

18 (B) VACANCIES.—A vacancy on the Com-
19 mission—

20 (i) shall not affect the powers of the
21 Commission; and

22 (ii) shall be filled in the same manner
23 as the original appointment was made.

24 (5) MEETINGS.—The Commission shall meet at
25 the call of the Chairperson.

1 (6) QUORUM.—A majority of the members of
2 the Commission shall constitute a quorum, but a
3 lesser number of members may hold hearings.

4 (7) CHAIRPERSON.—The Comptroller General
5 shall designate a member of the Commission, at the
6 time of the appointment of the member, as Chair-
7 person.

8 (c) DUTIES.—

9 (1) STUDY.—The Commission shall conduct a
10 study of all matters relating to payment rates under
11 the Medicare physician fee schedule under section
12 1848 of the Social Security Act (42 U.S.C. 1395w-
13 4).

14 (2) RECOMMENDATIONS.—The Commission
15 shall develop recommendations on the establishment
16 of a new physician payment system under the Medi-
17 care program that would appropriately reimburse
18 physicians by keeping pace with increases in medical
19 practice costs and providing stable, positive Medicare
20 updates.

21 (3) REPORT.—Not later than December 1,
22 2010, the Commission shall submit to the appro-
23 priate Committees of Congress and the Medicare
24 Payment Advisory Commission—

1 (A) a detailed statement of the findings
2 and conclusions of the Commission;

3 (B) the recommendations of the Commis-
4 sion for such legislation and administrative ac-
5 tions as the Commission considers appropriate
6 (including proposed legislative language to carry
7 out such recommendations); and

8 (C) a long-term CBO cost estimate regard-
9 ing such recommendations (as described under
10 subsection (i)).

11 (d) POWERS.—

12 (1) HEARINGS.—The Commission may hold
13 such hearings, meet and act at such times and
14 places, take such testimony, and receive such evi-
15 dence as the Commission considers advisable to
16 carry out this section.

17 (2) INFORMATION FROM FEDERAL AGENCIES.—

18 (A) IN GENERAL.—The Commission may
19 secure directly from a Federal agency such in-
20 formation as the Commission considers nec-
21 essary to carry out this section.

22 (B) PROVISION OF INFORMATION.—On re-
23 quest of the Chairperson of the Commission,
24 the head of the agency shall provide the infor-
25 mation to the Commission.

1 (3) POSTAL SERVICES.—The Commission may
2 use the United States mails in the same manner and
3 under the same conditions as other agencies of the
4 Federal Government.

5 (e) COMMISSION PERSONNEL MATTERS.—

6 (1) COMPENSATION OF MEMBERS.—

7 (A) IN GENERAL.—Members of the Com-
8 mission shall serve without compensation in ad-
9 dition to the compensation received for the serv-
10 ices of the member as an officer or employee of
11 the Federal Government.

12 (B) TRAVEL EXPENSES.—A member of the
13 Commission shall be allowed travel expenses, in-
14 cluding per diem in lieu of subsistence, at rates
15 authorized for an employee of an agency under
16 subchapter I of chapter 57 of title 5, United
17 States Code, while away from the home or reg-
18 ular place of business of the member in the per-
19 formance of the duties of the Commission.

20 (2) STAFF AND SUPPORT SERVICES.—

21 (A) EXECUTIVE DIRECTOR.—The Chair-
22 person shall appoint an executive director of the
23 Commission.

24 (B) STAFF.—With the approval of the
25 Commission, the executive director may appoint

1 such personnel as the executive director con-
2 siders appropriate.

3 (C) APPLICABILITY OF CIVIL SERVICE
4 LAWS.—The staff of the Commission shall be
5 appointed without regard to the provisions of
6 title 5, United States Code, governing appoint-
7 ments in the competitive service, and shall be
8 paid without regard to the provisions of chapter
9 51 and subchapter III of chapter 53 of such
10 title (relating to classification and General
11 Schedule pay rates).

12 (D) EXPERTS AND CONSULTANTS.—With
13 the approval of the Commission, the executive
14 director may procure temporary and intermit-
15 tent services under section 3109(b) of title 5,
16 United States Code.

17 (f) TERMINATION OF COMMISSION.—The Commis-
18 sion shall terminate 30 days after the date on which the
19 Commission submits its report under subsection (c)(3).

20 (g) REVIEW AND RESPONSE TO RECOMMENDATIONS
21 BY THE MEDICARE PAYMENT ADVISORY COMMISSION.—

22 (1) IN GENERAL.—Not later than February 1,
23 2011, the Medicare Payment Advisory Commission
24 shall—

1 (A) review the recommendations included
2 in the report submitted under subsection (c)(3);

3 (B) examine the budget consequences of
4 such recommendations, directly or through con-
5 sultation with appropriate expert entities; and

6 (C) submit to the appropriate Committees
7 of Congress a report on such review.

8 (2) CONTENTS OF REPORT ON REVIEW OF COM-
9 MISSION RECOMMENDATIONS.—The report sub-
10 mitted under paragraph (1)(C) shall include—

11 (A) if the Medicare Payment Advisory
12 Commission supports the recommendations of
13 the Commission, the reasons for such support;
14 or

15 (B) if the Medicare Payment Advisory
16 Commission does not support such rec-
17 ommendations, the recommendations of the
18 Medicare Payment Advisory Commission, to-
19 gether with an explanation as to why the Medi-
20 care Payment Advisory Commission does not
21 support the recommendations of the Commis-
22 sion.

23 (h) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated such sums as may be
25 necessary for the Commission to carry out this section.

1 Such appropriation shall be payable from the Federal Sup-
2 plementary Medical Insurance Trust Fund under section
3 1841 of the Social Security Act (42 U.S.C. 1395t).

4 (i) LONG-TERM CBO COST ESTIMATE.—

5 (1) PREPARATION AND SUBMISSION.—When
6 the Commission submits a written request to the Di-
7 rector of the Congressional Budget Office for a long-
8 term CBO cost estimate of recommended legislation
9 or administrative actions (as described under sub-
10 section (c)(3)), the Director shall prepare the esti-
11 mate and have it published in the Congressional
12 Record as expeditiously as possible.

13 (2) CONTENT.—A long-term CBO cost estimate
14 shall include—

15 (A) an estimate of the cost of each provi-
16 sion (if practicable) or group of provisions of
17 the recommended legislation or administrative
18 actions for first fiscal year it would take effect
19 and for each of the 49 fiscal years thereafter;
20 and

21 (B) a statement of any estimated future
22 costs not reflected by the estimate described in
23 subparagraph (A).

24 (3) FORM.—To the extent that a long-term
25 CBO cost estimate presented in dollars is impracti-

1 cable, the Director of the Congressional Budget Of-
2 fice may instead present the estimate in terms of
3 percentages of gross domestic product, with round-
4 ing to the nearest $\frac{1}{10}$ of 1 percent of gross domestic
5 product.

6 (4) LIMITATIONS ON DISCRETIONARY SPEND-
7 ING.—A long-term CBO cost estimate shall only
8 consider the effects of provisions affecting revenues
9 and direct spending (as defined by the Balanced
10 Budget and Emergency Deficit Control Act of
11 1985), and shall not assume that any changes in
12 outlays will result from limitations on, or reductions
13 in, annual appropriations.

14 (j) EXPEDITED CONSIDERATION OF COMMISSION
15 RECOMMENDATIONS.—

16 (1) INTRODUCTION.—

17 (A) IN GENERAL.—The proposed legisla-
18 tive language contained in the report submitted
19 pursuant to subsection (c)(3) (referred to in
20 this subsection as the “Commission bill”) shall
21 be introduced within the first 10 calendar days
22 of the 112th Congress (or on the first session
23 day thereafter) in the House of Representatives
24 and in the Senate by the majority leader of
25 each House of Congress, for himself, the minor-

1 ity leader of each House of Congress, for him-
2 self, or any member of the House designated by
3 the majority leader or minority leader. If the
4 Commission bill is not introduced in accordance
5 with the preceding sentence in either House of
6 Congress, then any Member of that House may
7 introduce the Commission bill on any day there-
8 after. Upon introduction, the Commission bill
9 shall be referred to the appropriate committees
10 under subparagraph (B).

11 (B) COMMITTEE CONSIDERATION.—A
12 Commission bill introduced in either House of
13 Congress shall be jointly referred to the com-
14 mittee or committees of jurisdiction, which shall
15 report the bill without any revision and with a
16 favorable recommendation, an unfavorable rec-
17 ommendation, or without recommendation, not
18 later than 10 calendar days after the date of in-
19 troduction of the bill in that House. If any com-
20 mittee fails to report the bill within that period,
21 that committee shall be automatically dis-
22 charged from consideration of the bill, and the
23 bill shall be placed on the appropriate calendar.
24 (2) EXPEDITED PROCEDURE.—

1 (A) IN THE HOUSE OF REPRESENTA-
2 TIVES.—

3 (i) IN GENERAL.—Not later than 5
4 days of session after the date on which a
5 Commission bill is reported or discharged
6 from all committees to which it was re-
7 ferred, the majority leader of the House of
8 Representatives or the majority leader's
9 designee shall move to proceed to the con-
10 sideration of the Commission bill. It shall
11 also be in order for any Member of the
12 House of Representatives to move to pro-
13 ceed to the consideration of the Commis-
14 sion bill at any time after the conclusion of
15 such 5-day period.

16 (ii) MOTION TO PROCEED.—A motion
17 to proceed to the consideration of the Com-
18 mission bill is highly privileged in the
19 House of Representatives and is not debat-
20 able. The motion is not subject to amend-
21 ment or to a motion to postpone consider-
22 ation of the Commission bill. A motion to
23 proceed to the consideration of other busi-
24 ness shall not be in order. A motion to re-
25 consider the vote by which the motion to

1 proceed is agreed to or not agreed to shall
2 not be in order. If the motion to proceed
3 is agreed to, the House of Representatives
4 shall immediately proceed to consideration
5 of the Commission bill without intervening
6 motion, order, or other business, and the
7 Commission bill shall remain the unfin-
8 ished business of the House of Representa-
9 tives until disposed of.

10 (iii) LIMITS ON DEBATE.—Debate in
11 the House of Representatives on a Com-
12 mission bill under this paragraph shall not
13 exceed a total of 100 hours, which shall be
14 divided equally between those favoring and
15 those opposing the bill. A motion further
16 to limit debate is in order and shall not be
17 debatable. It shall not be in order to move
18 to recommit a Commission bill under this
19 paragraph or to move to reconsider the
20 vote by which the bill is agreed to or dis-
21 agreed to.

22 (iv) APPEALS.—Appeals from deci-
23 sions of the chair relating to the applica-
24 tion of the Rules of the House of Rep-
25 resentatives to the procedure relating to a

1 Commission bill shall be decided without
2 debate.

3 (v) APPLICATION OF HOUSE RULES.—
4 Except to the extent specifically provided
5 in this paragraph, consideration of a Com-
6 mission bill shall be governed by the Rules
7 of the House of Representatives. It shall
8 not be in order in the House of Represent-
9 atives to consider any Commission bill in-
10 troduced pursuant to the provisions of this
11 subsection under a suspension of the rules
12 or under a special rule.

13 (vi) NO AMENDMENTS.—No amend-
14 ment to the Commission bill shall be in
15 order in the House of Representatives.

16 (vii) VOTE ON FINAL PASSAGE.—In
17 the House of Representatives, immediately
18 following the conclusion of consideration of
19 the Commission bill, the vote on final pas-
20 sage of the Commission bill shall occur
21 without any intervening action or motion,
22 requiring an affirmative vote of $\frac{3}{5}$ of the
23 Members, duly chosen and sworn. If the
24 Commission bill is passed, the Clerk of the
25 House of Representatives shall cause the

1 bill to be transmitted to the Senate before
2 the close of the next day of session of the
3 House.

4 (B) IN THE SENATE.—

5 (i) IN GENERAL.—Not later than 5
6 days of session after the date on which a
7 Commission bill is reported or discharged
8 from all committees to which it was re-
9 ferred, the majority leader of the Senate or
10 the majority leader's designee shall move
11 to proceed to the consideration of the Com-
12 mission bill. It shall also be in order for
13 any Member of the Senate to move to pro-
14 ceed to the consideration of the Commis-
15 sion bill at any time after the conclusion of
16 such 5-day period.

17 (ii) MOTION TO PROCEED.—A motion
18 to proceed to the consideration of the Com-
19 mission bill is privileged in the Senate and
20 is not debatable. The motion is not subject
21 to amendment or to a motion to postpone
22 consideration of the Commission bill. A
23 motion to proceed to consideration of the
24 Commission bill may be made even though
25 a previous motion to the same effect has

1 been disagreed to. A motion to proceed to
2 the consideration of other business shall
3 not be in order. A motion to reconsider the
4 vote by which the motion to proceed is
5 agreed to or not agreed to shall not be in
6 order. If the motion to proceed is agreed
7 to, the Senate shall immediately proceed to
8 consideration of the Commission bill with-
9 out intervening motion, order, or other
10 business, and the Commission bill shall re-
11 main the unfinished business of the Senate
12 until disposed of.

13 (iii) LIMITS ON DEBATE.—In the Sen-
14 ate, consideration of the Commission bill
15 and on all debatable motions and appeals
16 in connection therewith shall not exceed a
17 total of 100 hours, which shall be divided
18 equally between those favoring and those
19 opposing the Commission bill. A motion
20 further to limit debate on the Commission
21 bill is in order and is not debatable. Any
22 debatable motion or appeal is debatable for
23 not to exceed 1 hour, to be divided equally
24 between those favoring and those opposing
25 the motion or appeal. All time used for

1 consideration of the Commission bill, in-
2 cluding time used for quorum calls and
3 voting, shall be counted against the total
4 100 hours of consideration.

5 (iv) NO AMENDMENTS.—No amend-
6 ment to the Commission bill shall be in
7 order in the Senate.

8 (v) MOTION TO RECOMMIT.—A motion
9 to recommit a Commission bill shall not be
10 in order under this paragraph.

11 (vi) VOTE ON FINAL PASSAGE.—In
12 the Senate, immediately following the con-
13 clusion of consideration of the Commission
14 bill and a request to establish the presence
15 of a quorum, the vote on final passage of
16 the Commission bill shall occur and shall
17 require an affirmative vote of $\frac{3}{5}$ of the
18 Members, duly chosen and sworn.

19 (vii) OTHER MOTIONS NOT IN
20 ORDER.—A motion to postpone or a mo-
21 tion to proceed to the consideration of
22 other business is not in order in the Sen-
23 ate. A motion to reconsider the vote by
24 which the Commission bill is agreed to or
25 not agreed to is not in order in the Senate.

1 (viii) CONSIDERATION OF THE HOUSE
2 BILL.—

3 (I) IN GENERAL.—If the Senate
4 has received the House companion bill
5 to the Commission bill introduced in
6 the Senate prior to the vote required
7 under clause (vi) and the House com-
8 panion bill is identical to the Commis-
9 sion bill introduced in the Senate,
10 then the Senate shall consider, and
11 the vote under clause (vi) shall occur
12 on, the House companion bill.

13 (II) PROCEDURE AFTER VOTE ON
14 SENATE BILL.—If the Senate votes,
15 pursuant to clause (vi), on the bill in-
16 troduced in the Senate, the Senate bill
17 shall be held pending receipt of the
18 House message on the bill. Upon re-
19 ceipt of the House companion bill, if
20 the House bill is identical to the Sen-
21 ate bill, the House bill shall be
22 deemed to be considered, read for the
23 third time, and the vote on passage of
24 the Senate bill shall be considered to

1 be the vote on the bill received from
2 the House.

3 (C) NO SUSPENSION.—No motion to sus-
4 pend the application of this paragraph shall be
5 in order in the Senate or in the House of Rep-
6 resentatives.

7 **TITLE II—MEDICAL CARE** 8 **ACCESS PROTECTION**

9 **SEC. 101. SHORT TITLE.**

10 This title may be cited as the “Medical Care Access
11 Protection Act of 2009” or the “MCAP Act”.

12 **SEC. 102. FINDINGS AND PURPOSE.**

13 (a) FINDINGS.—

14 (1) EFFECT ON HEALTH CARE ACCESS AND
15 COSTS.—Congress finds that our current civil justice
16 system is adversely affecting patient access to health
17 care services, better patient care, and cost-efficient
18 health care, in that the health care liability system
19 is a costly and ineffective mechanism for resolving
20 claims of health care liability and compensating in-
21 jured patients, and is a deterrent to the sharing of
22 information among health care professionals which
23 impedes efforts to improve patient safety and quality
24 of care.

1 (2) EFFECT ON INTERSTATE COMMERCE.—
2 Congress finds that the health care and insurance
3 industries are industries affecting interstate com-
4 merce and the health care liability litigation systems
5 existing throughout the United States are activities
6 that affect interstate commerce by contributing to
7 the high costs of health care and premiums for
8 health care liability insurance purchased by health
9 care system providers.

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

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

18 (B) the large number of individuals who
19 benefit because of the exclusion from Federal
20 taxes of the amounts spent to provide them
21 with health insurance benefits; and

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

1 (b) PURPOSE.—It is the purpose of this title to imple-
2 ment reasonable, comprehensive, and effective health care
3 liability reforms designed to—

4 (1) improve the availability of health care serv-
5 ices in cases in which health care liability actions
6 have been shown to be a factor in the decreased
7 availability of services;

8 (2) reduce the incidence of “defensive medi-
9 cine” and lower the cost of health care liability in-
10 surance, all of which contribute to the escalation of
11 health care costs;

12 (3) ensure that persons with meritorious health
13 care injury claims receive fair and adequate com-
14 pensation, including reasonable noneconomic dam-
15 ages;

16 (4) improve the fairness and cost-effectiveness
17 of our current health care liability system to resolve
18 disputes over, and provide compensation for, health
19 care liability by reducing uncertainty in the amount
20 of compensation provided to injured individuals; and

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

24 **SEC. 103. DEFINITIONS.**

25 In this title:

1 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-
2 TEM; ADR.—The term “alternative dispute resolution
3 system” or “ADR” means a system that provides
4 for the resolution of health care lawsuits in a man-
5 ner other than through a civil action brought in a
6 State or Federal court.

7 (2) CLAIMANT.—The term “claimant” means
8 any person who brings a health care lawsuit, includ-
9 ing a person who asserts or claims a right to legal
10 or equitable contribution, indemnity or subrogation,
11 arising out of a health care liability claim or action,
12 and any person on whose behalf such a claim is as-
13 serted or such an action is brought, whether de-
14 ceased, incompetent, or a minor.

15 (3) COLLATERAL SOURCE BENEFITS.—The
16 term “collateral source benefits” means any amount
17 paid or reasonably likely to be paid in the future to
18 or on behalf of the claimant, or any service, product
19 or other benefit provided or reasonably likely to be
20 provided in the future to or on behalf of the claim-
21 ant, as a result of the injury or wrongful death, pur-
22 suant to—

23 (A) any State or Federal health, sickness,
24 income-disability, accident, or workers’ com-
25 pensation law;

1 (B) any health, sickness, income-disability,
2 or accident insurance that provides health bene-
3 fits or income-disability coverage;

4 (C) any contract or agreement of any
5 group, organization, partnership, or corporation
6 to provide, pay for, or reimburse the cost of
7 medical, hospital, dental, or income disability
8 benefits; and

9 (D) any other publicly or privately funded
10 program.

11 (4) 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. Such term includes economic
2 damages and noneconomic damages, as such terms
3 are defined in this section.

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

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

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

1 (8) HEALTH CARE INSTITUTION.—The term
2 “health care institution” means any entity licensed
3 under Federal or State law to provide health care
4 services (including but not limited to ambulatory
5 surgical centers, assisted living facilities, emergency
6 medical services providers, hospices, hospitals and
7 hospital systems, nursing homes, or other entities li-
8 censed to provide such services).

9 (9) HEALTH CARE LAWSUIT.—The term
10 “health care lawsuit” means any health care liability
11 claim concerning the provision of health care goods
12 or services affecting interstate commerce, or any
13 health care liability action concerning the provision
14 of (or the failure to provide) health care goods or
15 services affecting interstate commerce, brought in a
16 State or Federal court or pursuant to an alternative
17 dispute resolution system, against a health care pro-
18 vider or a health care institution regardless of the
19 theory of liability on which the claim is based, or the
20 number of claimants, plaintiffs, defendants, or other
21 parties, or the number of claims or causes of action,
22 in which the claimant alleges a health care liability
23 claim.

24 (10) HEALTH CARE LIABILITY ACTION.—The
25 term “health care liability action” means a civil ac-

1 tion brought in a State or Federal Court or pursu-
2 ant to an alternative dispute resolution system,
3 against a health care provider or a health care insti-
4 tution regardless of the theory of liability on which
5 the claim is based, or the number of plaintiffs, de-
6 fendants, or other parties, or the number of causes
7 of action, in which the claimant alleges a health care
8 liability claim.

9 (11) HEALTH CARE LIABILITY CLAIM.—The
10 term “health care liability claim” means a demand
11 by any person, whether or not pursuant to ADR,
12 against a health care provider or health care institu-
13 tion, including third-party claims, cross-claims,
14 counter-claims, or contribution claims, which are
15 based upon the provision of, use of, or payment for
16 (or the failure to provide, use, or pay for) health
17 care services, regardless of the theory of liability on
18 which the claim is based, or the number of plaintiffs,
19 defendants, or other parties, or the number of
20 causes of action.

21 (12) HEALTH CARE PROVIDER.—

22 (A) IN GENERAL.—The term “health care
23 provider” means any person (including but not
24 limited to a physician (as defined by section
25 1861(r) of the Social Security Act (42 U.S.C.

1 1395x(r)), registered nurse, dentist, podiatrist,
2 pharmacist, chiropractor, or optometrist) re-
3 quired by State or Federal law to be licensed,
4 registered, or certified to provide health care
5 services, and being either so licensed, reg-
6 istered, or certified, or exempted from such re-
7 quirement by other statute or regulation.

8 (B) TREATMENT OF CERTAIN PROFES-
9 SIONAL ASSOCIATIONS.—For purposes of this
10 title, a professional association that is organized
11 under State law by an individual physician or
12 group of physicians, a partnership or limited li-
13 ability partnership formed by a group of physi-
14 cians, a nonprofit health corporation certified
15 under State law, or a company formed by a
16 group of physicians under State law shall be
17 treated as a health care provider under sub-
18 paragraph (A).

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

24 (14) NONECONOMIC DAMAGES.—The term
25 “noneconomic damages” means damages for phys-

1 ical and emotional pain, suffering, inconvenience,
2 physical impairment, mental anguish, disfigurement,
3 loss of enjoyment of life, loss of society and compan-
4 ionship, loss of consortium (other than loss of do-
5 mestic service), hedonic damages, injury to reputa-
6 tion, and all other nonpecuniary losses of any kind
7 or nature.

8 (15) PUNITIVE DAMAGES.—The term “punitive
9 damages” means damages awarded, for the purpose
10 of punishment or deterrence, and not solely for com-
11 pensatory purposes, against a health care provider
12 or health care institution. Punitive damages are nei-
13 ther economic nor noneconomic damages.

14 (16) RECOVERY.—The term “recovery” means
15 the net sum recovered after deducting any disburse-
16 ments or costs incurred in connection with prosecu-
17 tion or settlement of the claim, including all costs
18 paid or advanced by any person. Costs of health care
19 incurred by the plaintiff and the attorneys’ office
20 overhead costs or charges for legal services are not
21 deductible disbursements or costs for such purpose.

22 (17) STATE.—The term “State” means each of
23 the several States, the District of Columbia, the
24 Commonwealth of Puerto Rico, the Virgin Islands,
25 Guam, American Samoa, the Northern Mariana Is-

1 lands, the Trust Territory of the Pacific Islands, and
2 any other territory or possession of the United
3 States, or any political subdivision thereof.

4 **SEC. 104. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

5 (a) IN GENERAL.—Except as otherwise provided for
6 in this section, the time for the commencement of a health
7 care lawsuit shall be 3 years after the date of manifesta-
8 tion of injury or 1 year after the claimant discovers, or
9 through the use of reasonable diligence should have discov-
10 ered, the injury, whichever occurs first.

11 (b) GENERAL EXCEPTION.—The time for the com-
12 mencement of a health care lawsuit shall not exceed 3
13 years after the date of manifestation of injury unless the
14 tolling of time was delayed as a result of—

15 (1) fraud;

16 (2) intentional concealment; or

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

20 (c) MINORS.—An action by a minor shall be com-
21 menced within 3 years from the date of the alleged mani-
22 festation of injury except that if such minor is under the
23 full age of 6 years, such action shall be commenced within
24 3 years of the manifestation of injury, or prior to the
25 eighth birthday of the minor, whichever provides a longer

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

6 (d) **RULE 11 SANCTIONS.**—Whenever a Federal or
7 State court determines (whether by motion of the parties
8 or whether on the motion of the court) that there has been
9 a violation of Rule 11 of the Federal Rules of Civil Proce-
10 dure (or a similar violation of applicable State court rules)
11 in a health care liability action to which this title applies,
12 the court shall impose upon the attorneys, law firms, or
13 pro se litigants that have violated Rule 11 or are respon-
14 sible for the violation, an appropriate sanction, which shall
15 include an order to pay the other party or parties for the
16 reasonable expenses incurred as a direct result of the filing
17 of the pleading, motion, or other paper that is the subject
18 of the violation, including a reasonable attorneys’ fee.
19 Such sanction shall be sufficient to deter repetition of such
20 conduct or comparable conduct by others similarly situ-
21 ated, and to compensate the party or parties injured by
22 such conduct.

23 **SEC. 105. COMPENSATING PATIENT INJURY.**

24 (a) **UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL**
25 **ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.**—In any

1 health care lawsuit, nothing in this title shall limit the re-
2 covery by a claimant of the full amount of the available
3 economic damages, notwithstanding the limitation con-
4 tained in subsection (b).

5 (b) ADDITIONAL NONECONOMIC DAMAGES.—

6 (1) HEALTH CARE PROVIDERS.—In any health
7 care lawsuit where final judgment is rendered
8 against a health care provider, the amount of non-
9 economic damages recovered from the provider, if
10 otherwise available under applicable Federal or State
11 law, may be as much as \$250,000, regardless of the
12 number of parties other than a health care institu-
13 tion against whom the action is brought or the num-
14 ber of separate claims or actions brought with re-
15 spect to the same occurrence.

16 (2) HEALTH CARE INSTITUTIONS.—

17 (A) SINGLE INSTITUTION.—In any health
18 care lawsuit where final judgment is rendered
19 against a single health care institution, the
20 amount of noneconomic damages recovered
21 from the institution, if otherwise available
22 under applicable Federal or State law, may be
23 as much as \$250,000, regardless of the number
24 of parties against whom the action is brought

1 or the number of separate claims or actions
2 brought with respect to the same occurrence.

3 (B) MULTIPLE INSTITUTIONS.—In any
4 health care lawsuit where final judgment is ren-
5 dered against more than one health care insti-
6 tution, the amount of noneconomic damages re-
7 covered from each institution, if otherwise avail-
8 able under applicable Federal or State law, may
9 be as much as \$250,000, regardless of the
10 number of parties against whom the action is
11 brought or the number of separate claims or ac-
12 tions brought with respect to the same occur-
13 rence, except that the total amount recovered
14 from all such institutions in such lawsuit shall
15 not exceed \$500,000.

16 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
17 DAMAGES.—In any health care lawsuit—

18 (1) an award for future noneconomic damages
19 shall not be discounted to present value;

20 (2) the jury shall not be informed about the
21 maximum award for noneconomic damages under
22 subsection (b);

23 (3) an award for noneconomic damages in ex-
24 cess of the limitations provided for in subsection (b)
25 shall be reduced either before the entry of judgment,

1 or by amendment of the judgment after entry of
2 judgment, and such reduction shall be made before
3 accounting for any other reduction in damages re-
4 quired by law; and

5 (4) if separate awards are rendered for past
6 and future noneconomic damages and the combined
7 awards exceed the limitations described in subsection
8 (b), the future noneconomic damages shall be re-
9 duced first.

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

20 **SEC. 106. MAXIMIZING PATIENT RECOVERY.**

21 (a) COURT SUPERVISION OF SHARE OF DAMAGES
22 ACTUALLY PAID TO CLAIMANTS.—

23 (1) IN GENERAL.—In any health care lawsuit,
24 the court shall supervise the arrangements for pay-
25 ment of damages to protect against conflicts of in-

1 terest that may have the effect of reducing the
2 amount of damages awarded that are actually paid
3 to claimants.

4 (2) CONTINGENCY FEES.—

5 (A) IN GENERAL.—In any health care law-
6 suit in which the attorney for a party claims a
7 financial stake in the outcome by virtue of a
8 contingent fee, the court shall have the power
9 to restrict the payment of a claimant's damage
10 recovery to such attorney, and to redirect such
11 damages to the claimant based upon the inter-
12 ests of justice and principles of equity.

13 (B) LIMITATION.—The total of all contin-
14 gent fees for representing all claimants in a
15 health care lawsuit shall not exceed the fol-
16 lowing limits:

17 (i) 40 percent of the first \$50,000 re-
18 covered by the claimant(s).

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

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

23 (iv) 15 percent of any amount by
24 which the recovery by the claimant(s) is in
25 excess of \$600,000.

1 (b) APPLICABILITY.—

2 (1) IN GENERAL.—The limitations in subsection
3 (a) shall apply whether the recovery is by judgment,
4 settlement, mediation, arbitration, or any other form
5 of alternative dispute resolution.

6 (2) MINORS.—In a health care lawsuit involving
7 a minor or incompetent person, a court retains the
8 authority to authorize or approve a fee that is less
9 than the maximum permitted under this section.

10 (c) EXPERT WITNESSES.—

11 (1) REQUIREMENT.—No individual shall be
12 qualified to testify as an expert witness concerning
13 issues of negligence in any health care lawsuit
14 against a defendant unless such individual—

15 (A) except as required under paragraph
16 (2), is a health care professional who—

17 (i) is appropriately credentialed or li-
18 censed in 1 or more States to deliver
19 health care services; and

20 (ii) typically treats the diagnosis or
21 condition or provides the type of treatment
22 under review; and

23 (B) can demonstrate by competent evi-
24 dence that, as a result of training, education,
25 knowledge, and experience in the evaluation, di-

1 agnosis, and treatment of the disease or injury
2 which is the subject matter of the lawsuit
3 against the defendant, the individual was sub-
4 stantially familiar with applicable standards of
5 care and practice as they relate to the act or
6 omission which is the subject of the lawsuit on
7 the date of the incident.

8 (2) PHYSICIAN REVIEW.—In a health care law-
9 suit, if the claim of the plaintiff involved treatment
10 that is recommended or provided by a physician
11 (allopathic or osteopathic), an individual shall not be
12 qualified to be an expert witness under this sub-
13 section with respect to issues of negligence con-
14 cerning such treatment unless such individual is a
15 physician.

16 (3) SPECIALTIES AND SUBSPECIALTIES.—With
17 respect to a lawsuit described in paragraph (1), a
18 court shall not permit an expert in one medical spe-
19 cialty or subspecialty to testify against a defendant
20 in another medical specialty or subspecialty unless,
21 in addition to a showing of substantial familiarity in
22 accordance with paragraph (1)(B), there is a show-
23 ing that the standards of care and practice in the
24 two specialty or subspecialty fields are similar.

1 (4) LIMITATION.—The limitations in this sub-
2 section shall not apply to expert witnesses testifying
3 as to the degree or permanency of medical or phys-
4 ical impairment.

5 **SEC. 107. ADDITIONAL HEALTH BENEFITS.**

6 (a) IN GENERAL.—The amount of any damages re-
7 ceived by a claimant in any health care lawsuit shall be
8 reduced by the court by the amount of any collateral
9 source benefits to which the claimant is entitled, less any
10 insurance premiums or other payments made by the claim-
11 ant (or by the spouse, parent, child, or legal guardian of
12 the claimant) to obtain or secure such benefits.

13 (b) PRESERVATION OF CURRENT LAW.—Where a
14 payor of collateral source benefits has a right of recovery
15 by reimbursement or subrogation and such right is per-
16 mitted under Federal or State law, subsection (a) shall
17 not apply.

18 (c) APPLICATION OF PROVISION.—This section shall
19 apply to any health care lawsuit that is settled or resolved
20 by a fact finder.

21 **SEC. 108. PUNITIVE DAMAGES.**

22 (a) PUNITIVE DAMAGES PERMITTED.—

23 (1) IN GENERAL.—Punitive damages may, if
24 otherwise available under applicable State or Federal
25 law, be awarded against any person in a health care

1 lawsuit only if it is proven by clear and convincing
2 evidence that such person acted with malicious in-
3 tent to injure the claimant, or that such person de-
4 liberately failed to avoid unnecessary injury that
5 such person knew the claimant was substantially
6 certain to suffer.

7 (2) FILING OF LAWSUIT.—No demand for puni-
8 tive damages shall be included in a health care law-
9 suit as initially filed. A court may allow a claimant
10 to file an amended pleading for punitive damages
11 only upon a motion by the claimant and after a find-
12 ing by the court, upon review of supporting and op-
13 posing affidavits or after a hearing, after weighing
14 the evidence, that the claimant has established by a
15 substantial probability that the claimant will prevail
16 on the claim for punitive damages.

17 (3) SEPARATE PROCEEDING.—At the request of
18 any party in a health care lawsuit, the trier of fact
19 shall consider in a separate proceeding—

20 (A) whether punitive damages are to be
21 awarded and the amount of such award; and

22 (B) the amount of punitive damages fol-
23 lowing a determination of punitive liability.

24 If a separate proceeding is requested, evidence rel-
25 evant only to the claim for punitive damages, as de-

1 terminated by applicable State law, shall be inadmis-
2 sible in any proceeding to determine whether com-
3 pensatory damages are to be awarded.

4 (4) LIMITATION WHERE NO COMPENSATORY
5 DAMAGES ARE AWARDED.—In any health care law-
6 suit where no judgment for compensatory damages
7 is rendered against a person, no punitive damages
8 may be awarded with respect to the claim in such
9 lawsuit against such person.

10 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
11 AGES.—

12 (1) FACTORS CONSIDERED.—In determining
13 the amount of punitive damages under this section,
14 the trier of fact shall consider only the following:

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

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

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

21 (D) the number of products sold or med-
22 ical procedures rendered for compensation, as
23 the case may be, by such party, of the kind
24 causing the harm complained of by the claim-
25 ant;

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

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

7 (2) MAXIMUM AWARD.—The amount of punitive
8 damages awarded in a health care lawsuit may not
9 exceed an amount equal to two times the amount of
10 economic damages awarded in the lawsuit or
11 \$250,000, whichever is greater. The jury shall not
12 be informed of the limitation under the preceding
13 sentence.

14 (c) LIABILITY OF HEALTH CARE PROVIDERS.—

15 (1) IN GENERAL.—A health care provider who
16 prescribes, or who dispenses pursuant to a prescrip-
17 tion, a drug, biological product, or medical device
18 approved by the Food and Drug Administration, for
19 an approved indication of the drug, biological prod-
20 uct, or medical device, shall not be named as a party
21 to a product liability lawsuit invoking such drug, bi-
22 ological product, or medical device and shall not be
23 liable to a claimant in a class action lawsuit against
24 the manufacturer, distributor, or product seller of
25 such drug, biological product, or medical device.

1 (2) **MEDICAL PRODUCT.**—The term “medical
2 product” means a drug or device intended for hu-
3 mans. The terms “drug” and “device” have the
4 meanings given such terms in sections 201(g)(1) and
5 201(h) of the Federal Food, Drug and Cosmetic Act
6 (21 U.S.C. 321), respectively, including any compo-
7 nent or raw material used therein, but excluding
8 health care services.

9 **SEC. 109. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
10 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
11 **SUITS.**

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

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

1 **SEC. 110. EFFECT ON OTHER LAWS.**

2 (a) GENERAL VACCINE INJURY.—

3 (1) IN GENERAL.—To the extent that title XXI
4 of the Public Health Service Act establishes a Fed-
5 eral rule of law applicable to a civil action brought
6 for a vaccine-related injury or death—

7 (A) this title shall not affect the applica-
8 tion of the rule of law to such an action; and

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

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

19 (b) SMALLPOX VACCINE INJURY.—

20 (1) IN GENERAL.—To the extent that part C of
21 title II of the Public Health Service Act establishes
22 a Federal rule of law applicable to a civil action
23 brought for a smallpox vaccine-related injury or
24 death—

25 (A) this title shall not affect the applica-
26 tion of the rule of law to such an action; and

1 (B) any rule of law prescribed by this title
2 in conflict with a rule of law of such part C
3 shall not apply to such action.

4 (2) EXCEPTION.—If there is an aspect of a civil
5 action brought for a smallpox vaccine-related injury
6 or death to which a Federal rule of law under part
7 C of title II of the Public Health Service Act does
8 not apply, then this title or otherwise applicable law
9 (as determined under this title) will apply to such
10 aspect of such action.

11 (c) OTHER FEDERAL LAW.—Except as provided in
12 this section, nothing in this title shall be deemed to affect
13 any defense available, or any limitation on liability that
14 applies to, a defendant in a health care lawsuit or action
15 under any other provision of Federal law.

16 **SEC. 111. STATE FLEXIBILITY AND PROTECTION OF**
17 **STATES' RIGHTS.**

18 (a) HEALTH CARE LAWSUITS.—The provisions gov-
19 erning health care lawsuits set forth in this title shall pre-
20 empt, subject to subsections (b) and (c), State law to the
21 extent that State law prevents the application of any pro-
22 visions of law established by or under this title. The provi-
23 sions governing health care lawsuits set forth in this title
24 supersede chapter 171 of title 28, United States Code, to
25 the extent that such chapter—

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

6 (2) prohibits the introduction of evidence re-
7 garding collateral source benefits.

8 (b) PREEMPTION OF CERTAIN STATE LAWS.—No
9 provision of this title shall be construed to preempt any
10 State law (whether effective before, on, or after the date
11 of the enactment of this Act) that specifies a particular
12 monetary amount of compensatory or punitive damages
13 (or the total amount of damages) that may be awarded
14 in a health care lawsuit, regardless of whether such mone-
15 tary amount is greater or lesser than is provided for under
16 this title, notwithstanding section 105(a).

17 (c) PROTECTION OF STATE'S RIGHTS AND OTHER
18 LAWS.—

19 (1) IN GENERAL.—Any issue that is not gov-
20 erned by a provision of law established by or under
21 this title (including the State standards of neg-
22 ligence) shall be governed by otherwise applicable
23 Federal or State law.

24 (2) RULE OF CONSTRUCTION.—Nothing in this
25 title shall be construed to—

1 (A) preempt or supersede any Federal or
2 State law that imposes greater procedural or
3 substantive protections (such as a shorter statute of limitations) for a health care provider or
4 health care institution from liability, loss, or
5 damages than those provided by this title;
6

7 (B) preempt or supercede any State law
8 that permits and provides for the enforcement
9 of any arbitration agreement related to a health
10 care liability claim whether enacted prior to or
11 after the date of enactment of this Act;

12 (C) create a cause of action that is not
13 otherwise available under Federal or State law;
14 or

15 (D) affect the scope of preemption of any
16 other Federal law.

17 **SEC. 112. APPLICABILITY; EFFECTIVE DATE.**

18 This title shall apply to any health care lawsuit
19 brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or
20 after the date of the enactment of this Act, except that
21 any health care lawsuit arising from an injury occurring
22 prior to the date of enactment of this Act shall be governed by the applicable statute of limitations provisions
23 in effect at the time the injury occurred.
24
25

1 **TITLE III—RESCISSION OF**
2 **UNUSED STIMULUS FUNDS**

3 **SEC. 201. RESCISSION IN ARRA.**

4 Effective as of October 1, 2010, any unobligated bal-
5 ances available on such date of funds made available by
6 division A of the American Recovery and Reinvestment
7 Act of 2009 (Public Law 111–5) are rescinded.

○