

MARCH 12, 2012

RULES COMMITTEE PRINT 112-18
TEXT OF H.R. 5, THE HELP EFFICIENT, ACCESSIBLE, LOW-COST, TIMELY HEALTHCARE (HEALTH) ACT OF 2011

[Showing the text of H.R. 5, as reported by the Committee on the Judiciary and the Committee on Energy and Commerce; and the text of H.R. 452 as ordered reported by the Committee on Ways and Means and the Committee on Energy and Commerce, with necessary technical and conforming changes.]

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, Access-
7 sible, Low-cost, Timely Healthcare (HEALTH) Act of
8 2012”.

9 **SEC. 102. FINDINGS AND PURPOSE.**

10 (a) FINDINGS.—

11 (1) EFFECT ON HEALTH CARE ACCESS AND
12 COSTS.—Congress finds that our current civil justice
13 system is adversely affecting patient access to health
14 care services, better patient care, and cost-efficient
15 health care, in that the health care liability system

1 is a costly and ineffective mechanism for resolving
2 claims of health care liability and compensating in-
3 jured patients, and is a deterrent to the sharing of
4 information among health care professionals which
5 impedes efforts to improve patient safety and quality
6 of care.

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

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

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

24 (B) the large number of individuals who
25 benefit because of the exclusion from Federal

1 taxes of the amounts spent to provide them
2 with health insurance benefits; and

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

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

9 (1) improve the availability of health care serv-
10 ices in cases in which health care liability actions
11 have been shown to be a factor in the decreased
12 availability of services;

13 (2) reduce the incidence of “defensive medi-
14 cine” and lower the cost of health care liability in-
15 surance, all of which contribute to the escalation of
16 health care costs;

17 (3) ensure that persons with meritorious health
18 care injury claims receive fair and adequate com-
19 pensation, including reasonable noneconomic dam-
20 ages;

21 (4) improve the fairness and cost-effectiveness
22 of our current health care liability system to resolve
23 disputes over, and provide compensation for, health
24 care liability by reducing uncertainty in the amount
25 of compensation provided to injured individuals; and

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

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

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

13 (1) upon proof of fraud;

14 (2) intentional concealment; or

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

18 Actions by a minor shall be commenced within 3 years
19 from the date of the alleged manifestation of injury except
20 that actions by a minor under the full age of 6 years shall
21 be commenced within 3 years of manifestation of injury
22 or prior to the minor's 8th birthday, whichever provides
23 a longer period. Such time limitation shall be tolled for
24 minors for any period during which a parent or guardian
25 and a health care provider or health care organization

1 have committed fraud or collusion in the failure to bring
2 an action on behalf of the injured minor.

3 **SEC. 104. COMPENSATING PATIENT INJURY.**

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

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

15 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
16 DAMAGES.—For purposes of applying the limitation in
17 subsection (b), future noneconomic damages shall not be
18 discounted to present value. The jury shall not be in-
19 formed about the maximum award for noneconomic dam-
20 ages. An award for noneconomic damages in excess of
21 \$250,000 shall be reduced either before the entry of judg-
22 ment, or by amendment of the judgment after entry of
23 judgment, and such reduction shall be made before ac-
24 counting for any other reduction in damages required by
25 law. If separate awards are rendered for past and future

1 noneconomic damages and the combined awards exceed
2 \$250,000, the future noneconomic damages shall be re-
3 duced first.

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

16 **SEC. 105. MAXIMIZING PATIENT RECOVERY.**

17 (a) COURT SUPERVISION OF SHARE OF DAMAGES
18 ACTUALLY PAID TO CLAIMANTS.—In any health care law-
19 suit, the court shall supervise the arrangements for pay-
20 ment of damages to protect against conflicts of interest
21 that may have the effect of reducing the amount of dam-
22 ages awarded that are actually paid to claimants. In par-
23 ticular, in any health care lawsuit in which the attorney
24 for a party claims a financial stake in the outcome by vir-
25 tue of a contingent fee, the court shall have the power

1 to restrict the payment of a claimant's damage recovery
2 to such attorney, and to redirect such damages to the
3 claimant based upon the interests of justice and principles
4 of equity. In no event shall the total of all contingent fees
5 for representing all claimants in a health care lawsuit ex-
6 ceed the following limits:

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

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

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

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

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

1 **SEC. 106. PUNITIVE DAMAGES.**

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

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

25 (2) the amount of punitive damages following a
26 determination of punitive liability.

1 If a separate proceeding is requested, evidence relevant
2 only to the claim for punitive damages, as determined by
3 applicable State law, shall be inadmissible in any pro-
4 ceeding to determine whether compensatory damages are
5 to be awarded.

6 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
7 AGES.—

8 (1) FACTORS CONSIDERED.—In determining
9 the amount of punitive damages, if awarded, in a
10 health care lawsuit, the trier of fact shall consider
11 only the following—

12 (A) the severity of the harm caused by the
13 conduct of such party;

14 (B) the duration of the conduct or any
15 concealment of it by such party;

16 (C) the profitability of the conduct to such
17 party;

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

23 (E) any criminal penalties imposed on such
24 party, as a result of the conduct complained of
25 by the claimant; and

1 (F) the amount of any civil fines assessed
2 against such party as a result of the conduct
3 complained of by the claimant.

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

10 (c) NO PUNITIVE DAMAGES FOR PRODUCTS THAT
11 COMPLY WITH FDA STANDARDS.—

12 (1) IN GENERAL.—

13 (A) No punitive damages may be awarded
14 against the manufacturer or distributor of a
15 medical product, or a supplier of any compo-
16 nent or raw material of such medical product,
17 based on a claim that such product caused the
18 claimant's harm where—

19 (i)(I) such medical product was sub-
20 ject to premarket approval, clearance, or li-
21 censure by the Food and Drug Administra-
22 tion with respect to the safety of the for-
23 mulation or performance of the aspect of
24 such medical product which caused the
25 claimant's harm or the adequacy of the

1 packaging or labeling of such medical
2 product; and

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

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

18 (B) RULE OF CONSTRUCTION.—Subpara-
19 graph (A) may not be construed as establishing
20 the obligation of the Food and Drug Adminis-
21 tration to demonstrate affirmatively that a
22 manufacturer, distributor, or supplier referred
23 to in such subparagraph meets any of the con-
24 ditions described in such subparagraph.

1 (2) LIABILITY OF HEALTH CARE PROVIDERS.—

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

14 (3) PACKAGING.—In a health care lawsuit for
15 harm which is alleged to relate to the adequacy of
16 the packaging or labeling of a drug which is required
17 to have tamper-resistant packaging under regula-
18 tions of the Secretary of Health and Human Serv-
19 ices (including labeling regulations related to such
20 packaging), the manufacturer or product seller of
21 the drug shall not be held liable for punitive dam-
22 ages unless such packaging or labeling is found by
23 the trier of fact by clear and convincing evidence to
24 be substantially out of compliance with such regula-
25 tions.

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

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

13 (B) a person made an illegal payment to
14 an official of the Food and Drug Administra-
15 tion for the purpose of either securing or main-
16 taining approval, clearance, or licensure of such
17 medical product; or

18 (C) the defendant caused the medical prod-
19 uct which caused the claimant's harm to be
20 misbranded or adulterated (as such terms are
21 used in chapter V of the Federal Food, Drug,
22 and Cosmetic Act (21 U.S.C 351 et seq.)).

1 **SEC. 107. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
2 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
3 **SUITS.**

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

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

17 **SEC. 108. DEFINITIONS.**

18 In this title:

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

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

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

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

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

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

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

1 regardless of the theory of liability on which the
2 claim is based, or the number of claimants, plain-
3 tiffs, defendants, or other parties, or the number of
4 claims or causes of action, in which the claimant al-
5 leges a health care liability claim. Such term does
6 not include a claim or action which is based on
7 criminal liability; which seeks civil fines or penalties
8 paid to Federal, State, or local government; or which
9 is grounded in antitrust.

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

21 (8) HEALTH CARE LIABILITY CLAIM.—The
22 term “health care liability claim” means a demand
23 by any person, whether or not pursuant to ADR,
24 against a health care provider, health care organiza-
25 tion, or the manufacturer, distributor, supplier, mar-

1 keter, promoter, or seller of a medical product, in-
2 cluding, but not limited to, third-party claims, cross-
3 claims, counter-claims, or contribution claims, which
4 are based upon the provision of, use of, or payment
5 for (or the failure to provide, use, or pay for) health
6 care services or medical products, regardless of the
7 theory of liability on which the claim is based, or the
8 number of plaintiffs, defendants, or other parties, or
9 the number of causes of action.

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

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

24 (11) HEALTH CARE GOODS OR SERVICES.—The
25 term “health care goods or services” means any

1 goods or services provided by a health care organiza-
2 tion, provider, or by any individual working under
3 the supervision of a health care provider, that relates
4 to the diagnosis, prevention, or treatment of any
5 human disease or impairment, or the assessment or
6 care of the health of human beings.

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

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

22 (14) NONECONOMIC DAMAGES.—The term
23 “noneconomic damages” means damages for phys-
24 ical and emotional pain, suffering, inconvenience,
25 physical impairment, mental anguish, disfigurement,

1 loss of enjoyment of life, loss of society and compan-
2 ionship, loss of consortium (other than loss of do-
3 mestic service), hedonic damages, injury to reputa-
4 tion, and all other nonpecuniary losses of any kind
5 or nature.

6 (15) PUNITIVE DAMAGES.—The term “punitive
7 damages” means damages awarded, for the purpose
8 of punishment or deterrence, and not solely for com-
9 pensatory purposes, against a health care provider,
10 health care organization, or a manufacturer, dis-
11 tributor, or supplier of a medical product. Punitive
12 damages are neither economic nor noneconomic
13 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. 109. EFFECT ON OTHER LAWS.**

5 (a) VACCINE INJURY.—

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

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

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

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

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

1 **SEC. 110. STATE FLEXIBILITY AND PROTECTION OF**
2 **STATES' RIGHTS.**

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

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

16 (2) prohibits the introduction of evidence re-
17 garding collateral source benefits, or mandates or
18 permits subrogation or a lien on collateral source
19 benefits.

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

25 (2) This title shall not preempt or supersede any
26 State or Federal law that imposes greater procedural or

1 substantive protections for health care providers and
2 health care organizations from liability, loss, or damages
3 than those provided by this title or create a cause of ac-
4 tion.

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

7 (1) any State law (whether effective before, on,
8 or after the date of the enactment of this title) that
9 specifies a particular monetary amount of compen-
10 satory or punitive damages (or the total amount of
11 damages) that may be awarded in a health care law-
12 suit, regardless of whether such monetary amount is
13 greater or lesser than is provided for under this title,
14 notwithstanding section 4(a); or

15 (2) any defense available to a party in a health
16 care lawsuit under any other provision of State or
17 Federal law.

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

19 This title shall apply to any health care lawsuit
20 brought in a Federal or State court, or subject to an alter-
21 native dispute resolution system, that is initiated on or
22 after the date of the enactment of this title, except that
23 any health care lawsuit arising from an injury occurring
24 prior to the date of the enactment of this title shall be

1 governed by the applicable statute of limitations provisions
2 in effect at the time the injury occurred.

3 **TITLE II—REPEAL OF**
4 **INDEPNDENT PAYMENT ADVI-**
5 **SORY BOARD**

6 **SEC. 201. SHORT TITLE.**

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

9 **SEC. 202. REPEAL OF THE INDEPENDENT PAYMENT ADVI-**
10 **SORY BOARD.**

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

