

MARCH 21, 2017

RULES COMMITTEE PRINT 115–10
TEXT OF H.R. 1215, PROTECTING ACCESS TO
CARE ACT OF 2017

**[Showing the text of H.R. 1215 as ordered reported by the
Committee on the Judiciary.]**

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Protecting Access to Care Act of 2017”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Encouraging speedy resolution of claims.
- Sec. 3. Compensating patient injury.
- Sec. 4. Maximizing patient recovery.
- Sec. 5. Authorization of payment of future damages to claimants in health care lawsuits.
- Sec. 6. Product liability for health care providers.
- Sec. 7. Definitions.
- Sec. 8. Effect on other laws.
- Sec. 9. Rules of construction.
- Sec. 10. Effective date.

6 SEC. 2. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

7 (a) **STATUTE OF LIMITATIONS.**—The time for the
8 commencement of a health care lawsuit shall be 3 years
9 after the date of injury or 1 year after the claimant dis-
10 covers, or through the use of reasonable diligence should
11 have discovered, the injury, whichever occurs first. In no
12 event shall the time for commencement of a health care

1 lawsuit exceed 3 years after the date of injury unless tolled
2 for any of the following—

3 (1) upon proof of fraud;

4 (2) intentional concealment; or

5 (3) the presence of a foreign body, which has no
6 therapeutic or diagnostic purpose or effect, in the
7 person of the injured person.

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

19 (b) STATE FLEXIBILITY.—No provision of subsection
20 (a) shall be construed to preempt any state law (whether
21 effective before, on, or after the date of the enactment of
22 this Act) that—

23 (1) specifies a time period of less than 3 years
24 after the date of injury or less than 1 year after the
25 claimant discovers, or through the use of reasonable

1 diligence should have discovered, the injury, for the
2 filing of a health care lawsuit;

3 (2) that specifies a different time period for the
4 filing of lawsuits by a minor;

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

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

9 **SEC. 3. COMPENSATING PATIENT INJURY.**

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

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

21 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
22 DAMAGES.—For purposes of applying the limitation in
23 subsection (b), future noneconomic damages shall not be
24 discounted to present value. The jury shall not be in-
25 formed about the maximum award for noneconomic dam-

1 ages. An award for noneconomic damages in excess of
2 \$250,000 shall be reduced either before the entry of judg-
3 ment, or by amendment of the judgment after entry of
4 judgment, and such reduction shall be made before ac-
5 counting for any other reduction in damages required by
6 law. If separate awards are rendered for past and future
7 noneconomic damages and the combined awards exceed
8 \$250,000, 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. Whenever a
16 judgment of liability is rendered as to any party, a sepa-
17 rate judgment shall be rendered against each such party
18 for the amount allocated to such party. For purposes of
19 this section, the trier of fact shall determine the propor-
20 tion of responsibility of each party for the claimant's
21 harm.

22 (e) STATE FLEXIBILITY.—No provision of this sec-
23 tion shall be construed to preempt any State law (whether
24 effective before, on, or after the date of the enactment of
25 this Act) that specifies a particular monetary amount of

1 economic or noneconomic damages (or the total amount
2 of damages) that may be awarded in a health care lawsuit,
3 regardless of whether such monetary amount is greater
4 or lesser than is provided for under this section.

5 **SEC. 4. MAXIMIZING PATIENT RECOVERY.**

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

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

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

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

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

5 (b) APPLICABILITY.—The limitations in this section
6 shall apply whether the recovery is by judgment, settle-
7 ment, mediation, arbitration, or any other form of alter-
8 native dispute resolution. In a health care lawsuit involv-
9 ing a minor or incompetent person, a court retains the
10 authority to authorize or approve a fee that is less than
11 the maximum permitted under this section. The require-
12 ment for court supervision in the first two sentences of
13 subsection (a) applies only in civil actions.

14 (c) STATE FLEXIBILITY.—No provision of this sec-
15 tion shall be construed to preempt any State law (whether
16 effective before, on, or after the date of the enactment of
17 this Act) that specifies a lesser percentage or lesser total
18 value of damages which may be claimed by an attorney
19 representing a claimant in a health care lawsuit.

20 **SEC. 5. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
21 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
22 **SUITS.**

23 (a) IN GENERAL.—In any health care lawsuit, if an
24 award of future damages, without reduction to present
25 value, equaling or exceeding \$50,000 is made against a

1 party with sufficient insurance or other assets to fund a
2 periodic payment of such a judgment, the court shall, at
3 the request of any party, enter a judgment ordering that
4 the future damages be paid by periodic payments, in ac-
5 cordance with the Uniform Periodic Payment of Judg-
6 ments Act promulgated by the National Conference of
7 Commissioners on Uniform State Laws.

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

11 (c) **STATE FLEXIBILITY.**—No provision of this sec-
12 tion shall be construed to preempt any State law (whether
13 effective before, on, or after the date of the enactment of
14 this Act) that specifies periodic payments for future dam-
15 ages at any amount other than \$50,000 or that mandates
16 such payments absent the request of either party.

17 **SEC. 6. PRODUCT LIABILITY FOR HEALTH CARE PRO-**
18 **VIDERS.**

19 A health care provider who prescribes, or who dis-
20 penses pursuant to a prescription, a medical product ap-
21 proved, licensed, or cleared by the Food and Drug Admin-
22 istration shall not be named as a party to a product liabil-
23 ity lawsuit involving such product and shall not be liable
24 to a claimant in a class action lawsuit against the manu-
25 facturer, distributor, or seller of such product.

1 **SEC. 7. DEFINITIONS.**

2 In this Act:

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

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

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

1 (A) any State or Federal health, sickness,
2 income-disability, accident, or workers' com-
3 pensation law;

4 (B) any health, sickness, income-disability,
5 or accident insurance that provides health bene-
6 fits or income-disability coverage;

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

12 (D) any other publicly or privately funded
13 program.

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

18 (5) ECONOMIC DAMAGES.—The term “economic
19 damages” means objectively verifiable monetary
20 losses incurred as a result of the provision or use of
21 (or failure to provide or use) health care services or
22 medical products, such as past and future medical
23 expenses, loss of past and future earnings, cost of
24 obtaining domestic services, loss of employment, and
25 loss of business or employment opportunities, unless

1 otherwise defined under applicable state law. In no
2 circumstances shall damages for health care services
3 or medical products exceed the amount actually paid
4 or incurred by or on behalf of the claimant.

5 (6) FUTURE DAMAGES.—The term “future
6 damages” means any damages that are incurred
7 after the date of judgment, settlement, or other reso-
8 lution (including mediation, or any other form of al-
9 ternative dispute resolution).

10 (7) HEALTH CARE LAWSUIT.—The term
11 “health care lawsuit” means any health care liability
12 claim concerning the provision of goods or services
13 for which coverage was provided in whole or in part
14 via a Federal program, subsidy or tax benefit, or
15 any health care liability action concerning the provi-
16 sion of goods or services for which coverage was pro-
17 vided in whole or in part via a Federal program,
18 subsidy or tax benefit, brought in a State or Federal
19 court or pursuant to an alternative dispute resolu-
20 tion system, against a health care provider regard-
21 less of the theory of liability on which the claim is
22 based, or the number of claimants, plaintiffs, de-
23 fendants, or other parties, or the number of claims
24 or causes of action, in which the claimant alleges a
25 health care liability claim. Such term does not in-

1 clude a claim or action which is based on criminal
2 liability; which seeks civil fines or penalties paid to
3 Federal, State, or local government; or which is
4 grounded in antitrust.

5 (8) HEALTH CARE LIABILITY ACTION.—The
6 term “health care liability action” means a civil ac-
7 tion brought in a State or Federal court or pursuant
8 to an alternative dispute resolution system, against
9 a health care provider regardless of the theory of li-
10 ability on which the claim is based, or the number
11 of plaintiffs, defendants, or other parties, or the
12 number of causes of action, in which the claimant al-
13 leges a health care liability claim.

14 (9) HEALTH CARE LIABILITY CLAIM.—The
15 term “health care liability claim” means a demand
16 by any person, whether or not pursuant to ADR,
17 against a health care provider, including, but not
18 limited to, third-party claims, cross-claims, counter-
19 claims, or contribution claims, which are based upon
20 the provision or use of (or the failure to provide or
21 use) health care services or medical products, re-
22 gardless of the theory of liability on which the claim
23 is based, or the number of plaintiffs, defendants, or
24 other parties, or the number of causes of action.

1 (10) HEALTH CARE PROVIDER.—The term
2 “health care provider” means any person or entity
3 required by State or Federal laws or regulations to
4 be licensed, registered, or certified to provide health
5 care services, and being either so licensed, reg-
6 istered, or certified, or exempted from such require-
7 ment by other statute or regulation, as well as any
8 other individual or entity defined as a health care
9 provider, health care professional, or health care in-
10 stitution under state law.

11 (11) HEALTH CARE SERVICES.—The term
12 “health care services” means the provision of any
13 goods or services by a health care provider, or by
14 any individual working under the supervision of a
15 health care provider, that relates to the diagnosis,
16 prevention, or treatment of any human disease or
17 impairment, or the assessment or care of the health
18 of human beings.

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

1 Public Health Service Act (42 U.S.C. 262(a)), re-
2 spectively, including any component or raw material
3 used therein, but excluding health care services.

4 (13) NONECONOMIC DAMAGES.—The term
5 “noneconomic damages” means damages for phys-
6 ical and emotional pain, suffering, inconvenience,
7 physical impairment, mental anguish, disfigurement,
8 loss of enjoyment of life, loss of society and compan-
9 ionship, loss of consortium (other than loss of do-
10 mestic service), hedonic damages, injury to reputa-
11 tion, and all other nonpecuniary losses of any kind
12 or nature incurred as a result of the provision or use
13 of (or failure to provide or use) health care services
14 or medical products, unless otherwise defined under
15 applicable state law.

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

24 (15) REPRESENTATIVE.—The term “represent-
25 ative” means a legal guardian, attorney, person des-

1 ignated to make decisions on behalf of a patient
2 under a medical power of attorney, or any person
3 recognized in law or custom as a patient’s agent.

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

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

12 (a) VACCINE INJURY.—

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

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

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

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

1 Act or otherwise applicable law (as determined
2 under this Act) will apply to such aspect of such ac-
3 tion.

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

8 **SEC. 9. RULES OF CONSTRUCTION.**

9 (a) HEALTH CARE LAWSUITS.—Unless otherwise
10 specified in this Act, the provisions governing health care
11 lawsuits set forth in this Act preempt, subject to sub-
12 sections (b) and (c), State law to the extent that State
13 law prevents the application of any provisions of law estab-
14 lished by or under this Act. The provisions governing
15 health care lawsuits set forth in this Act supersede chapter
16 171 of title 28, United States Code, to the extent that
17 such chapter—

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

23 (2) prohibits the introduction of evidence re-
24 garding collateral source benefits, or mandates or

1 permits subrogation or a lien on collateral source
2 benefits.

3 (b) PROTECTION OF STATES' RIGHTS AND OTHER
4 LAWS.—Any issue that is not governed by any provision
5 of law established by or under this Act (including State
6 standards of negligence) shall be governed by otherwise
7 applicable State or Federal law

8 (c) STATE FLEXIBILITY.—No provision of this Act
9 shall be construed to preempt any defense available to a
10 party in a health care lawsuit under any other provision
11 of State or Federal law.

12 **SEC. 10. EFFECTIVE DATE.**

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

