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

(1) upon proof of fraud;
(2) intentional concealment; or
(3) the presence of a foreign body, which has no
therapeutic or diagnostic purpose or effect, in the
person of the injured person.

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

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

(1) specifies a time period of less than 3 years
after the date of injury or less than 1 year after the
claimant discovers, or through the use of reasonable
diligence should have discovered, the injury, for the filing of a health care lawsuit;
(2) that specifies a different time period for the filing of lawsuits by a minor;
(3) that triggers the time period based on the date of the alleged negligence; or
(4) establishes a statute of repose for the filing of health care lawsuit.

SEC. 3. COMPENSATING PATIENT INJURY.

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

(b) ADDITIONAL NONECONOMIC DAMAGES.—In any health care lawsuit, the amount of noneconomic damages, if available, shall not exceed $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same injury.

(c) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—For purposes of applying the limitation in subsection (b), future noneconomic damages shall not be discounted to present value. The jury shall not be informed about the maximum award for noneconomic dam-
ages. An award for noneconomic damages in excess of $250,000 shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law. If separate awards are rendered for past and future noneconomic damages and the combined awards exceed $250,000, the future noneconomic damages shall be reduced first.

(d) Fair Share Rule.—In any health care lawsuit, each party shall be liable for that party’s several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party’s percentage of responsibility. Whenever a judgment of liability is rendered as to any party, a separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant’s harm.

(e) State Flexibility.—No provision of this section shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of
economic or noneconomic damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this section.

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

(a) **Court Supervision of Share of Damages Actually Paid to Claimants.**—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants. In particular, in any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant’s damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity. In no event shall the total of all contingent fees for representing all claimants in a health care lawsuit exceed the following limits:

1. Forty percent of the first $50,000 recovered by the claimant(s).
2. Thirty-three and one-third percent of the next $50,000 recovered by the claimant(s).
(3) Twenty-five percent of the next $500,000 recovered by the claimant(s).

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

(b) Applicability.—The limitations in this section shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution. In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section. The requirement for court supervision in the first two sentences of subsection (a) applies only in civil actions.

(e) State Flexibility.—No provision of this section shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a lesser percentage or lesser total value of damages which may be claimed by an attorney representing a claimant in a health care lawsuit.

SEC. 5. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) In General.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a
party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments, in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this Act.

c) STATE FLEXIBILITY.—No provision of this section shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies periodic payments for future damages at any amount other than $50,000 or that mandates such payments absent the request of either party.

SEC. 6. PRODUCT LIABILITY FOR HEALTH CARE PROVIDERS.

A health care provider who prescribes, or who dispenses pursuant to a prescription, a medical product approved, licensed, or cleared by the Food and Drug Administration shall not be named as a party to a product liability lawsuit involving such product and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or seller of such product.
SEC. 7. DEFINITIONS.

In this Act:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term “alternative dispute resolution system” or “ADR” means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term “claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity, or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term “collateral source benefits” means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product, or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—
(A) any State or Federal health, sickness, income-disability, accident, or workers’ compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

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

(D) any other publicly or privately funded program.

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

(5) ECONOMIC DAMAGES.—The term “economic damages” means objectively verifiable monetary losses incurred as a result of the provision or use of (or failure to provide or use) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, unless
otherwise defined under applicable state law. In no circumstances shall damages for health care services or medical products exceed the amount actually paid or incurred by or on behalf of the claimant.

(6) **Future Damages.**—The term “future damages” means any damages that are incurred after the date of judgment, settlement, or other resolution (including mediation, or any other form of alternative dispute resolution).

(7) **Health Care Lawsuit.**—The term “health care lawsuit” means any health care liability claim concerning the provision of goods or services for which coverage was provided in whole or in part via a Federal program, subsidy or tax benefit, or any health care liability action concerning the provision of goods or services for which coverage was provided in whole or in part via a Federal program, subsidy or tax benefit, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim. Such term does not in-
clude a claim or action which is based on criminal liability; which seeks civil fines or penalties paid to Federal, State, or local government; or which is grounded in antitrust.

(8) Health Care Liability Action.—The term “health care liability action” means a civil action brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(9) Health Care Liability Claim.—The term “health care liability claim” means a demand by any person, whether or not pursuant to ADR, against a health care provider, including, but not limited to, third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision or use of (or the failure to provide or use) health care services or medical products, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.
(10) **Health care provider.**—The term “health care provider” means any person or entity required by State or Federal laws or regulations to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation, as well as any other individual or entity defined as a health care provider, health care professional, or health care institution under state law.

(11) **Health care services.**—The term “health care services” means the provision of any goods or services by a health care provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, or treatment of any human disease or impairment, or the assessment or care of the health of human beings.

(12) **Medical product.**—The term “medical product” means a drug, device, or biological product intended for humans, and the terms “drug”, “device”, and “biological product” have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(g)(1) and (h)) and section 351(a) of the
Public Health Service Act (42 U.S.C. 262(a)), respectively, including any component or raw material used therein, but excluding health care services.

(13) Noneconomic Damages.—The term “noneconomic damages” means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature incurred as a result of the provision or use of (or failure to provide or use) health care services or medical products, unless otherwise defined under applicable state law.

(14) Recovery.—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys’ office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(15) Representative.—The term “representative” means a legal guardian, attorney, person des-
ignated to make decisions on behalf of a patient
under a medical power of attorney, or any person
recognized in law or custom as a patient’s agent.

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

SEC. 8. EFFECT ON OTHER LAWS.

(a) VACCINE INJURY.—

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

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

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

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

(b) Other Federal Law.—Except as provided in this section, nothing in this Act shall be deemed to affect any defense available to a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. 9. RULES OF CONSTRUCTION.

(a) Health Care Lawsuits.—Unless otherwise specified in this Act, the provisions governing health care lawsuits set forth in this Act preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this Act. The provisions governing health care lawsuits set forth in this Act supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this Act; or

(2) prohibits the introduction of evidence regarding collateral source benefits, or mandates or
permits subrogation or a lien on collateral source benefits.

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

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

SEC. 10. EFFECTIVE DATE.

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