

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 6246

To reduce the excessive burden the liability system places on the health care delivery system by establishing new rules for lawsuits related to health care provided pursuant to a Federal program.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 2006

Mr. PAUL introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To reduce the excessive burden the liability system places on the health care delivery system by establishing new rules for lawsuits related to health care provided pursuant to a Federal program.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Physicians and Tax-  
5 payers Protection from Frivolous Litigation Act of 2006”.

1 **SEC. 2. APPLICABILITY.**

2 (a) **APPLICABILITY IN FEDERAL COURTS.**—This Act  
3 applies to any health care lawsuit that is brought in, or  
4 removed to, a Federal court.

5 (b) **REMOVAL.**—Any health care lawsuit that is  
6 brought in a State court may be removed to the appro-  
7 priate United States district court pursuant to chapter 89  
8 of title 28, United States Code, without regard to the  
9 amount in controversy.

10 (c) **JURISDICTION.**—The United States district  
11 courts shall have jurisdiction of any health care lawsuit.

12 **SEC. 3. ATTORNEY ACCOUNTABILITY.**

13 Notwithstanding Rule 11(c) of the Federal Rules of  
14 Civil Procedure, if a pleading, motion, or other paper re-  
15 lated to a health care lawsuit is signed in violation of Rule  
16 11(b) of the Federal Rules of Civil Procedure, the court,  
17 upon motion or its own initiative, shall impose upon the  
18 attorney, law firm, or parties that have violated this rule  
19 or are responsible for the violation, an appropriate sanc-  
20 tion, which shall include an order to pay the other party  
21 or parties for the reasonable expenses incurred as a direct  
22 result of the filing of the pleading, motion, or other paper,  
23 that is the subject of the violation, including a reasonable  
24 attorney's fee.

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

2 (a) IN GENERAL.—Subject to subsection (b), a health  
3 care lawsuit may not be commenced in a Federal court  
4 more than 3 years after the date of the alleged manifesta-  
5 tion of injury or more than 1 year after the claimant dis-  
6 covers, or through the use of reasonable diligence should  
7 have discovered, the injury, whichever occurs first. The  
8 time limitation in the preceding sentence may be tolled  
9 only—

10 (1) upon proof of fraud;

11 (2) because of intentional concealment; or

12 (3) because of the presence of a foreign body,  
13 which has no therapeutic or diagnostic purpose or  
14 effect, in the person of the injured person.

15 (b) ACTIONS ON BEHALF OF MINORS.—

16 (1) IN GENERAL.—A health care lawsuit in  
17 which the injured party is a minor may not be com-  
18 menced in a Federal court more than 3 years after  
19 the date of the alleged manifestation of injury, ex-  
20 cept that if the minor is under 6 years of age, the  
21 lawsuit may not be commenced—

22 (A) more than 3 years after the date of the  
23 alleged manifestation of injury, or

24 (B) after the minor's 8th birthday,  
25 whichever occurs later.

1           (2) TOLLING.—The time limitation under para-  
2           graph (1) shall be tolled for any period during which  
3           a parent or guardian of the minor or a health care  
4           provider or health care organization committed  
5           fraud or collusion in the failure to bring an action  
6           on behalf of the injured minor.

7 **SEC. 5. COMPENSATING PATIENT INJURY.**

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

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

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

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

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

19 **SEC. 6. ADDITIONAL HEALTH BENEFITS.**

20 (a) IN GENERAL.—In any health care lawsuit involv-  
21 ing injury or wrongful death, any party may introduce evi-  
22 dence of collateral source benefits. If a party elects to in-  
23 troduce such evidence, any opposing party may introduce  
24 evidence of any amount paid or contributed or reasonably  
25 likely to be paid or contributed in the future by or on be-

1 half of the opposing party to secure the right to the collat-  
2 eral source benefits.

3 (b) NO RECOVERY BY PROVIDER OF COLLATERAL  
4 SOURCE BENEFITS.—No provider of collateral source ben-  
5 efits may recover any amount against the claimant or re-  
6 ceive any lien or credit against the claimant’s recovery or  
7 be equitably or legally subrogated to the right of the claim-  
8 ant in a health care lawsuit involving injury or wrongful  
9 death.

10 (c) APPLICABILITY.—This section applies to any  
11 health care lawsuit that is settled and to any health care  
12 lawsuit that is resolved by a fact finder. This section shall  
13 not apply to section 1862(b) (42 U.S.C. 1395y(b)) or sec-  
14 tion 1902(a)(25) (42 U.S.C. 1396a(a)(25)) of the Social  
15 Security Act.

16 **SEC. 7. PUNITIVE DAMAGES.**

17 (a) IN GENERAL.—

18 (1) LIMITATIONS.—Punitive damages may, if  
19 otherwise permitted by applicable State or Federal  
20 law, be awarded against any person in a health care  
21 lawsuit only if it is proven by clear and convincing  
22 evidence that the person acted with malicious intent  
23 to injure the claimant, or that the person delib-  
24 erately failed to avoid unnecessary injury that the  
25 person knew the claimant was substantially certain

1 to suffer. In any health care lawsuit in which no  
2 judgment for compensatory damages is rendered  
3 against a person, no punitive damages may be  
4 awarded with respect to the claim in such lawsuit.

5 (2) PROCEDURES.—No demand for punitive  
6 damages may be included in a health care lawsuit as  
7 initially filed. A court may allow a claimant to file  
8 an amended pleading for punitive damages only  
9 upon a motion by the claimant and after a finding  
10 by the court, upon review of supporting and oppos-  
11 ing affidavits or after a hearing, after weighing the  
12 evidence, that the claimant has established by a sub-  
13 stantial probability that the claimant will prevail on  
14 the claim for punitive damages.

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

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

20 (B) the amount of punitive damages fol-  
21 lowing a determination of punitive liability.

22 If a separate proceeding is requested, evidence relevant  
23 only to the claim for punitive damages, as determined by  
24 applicable State law, shall be inadmissible in any pro-

1 ceeding to determine whether compensatory damages are  
2 to be awarded.

3 (b) DETERMINING AMOUNT OF PUNITIVE DAM-  
4 AGES.—

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

9 (A) The severity of the harm caused by the  
10 conduct of the party against whom the lawsuit  
11 is brought.

12 (B) The duration of the conduct or any  
13 concealment of it by such party.

14 (C) The profitability of the conduct to such  
15 party.

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

21 (E) Any criminal penalties imposed on  
22 such party, as a result of the conduct com-  
23 plained of by the claimant.

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 not exceed \$250,000 or 2 times the amount of eco-  
7 nomic damages awarded, whichever amount is great-  
8 er. The jury shall not be informed of the limitation  
9 under this paragraph.

10 **SEC. 8. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**  
11 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**  
12 **SUITS.**

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

23 (b) APPLICABILITY.—This section applies to any ac-  
24 tion that has not been first set for trial or retrial before  
25 the effective date of this Act.

1 **SEC. 9. 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 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 a  
14 health care liability action, and any person on whose  
15 behalf such a claim is asserted or such an action is  
16 brought, whether deceased, 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) COMPENSATORY DAMAGES.—The term  
15 “compensatory damages”—

16 (A) means objectively verifiable monetary  
17 losses incurred as a result of the provision of,  
18 use of, or payment for (or failure to provide,  
19 use, or pay for) health care services or medical  
20 products, such as past and future medical ex-  
21 penses, loss of past and future earnings, cost of  
22 obtaining domestic services, loss of employment,  
23 and loss of business or employment opportuni-  
24 ties, damages for physical and emotional pain,  
25 suffering, inconvenience, physical impairment,

1           mental anguish, disfigurement, loss of enjoy-  
2           ment of life, loss of society and companionship,  
3           loss of consortium (other than loss of domestic  
4           service), hedonic damages, injury to reputation,  
5           and all other nonpecuniary losses of any kind or  
6           nature; and

7                   (B) includes economic damages and non-  
8           economic damages.

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

18                  (6) HEALTH CARE LAWSUIT.—

19                       (A) IN GENERAL.—The term “health care  
20          lawsuit” means—

21                               (i) any health care liability claim; or

22                               (ii) any health care liability action.

23                       (B) EXCLUSIONS.—The term “health care  
24          lawsuit” does not include a claim or action  
25          that—

- 1 (i) is based on criminal liability;
- 2 (ii) seeks civil fines or penalties paid
- 3 to the Federal Government or a State or
- 4 local government; or
- 5 (iii) is grounded in antitrust.

6 (7) HEALTH CARE LIABILITY ACTION.—The

7 term “health care liability action” means a civil ac-

8 tion brought in a State or Federal court or pursuant

9 to an alternative dispute resolution system, in which

10 a claimant alleges a health care liability claim.

11 (8) HEALTH CARE LIABILITY CLAIM.—The

12 term “health care liability claim” means a demand

13 by any person, whether or not pursuant to ADR,

14 against a health care provider, health care organiza-

15 tion, or the manufacturer, distributor, supplier, mar-

16 keter, promoter, or seller of a medical product, in-

17 cluding, but not limited to, third-party claims, cross-

18 claims, counter-claims, or contribution claims, which

19 is based upon the provision of, use of, or payment

20 for (or the failure to provide, use, or pay for) health

21 care services or medical products that are provided

22 pursuant to any Federal program, including the

23 Medicare program (under title XVIII of the Social

24 Security Act), the Medicaid program (under title

25 XIX of the Social Security Act), and the State Chil-

1       dren’s Health Insurance Program (under title XXI  
2       of the Social Security Act), or are required to be  
3       provided under section 1867 of the Social Security  
4       Act (relating to examination and treatment for  
5       emergency medical conditions and women in labor  
6       and popularly known as EMTALA), regardless of  
7       the theory of liability on which the claim is based,  
8       or the number of plaintiffs, defendants, or other par-  
9       ties, or 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       that—

20                   (A) is required by State or Federal law or  
21                   regulation to be licensed, registered, or certified  
22                   to provide health care services; and

23                   (B) either is so licensed, registered, or cer-  
24                   tified, or is exempted from such requirement by  
25                   other statute or regulation.

1           (11) HEALTH CARE SERVICES.—The term  
2           “health care services” means any services provided  
3           by a health care organization or health care pro-  
4           vider, or by any individual working under the super-  
5           vision of a health care provider, that relates to—

6                   (A) the diagnosis, prevention, or treatment  
7                   of any human disease or impairment; or

8                   (B) the assessment or care of the health of  
9                   human beings.

10          (12) MALICIOUS INTENT TO INJURE.—The  
11          term “malicious intent to injure” means inten-  
12          tionally causing or attempting to cause physical in-  
13          jury other than providing health care services or  
14          medical products.

15          (13) MEDICAL PRODUCT.—

16                   (A) IN GENERAL.—The term “medical  
17                   product”—

18                           (i) means a drug, device, or biological  
19                           product intended for humans;

20                           (ii) includes any component or raw  
21                           material used in a drug, device, or biologi-  
22                           cal product intended for humans; and

23                           (iii) does not include health care serv-  
24                           ices.

1 (B) DRUG, DEVICE, BIOLOGICAL PROD-  
2 UCT.—

3 (i) DRUG.—The term “drug” has the  
4 meaning given that term in sections  
5 201(g)(1) and 201(h) of the Federal Food,  
6 Drug and Cosmetic Act (21 U.S.C.  
7 321(g)(1)).

8 (ii) DEVICE.—The term “device” has  
9 the meaning given that term in section  
10 201(h) of the Federal Food, Drug and  
11 Cosmetic Act (21 U.S.C. 321(h)).

12 (iii) BIOLOGICAL PRODUCT.—The  
13 term “biological product” has the meaning  
14 given that term in section 351(i) of the  
15 Public Health Service Act (42 U.S.C.  
16 262(i)).

17 (14) NONECONOMIC DAMAGES.—The term  
18 “noneconomic damages” means damages for phys-  
19 ical and emotional pain, suffering, inconvenience,  
20 physical impairment, mental anguish, disfigurement,  
21 loss of enjoyment of life, loss of society and compan-  
22 ionship, loss of consortium (other than loss of do-  
23 mestic service), hedonic damages, injury to reputa-  
24 tion, and all other nonpecuniary losses of any kind  
25 or nature.

1           (15) PUNITIVE DAMAGES.—The term “punitive  
2 damages” means damages awarded, for the purpose  
3 of punishment or deterrence, and not solely for com-  
4 pensatory purposes, against a health care provider,  
5 health care organization, or a manufacturer, dis-  
6 tributor, supplier, marketer, promoter, or seller of a  
7 medical product. Punitive damages are neither eco-  
8 nomic damages nor noneconomic damages.

9           (16) RECOVERY.—

10           (A) IN GENERAL.—The term “recovery”  
11 means the net sum recovered after deducting  
12 any disbursements or costs incurred in connec-  
13 tion with the prosecution or settlement of a  
14 claim, including all costs paid or advanced by  
15 any person.

16           (B) EXCLUSIONS.—For purposes of sub-  
17 paragraph (A), costs of health care incurred by  
18 the plaintiff and the attorneys’ office overhead  
19 costs or charges for legal services are not de-  
20 ductible disbursements or costs.

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

1 any other territory or possession of the United  
2 States, or any political subdivision thereof.

3 **SEC. 10. RELATIONSHIP TO FEDERAL TORT CLAIMS PROVI-**  
4 **SIONS AND STATE LAW.**

5 (a) HEALTH CARE LAWSUITS.—The provisions gov-  
6 erning health care lawsuits set forth in this Act supersede  
7 chapter 171 of title 28, United States Code, to the extent  
8 that such chapter—

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

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

18 (b) PROTECTION OF STATES' RIGHTS AND OTHER  
19 LAWS.—Except as provided in section 2, nothing in this  
20 Act preempts the laws of any State relating to health care  
21 lawsuits.

22 (c) DEFENSES PRESERVED.—No provision of this  
23 Act shall be construed to preempt any defense available  
24 to a party in a health care lawsuit under any other provi-  
25 sion of Federal law.

1 **SEC. 11. APPLICABILITY; EFFECTIVE DATE.**

2       This Act shall apply to any health care lawsuit  
3 brought in a Federal or State court, or subject to an alter-  
4 native dispute resolution system, that is initiated on or  
5 after the date of the enactment of this Act, except that  
6 any health care lawsuit arising from an injury occurring  
7 before the date of the enactment of this Act shall be gov-  
8 erned by the applicable statute of limitations provisions  
9 in effect at the time the injury occurred.

○