

103<sup>D</sup> CONGRESS  
1ST SESSION

# H. R. 144

To reform the health care system by restoring the full tax deductibility of medical expenses; eliminating incentives for abusive litigation against hospitals, doctors, nurses, and health care providers; abolishing non-economic damages in medical care liability actions; and redirecting punitive damages to community hospitals that care for the indigent.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. COX introduced the following bill; which was referred jointly to the Committees on Ways and Means, the Judiciary, and Energy and Commerce

JUNE 2, 1993

Additional sponsors: Mr. ROHRBACHER, Mr. BAKER of Louisiana, Mr. DOOLITTLE, Mr. GALLEGLY, Mr. DORNAN, Mr. CUNNINGHAM, Mr. HANCOCK, Mr. BLUTE, Mr. ARMEY, Mr. HERGER, Mr. ZIMMER, and Mr. DELAY

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## A BILL

To reform the health care system by restoring the full tax deductibility of medical expenses; eliminating incentives for abusive litigation against hospitals, doctors, nurses, and health care providers; abolishing noneconomic damages in medical care liability actions; and redirecting punitive damages to community hospitals that care for the indigent.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Health Care Cost Con-  
3 tainment Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds the following:

6 (1) The intolerably high number of Americans  
7 without adequate health insurance has resulted in  
8 major part from the high cost of health insurance  
9 premiums.

10 (2) By eliminating the full tax deductibility of  
11 most medical expenses, the Federal Government has  
12 effectively increased the cost of health insurance.  
13 This same misguided policy has increased the cost of  
14 regular maintenance of one’s own health through  
15 regular physician visits. This policy of the Federal  
16 Government, therefore, has both discouraged the  
17 purchase of health insurance and exposed taxpayers  
18 to greater expense because individuals are more like-  
19 ly to develop chronic illnesses and more likely to go  
20 without insurance to pay for critical care.

21 (3) Excessive, wasteful, and abusive litigation in  
22 medical care liability suits throughout the United  
23 States has also significantly contributed to the high  
24 cost of health care in America. The enormous sums  
25 and valuable time that hospitals and physicians lose  
26 because of needless litigation amount to a huge tax

1 on health care for all Americans. Even more expen-  
2 sive is the huge and thoroughly unnecessary cost of  
3 so-called “defensive medicine”. Because of the ubiq-  
4 uitous threat of lawsuits, doctors and other health  
5 care providers all too often prescribe unnecessary  
6 tests, studies, and procedures simply to protect  
7 themselves—not their patients. Reforming the  
8 abuses of our civil litigation system in medical cases  
9 is therefore an essential step in controlling health  
10 care costs.

11 (4) Noneconomic damages in medical cases  
12 should be eliminated. Payment of huge money dam-  
13 ages for conceptually elusive measure of loss such as  
14 “pain and suffering” and “inconvenience” has prov-  
15 en to be unworkable. Our society simply cannot af-  
16 ford it. Money damages should be limited to repay-  
17 ment of actual monetary losses such as medical ex-  
18 penses, out-of-pocket costs, lost future earnings, and  
19 other traditional measures of actual damages.

20 (5) Punitive damages in medical care liability  
21 suits are meant to punish malefactors rather than  
22 provide a windfall to attorneys and random litigants.  
23 The existence of this potential windfall (always unre-  
24 lated to the actual damages suffered in any case)  
25 creates a perverse incentive for even more litigation

1 against “deep pockets” doctors, hospitals, and  
2 health care providers. Punitive damages should,  
3 therefore, be paid over to community hospitals to  
4 offset the cost of indigent care. This will end one of  
5 the most significant incentives for abusive and un-  
6 necessary litigation that drives up medical costs.  
7 Even more importantly, it will reduce the cost of  
8 health care for the poor and taxpayers alike.

9 (6) Medical care liability suits should be decided  
10 on their merits. But in recent years, the vast major-  
11 ity of medical care liability suits have been decided  
12 without a single day of trial, when parties realize  
13 that they cannot afford the lawyers’ costs and other  
14 expenses of obtaining their day in court. This has  
15 led all too often to economic blackmail, in which in-  
16 nocent parties—hospitals, physicians, nurses, other  
17 health care workers—are forced to settle for large  
18 amounts even though they should, in fact, be held  
19 harmless by our legal system. Patients with meritori-  
20 ous medical malpractice cases find their recoveries  
21 substantially reduced by attorneys’ fees. Health care  
22 providers victimized by groundless litigation must  
23 often pay enormous fees simply to prove they are  
24 blameless. To redress this inequity, the loser in a  
25 medical case should pay the costs and attorneys’ fees

1 of the winner. This will end another perverse incen-  
2 tive in the present system for unnecessary litigation  
3 that drives up health care costs.

4 (7) By reducing the cost of health care and by  
5 making health insurance more affordable, millions  
6 more Americans will be able to obtain needed health  
7 coverage. This, in turn, will increase the size of in-  
8 surance risk pools, further reducing the cost of nec-  
9 essary insurance for all Americans.

10 **SEC. 3. RESTORATION OF THE FULL DEDUCTIBILITY OF**  
11 **MEDICAL EXPENSES.**

12 Section 213(a) of the Internal Revenue Code of 1986  
13 (relating to the treatment of medical and dental expenses)  
14 is amended to read as follows:

15 “(a) ALLOWANCE OF DEDUCTION.—There shall be  
16 allowed as a deduction the expenses paid during the tax-  
17 able year, not compensated for by insurance or otherwise,  
18 for medical care of the taxpayer, the taxpayer’s spouse,  
19 or a dependent (as defined in section 152).”.

20 **SEC. 4. ATTORNEYS’ FEES IN MEDICAL CARE LIABILITY**  
21 **SUITS.**

22 (a) AWARDING ATTORNEYS’ FEES AND OTHER  
23 COSTS TO PREVAILING PARTY.—The nonprevailing party  
24 in a medical care liability suit shall pay to the prevailing  
25 party in such suit its litigation expenses under the action

1 (including attorneys' fees and fees paid to expert wit-  
2 nesses, but not including court fees, filing fees, or other  
3 expenses paid directly to the court). The amount to be  
4 paid for such litigation expenses shall not exceed the liti-  
5 gation expenses of the nonprevailing party in such medical  
6 care liability suit. If the nonprevailing party receives attor-  
7 ney services under a contingent fee agreement, the amount  
8 of the attorneys' fees paid under this subsection shall not  
9 exceed the reasonable value of those services, determined  
10 without regard to the contingent nature of the fee ar-  
11 rangement.

12 (b) DEFINITION OF PREVAILING PARTY.—The term  
13 'prevailing party' means a party to a medical care liability  
14 suit who obtains a favorable final judgment (other than  
15 by settlement) on all or a portion of the claims asserted  
16 in the action.

17 **SEC. 5. ELIMINATION OF NONECONOMIC DAMAGES IN MED-**  
18 **ICAL CARE LIABILITY SUITS.**

19 (a) SCOPE OF PROHIBITION.—Noneconomic damages  
20 may not be imposed in a medical care liability suit. Com-  
21 pensatory damages may be awarded as in any other type  
22 of action.

23 (b) DEFINITION OF NONECONOMIC DAMAGES.—The  
24 term 'noneconomic damages' means damages for pain,

1 suffering, inconvenience, or any other nonpecuniary loss,  
2 but does not include punitive damages.

3 **SEC. 6. PUNITIVE DAMAGES TO BE REDIRECTED TO COM-**  
4 **MUNITY HOSPITALS TO PAY FOR INDIGENT**  
5 **CARE.**

6 (a) LOCAL GOVERNMENT TO RECEIVE MONEYS ON  
7 BEHALF OF HOSPITALS.—Any punitive damages imposed  
8 in a medical care liability suit shall be paid to the county,  
9 parish, or comparable unit of local government in which  
10 the action is brought and which has primary responsibility  
11 for payment for indigent health services in its jurisdiction.

12 (b) USE OF MONEYS.—A county, parish, or com-  
13 parable unit of local government which receives moneys  
14 under subsection (a) shall use it toward payment of its  
15 unreimbursed expenses incurred in providing health care  
16 to individuals entitled to medical assistance under titles  
17 XVIII and XIX of the Social Security Act.

18 **SEC. 7. APPLICABILITY.**

19 (a) APPLICABILITY.—This Act shall apply with re-  
20 spect to any medical care liability suit brought in any  
21 State or Federal court, except that this Act shall not apply  
22 to a claim or action for damages arising from a vaccine-  
23 related injury or death to the extent that title XXI of the  
24 Public Health Service Act applies to the action.

1 (b) EFFECT ON STATE LAW.—This Act supersedes  
2 State law only to the extent that State law differs from  
3 any provision of law established by or under this Act. Any  
4 issue that is not governed by any provision of law estab-  
5 lished by or under this Act shall be governed by otherwise  
6 applicable State or Federal law.

7 (c) FEDERAL COURT JURISDICTION NOT ESTAB-  
8 LISHED ON FEDERAL QUESTION GROUNDS.—Nothing in  
9 this Act shall be construed to establish any jurisdiction  
10 in the district courts of the United States over medical  
11 care liability suits on the basis of sections 1331 or 1337  
12 of title 28, United States Code.

13 (d) DEFINITION OF MEDICAL CARE LIABILITY  
14 SUIT.—The term ‘medical care liability suit’ means an ac-  
15 tion for damages arising out of the provision of (or the  
16 failure to provide) health care services.

17 **SEC. 8. EFFECTIVE DATE.**

18 This Act shall apply with respect to claims accruing  
19 or suits brought on or after the first day of January of  
20 the calendar year following the date of the enactment of  
21 this Act.

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