

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. _____
OFFERED BY M. _____

Strike all that follows after the enacting clause and
insert the following:

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. Additional health benefits.
- Sec. 6. Authorization of payment of future damages to claimants in health care lawsuits.
- Sec. 7. Product liability for health care providers.
- Sec. 8. Definitions.
- Sec. 9. Effect on other laws.
- Sec. 10. Rules of construction.
- Sec. 11. 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. ADDITIONAL HEALTH BENEFITS.**

21 (a) **COLLATERAL SOURCE BENEFITS.**—In any health
22 care lawsuit involving injury or wrongful death, any party
23 may introduce evidence of collateral source benefits. If a
24 party elects to introduce such evidence, any opposing party
25 may introduce evidence of any amount paid or contributed

1 or reasonably likely to be paid or contributed in the future
2 by or on behalf of the opposing party to secure the right
3 to such collateral source benefits.

4 (b) SUBROGATION.—No provider of collateral source
5 benefits shall recover any amount against the claimant or
6 receive any lien or credit against the claimant's recovery
7 or be equitably or legally subrogated to the right of the
8 claimant in a health care lawsuit involving injury or
9 wrongful death.

10 (c) APPLICABILITY.—This section shall apply to any
11 health care lawsuit that is settled as well as a 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 (d) STATE FLEXIBILITY.—No provision of subsection
17 (a) shall be construed to preempt any State law (whether
18 effective before, on, or after the date of the enactment of
19 this Act) that specifies a mandatory offset of collateral
20 source benefits against an award in a health care liability
21 lawsuit.

1 **SEC. 6. 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 Act.

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

23 **SEC. 7. PRODUCT LIABILITY FOR HEALTH CARE PRO-**
24 **VIDERS.**

25 A health care provider who prescribes, or who dis-
26 penses pursuant to a prescription, a medical product ap-

1 proved, licensed, or cleared by the Food and Drug Admin-
2 istration shall not be named as a party to a product liabil-
3 ity lawsuit involving such product and shall not be liable
4 to a claimant in a class action lawsuit against the manu-
5 facturer, distributor, or seller of such product.

6 **SEC. 8. DEFINITIONS.**

7 In this Act:

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

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

22 (3) COLLATERAL SOURCE BENEFITS.—The
23 term “collateral source benefits” means any amount
24 paid or reasonably likely to be paid in the future to
25 or on behalf of the claimant, or any service, product,

1 or other benefit provided or reasonably likely to be
2 provided in the future to or on behalf of the claim-
3 ant, as a result of the injury or wrongful death, pur-
4 suant to—

5 (A) any State or Federal health, sickness,
6 income-disability, accident, or workers' com-
7 pensation law;

8 (B) any health, sickness, income-disability,
9 or accident insurance that provides health bene-
10 fits or income-disability coverage;

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

16 (D) any other publicly or privately funded
17 program.

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

22 (5) ECONOMIC DAMAGES.—The term “economic
23 damages” means objectively verifiable monetary
24 losses incurred as a result of the provision or use of
25 (or failure to provide or use) health care services or

1 medical products, such as past and future medical
2 expenses, loss of past and future earnings, cost of
3 obtaining domestic services, loss of employment, and
4 loss of business or employment opportunities, unless
5 otherwise defined under applicable state law. In no
6 circumstances shall damages for health care services
7 or medical products exceed the amount actually paid
8 or incurred by or on behalf of the claimant.

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

14 (7) HEALTH CARE LAWSUIT.—The term
15 “health care lawsuit” means any health care liability
16 claim concerning the provision of goods or services
17 for which coverage was provided in whole or in part
18 via a Federal program, subsidy or tax benefit, or
19 any health care liability action concerning the provi-
20 sion of goods or services for which coverage was pro-
21 vided in whole or in part via a Federal program,
22 subsidy or tax benefit, brought in a State or Federal
23 court or pursuant to an alternative dispute resolu-
24 tion system, against a health care provider regard-
25 less of the theory of liability on which the claim is

1 based, or the number of claimants, plaintiffs, de-
2 fendants, or other parties, or the number of claims
3 or causes of action, in which the claimant alleges a
4 health care liability claim. Such term does not in-
5 clude a claim or action which is based on criminal
6 liability; which seeks civil fines or penalties paid to
7 Federal, State, or local government; or which is
8 grounded in antitrust.

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

18 (9) HEALTH CARE LIABILITY CLAIM.—The
19 term “health care liability claim” means a demand
20 by any person, whether or not pursuant to ADR,
21 against a health care provider, including, but not
22 limited to, third-party claims, cross-claims, counter-
23 claims, or contribution claims, which are based upon
24 the provision or use of (or the failure to provide or
25 use) health care services or medical products, re-

1 regardless of the theory of liability on which the claim
2 is based, or the number of plaintiffs, defendants, or
3 other parties, or the number of causes of action.

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

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

22 (12) MEDICAL PRODUCT.—The term “medical
23 product” means a drug, device, or biological product
24 intended for humans, and the terms “drug”, “de-
25 vice”, and “biological product” have the meanings

1 given such terms in sections 201(g)(1) and 201(h)
2 of the Federal Food, Drug and Cosmetic Act (21
3 U.S.C. 321(g)(1) and (h)) and section 351(a) of the
4 Public Health Service Act (42 U.S.C. 262(a)), re-
5 spectively, including any component or raw material
6 used therein, but excluding health care services.

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

19 (14) RECOVERY.—The term “recovery” means
20 the net sum recovered after deducting any disburse-
21 ments or costs incurred in connection with prosecu-
22 tion or settlement of the claim, including all costs
23 paid or advanced by any person. Costs of health care
24 incurred by the plaintiff and the attorneys’ office

1 overhead costs or charges for legal services are not
2 deductible disbursements or costs for such purpose.

3 (15) REPRESENTATIVE.—The term “represent-
4 ative” means a legal guardian, attorney, person des-
5 ignated to make decisions on behalf of a patient
6 under a medical power of attorney, or any person
7 recognized in law or custom as a patient’s agent.

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

15 **SEC. 9. EFFECT ON OTHER LAWS.**

16 (a) VACCINE INJURY.—

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

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

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

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

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

12 **SEC. 10. RULES OF CONSTRUCTION.**

13 (a) HEALTH CARE LAWSUITS.—Unless otherwise
14 specified in this Act, the provisions governing health care
15 lawsuits set forth in this Act preempt, subject to sub-
16 sections (b) and (c), State law to the extent that State
17 law prevents the application of any provisions of law estab-
18 lished by or under this Act. The provisions governing
19 health care lawsuits set forth in this Act supersede chapter
20 171 of title 28, United States Code, to the extent that
21 such chapter—

22 (1) provides for a greater amount of damages
23 or contingent fees, a longer period in which a health
24 care lawsuit may be commenced, or a reduced appli-

1 cability or scope of periodic payment of future dam-
2 ages, than provided in this Act; or

3 (2) prohibits the introduction of evidence re-
4 garding collateral source benefits, or mandates or
5 permits subrogation or a lien on collateral source
6 benefits.

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

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

16 **SEC. 11. EFFECTIVE DATE.**

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

