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AMENDMENT TO HR 3962
OFFERED BY MR. GINGREY OF GEORGIA

Base text: HR 3962 as introduced

Insert at the end of title I of division A the following
new section:

1 SEC. 116. HELP DELIVER EFFICIENT, ACCESSIBLE, LOW-
2 COST, TIMELY HEALTHCARE.

3 (a) FINDINGS AND PURPOSE.—

4 (1) FINDINGS.—

5 (A) EFFECT ON HEALTH CARE ACCESS
6 AND COSTS.—Congress finds that our current
7 civil justice system is adversely affecting patient
8 access to health care services, better patient
9 care, and cost-efficient health care, because the
10 health care liability system is a costly and inef-
11 fective mechanism for resolving claims of health
12 care liability and compensating injured patients,
13 and such system is a deterrent to the sharing
14 of information among health care professionals
15 which impedes efforts to improve patient safety
16 and quality of care.

17 (B) EFFECT ON INTERSTATE COM-
18 MERCE.—Congress finds that the health care

1 and insurance industries are industries affect-
2 ing interstate commerce and the health care li-
3 ability litigation systems existing throughout
4 the United States are activities that affect
5 interstate commerce by contributing to the high
6 costs of health care and premiums for health
7 care liability insurance purchased by health
8 care system providers.

9 (C) EFFECT ON FEDERAL SPENDING.—
10 Congress finds that the health care liability liti-
11 gation systems existing throughout the United
12 States have a significant effect on the amount,
13 distribution, and use of Federal funds because
14 of—

15 (i) the large number of individuals
16 who receive health care benefits under pro-
17 grams operated or financed by the Federal
18 Government;

19 (ii) the large number of individuals
20 who benefit because of the exclusion from
21 Federal taxes of the amounts spent to pro-
22 vide them with health insurance benefits;
23 and

24 (iii) the large number of health care
25 providers who provide items or services for

1 which the Federal Government makes pay-
2 ments.

3 (2) PURPOSE.—It is the purpose of this section
4 to implement reasonable, comprehensive, and effec-
5 tive health care liability reforms designed to—

6 (A) improve the availability of health care
7 services in cases in which health care liability
8 actions have been shown to be a factor in the
9 decreased availability of services;

10 (B) reduce the incidence of “defensive
11 medicine” and lower the cost of health care li-
12 ability insurance, all of which contribute to the
13 escalation of health care costs;

14 (C) ensure that persons with meritorious
15 health care injury claims receive fair and ade-
16 quate compensation, including reasonable non-
17 economic damages;

18 (D) improve the fairness and cost-effective-
19 ness of our current health care liability system
20 to resolve disputes over, and provide compensa-
21 tion for, health care liability by reducing uncer-
22 tainty in the amount of compensation provided
23 to injured individuals; and

24 (E) provide an increased sharing of infor-
25 mation in the health care system which will re-

1 duce unintended injury and improve patient
2 care.

3 (b) ENCOURAGING SPEEDY RESOLUTION OF
4 CLAIMS.—The time for the commencement of a health
5 care lawsuit shall be not more than 3 years after the date
6 of manifestation of injury or 1 year after the claimant dis-
7 covers, or through the use of reasonable diligence should
8 have discovered, the injury, whichever occurs first. In no
9 event shall the time for commencement of a health care
10 lawsuit exceed 3 years after the date of manifestation of
11 injury unless tolled for any of the following reasons:

12 (1) Upon proof of fraud.

13 (2) Intentional concealment.

14 (3) The presence of a foreign body, which has
15 no therapeutic or diagnostic purpose or effect, in the
16 person of the injured person.

17 Actions by a minor shall be commenced within 3 years
18 from the date of the alleged manifestation of injury except
19 that actions by a minor under the full age of 6 years shall
20 be commenced within 3 years of manifestation of injury
21 or prior to the minor's 8th birthday, whichever provides
22 a longer period. Such time limitation shall be tolled for
23 minors for any period during which a parent or guardian
24 and a health care provider or health care organization

1 have committed fraud or collusion in the failure to bring
2 an action on behalf of the injured minor.

3 (c) COMPENSATING PATIENT INJURY.—

4 (1) UNLIMITED AMOUNT OF DAMAGES FOR AC-
5 TUAL ECONOMIC LOSSES IN HEALTH CARE LAW-
6 SUITS.—Nothing in this section shall be construed to
7 limit a claimant's recovery of the full amount of the
8 available economic damages in any health care law-
9 suit.

10 (2) LIMIT ON NONECONOMIC DAMAGES.—

11 (A) IN GENERAL.—The amount of non-
12 economic damages awarded in a health care
13 lawsuit may not exceed \$250,000, regardless of
14 the number of parties against whom the action
15 is brought or the number of separate claims or
16 actions brought with respect to the same injury.

17 (B) NO DISCOUNT OF AWARD FOR NON-
18 ECONOMIC DAMAGES.—For purposes of apply-
19 ing the limitation in subparagraph (A), future
20 noneconomic damages shall not be discounted
21 to present value.

22 (C) JURY INSTRUCTION.—The jury may
23 not be informed about the maximum award for
24 noneconomic damages.

1 (D) REDUCTION BEFORE JUDGEMENT.—

2 An award for noneconomic damages in excess of
3 \$250,000 shall be reduced either before the
4 entry of judgment, or by amendment of the
5 judgment after entry of judgment, and such re-
6 duction shall be made before accounting for any
7 other reduction in damages required by law. If
8 separate awards are rendered for past and fu-
9 ture noneconomic damages and the combined
10 awards exceed \$250,000, the future non-
11 economic damages shall be reduced first.

12 (3) FAIR SHARE RULE.—In any health care
13 lawsuit, each party shall be liable for that party's
14 several share of any damages only and not for the
15 share of any other person. Each party shall be liable
16 only for the amount of damages allocated to such
17 party in direct proportion to such party's percentage
18 of responsibility. Whenever a judgment of liability is
19 rendered as to any party, a separate judgment shall
20 be rendered against each such party for the amount
21 allocated to such party. For purposes of this section,
22 the trier of fact shall determine the proportion of re-
23 sponsibility of each party for the claimant's harm.

24 (d) MAXIMIZING PATIENT RECOVERY.—

1 (1) COURT SUPERVISION OF SHARE OF DAM-
2 AGES ACTUALLY PAID TO CLAIMANTS.—In any
3 health care lawsuit, the court shall supervise the ar-
4 rangements for payment of damages to protect
5 against conflicts of interest that may have the effect
6 of reducing the amount of damages awarded that
7 are actually paid to claimants.

8 (2) CONTINGENCY FEES.—In any health care
9 lawsuit in which the attorney for a party claims a
10 financial stake in the outcome by virtue of a contin-
11 gent fee, the court shall have the power to restrict
12 the payment of a claimant's damage recovery to
13 such attorney, and to redirect such damages to the
14 claimant based upon the interests of justice and
15 principles of equity. In no event shall the total of all
16 contingent fees for representing all claimants in a
17 health care lawsuit exceed the following limits:

18 (A) 40 percent of the first \$50,000 recov-
19 ered by the claimant(s).

20 (B) 33 $\frac{1}{3}$ percent of the next \$50,000 re-
21 covered by the claimant(s).

22 (C) 25 percent of the next \$500,000 recov-
23 ered by the claimant(s).

1 (D) 15 percent of any amount by which
2 the recovery by the claimant(s) is in excess of
3 \$600,000.

4 (3) **APPLICABILITY.**—The limitations in this
5 subsection shall apply whether the recovery is by
6 judgment, settlement, mediation, arbitration, or any
7 other form of alternative dispute resolution. In a
8 health care lawsuit involving a minor or incompetent
9 person, a court retains the authority to authorize or
10 approve a fee that is less than the maximum per-
11 mitted under this section. The requirement for court
12 supervision in paragraph (1) and the first sentence
13 of paragraph (2) applies only in civil actions.

14 (e) **ADDITIONAL HEALTH BENEFITS.**—In any health
15 care lawsuit involving injury or wrongful death, any party
16 may introduce evidence of collateral source benefits. If a
17 party elects to introduce such evidence, any opposing party
18 may introduce evidence of any amount paid or contributed
19 or reasonably likely to be paid or contributed in the future
20 by or on behalf of the opposing party to secure the right
21 to such collateral source benefits. No provider of collateral
22 source benefits shall recover any amount against the
23 claimant or receive any lien or credit against the claim-
24 ant's recovery or be equitably or legally subrogated to the
25 right of the claimant in a health care lawsuit involving

1 injury or wrongful death. This subsection shall apply to
2 any health care lawsuit that is settled as well as a health
3 care lawsuit that is resolved by a fact finder. This section
4 shall not apply to section 1862(b) (42 U.S.C. 1395y(b))
5 or section 1902(a)(25) (42 U.S.C. 1396a(a)(25)) of the
6 Social Security Act.

7 (f) PUNITIVE DAMAGES.—

8 (1) IN GENERAL.—Punitive damages may, if
9 otherwise permitted by applicable State or Federal
10 law, be awarded against any person in a health care
11 lawsuit only if it is proven by clear and convincing
12 evidence that such person acted with malicious in-
13 tent to injure the claimant, or that such person de-
14 liberately failed to avoid unnecessary injury that
15 such person knew the claimant was substantially
16 certain to suffer. In any health care lawsuit where
17 no judgment for compensatory damages is rendered
18 against such person, no punitive damages may be
19 awarded with respect to the claim in such lawsuit.
20 No demand for punitive damages shall be included
21 in a health care lawsuit as initially filed. A court
22 may allow a claimant to file an amended pleading
23 for punitive damages only upon a motion by the
24 claimant and after a finding by the court, upon re-
25 view of supporting and opposing affidavits or after

1 a hearing, after weighing the evidence, that the
2 claimant has established by a substantial probability
3 that the claimant will prevail on the claim for puni-
4 tive damages. At the request of any party in a
5 health care lawsuit, the trier of fact shall consider
6 in a separate proceeding—

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

9 (B) the amount of punitive damages fol-
10 lowing a determination of punitive liability.

11 If a separate proceeding is requested, evidence rel-
12 evant only to the claim for punitive damages, as de-
13 termined by applicable State law, shall be inadmis-
14 sible in any proceeding to determine whether com-
15 pensatory damages are to be awarded.

16 (2) DETERMINING AMOUNT OF PUNITIVE DAM-
17 AGES.—

18 (A) FACTORS CONSIDERED.—In deter-
19 mining the amount of punitive damages, if
20 awarded, in a health care lawsuit, the trier of
21 fact shall consider only the following—

22 (i) the severity of the harm caused by
23 the conduct of such party;

24 (ii) the duration of the conduct or any
25 concealment of it by such party;

1 (iii) the profitability of the conduct to
2 such party;

3 (iv) the number of products sold or
4 medical procedures rendered for compensa-
5 tion, as the case may be, by such party, of
6 the kind causing the harm complained of
7 by the claimant;

8 (v) any criminal penalties imposed on
9 such party, as a result of the conduct com-
10 plained of by the claimant; and

11 (vi) the amount of any civil fines as-
12 sessed against such party as a result of the
13 conduct complained of by the claimant.

14 (B) MAXIMUM AWARD.—The amount of
15 punitive damages, if awarded, in a health care
16 lawsuit may not exceed \$250,000 or two times
17 the amount of economic damages awarded,
18 whichever is greater. The jury shall not be in-
19 formed of this limitation.

20 (3) NO PUNITIVE DAMAGES FOR PRODUCTS
21 THAT COMPLY WITH FDA STANDARDS.—

22 (A) IN GENERAL.—

23 (i) No punitive damages may be
24 awarded against the manufacturer or dis-
25 tributor of a medical product, or a supplier

1 of any component or raw material of such
2 medical product, based on a claim that
3 such product caused the claimant's harm
4 where—

5 (I)(aa) such medical product was
6 subject to premarket approval, clear-
7 ance, or licensure by the Food and
8 Drug Administration with respect to
9 the safety of the formulation or per-
10 formance of the aspect of such med-
11 ical product which caused the claim-
12 ant's harm or the adequacy of the
13 packaging or labeling of such medical
14 product; and

15 (bb) such medical product was so
16 approved, cleared, or licensed; or

17 (II) such medical product is gen-
18 erally recognized among qualified ex-
19 perts as safe and effective pursuant to
20 conditions established by the Food
21 and Drug Administration and applica-
22 ble Food and Drug Administration
23 regulations, including without limita-
24 tion those related to packaging and
25 labeling, unless the Food and Drug

1 Administration has determined that
2 such medical product was not manu-
3 factured or distributed in substantial
4 compliance with applicable Food and
5 Drug Administration statutes and
6 regulations.

7 (ii) RULE OF CONSTRUCTION.—Clause
8 (i) may not be construed as establishing
9 the obligation of the Food and Drug Ad-
10 ministration to demonstrate affirmatively
11 that a manufacturer, distributor, or sup-
12 plier referred to in such subparagraph
13 meets any of the conditions described in
14 such subparagraph.

15 (B) LIABILITY OF HEALTH CARE PRO-
16 VIDERS.—A health care provider who pre-
17 scribes, or who dispenses pursuant to a pre-
18 scription, a medical product approved, licensed,
19 or cleared by the Food and Drug Administra-
20 tion shall not be named as a party to a product
21 liability lawsuit involving such product and shall
22 not be liable to a claimant in a class action law-
23 suit against the manufacturer, distributor, or
24 seller of such product. Nothing in this para-
25 graph prevents a court from consolidating cases

1 involving health care providers and cases involv-
2 ing products liability claims against the manu-
3 facturer, distributor, or product seller of such
4 medical product.

5 (C) PACKAGING.—In a health care lawsuit
6 for harm which is alleged to relate to the ade-
7 quacy of the packaging or labeling of a drug
8 which is required to have tamper-resistant
9 packaging under regulations of the Secretary of
10 Health and Human Services (including labeling
11 regulations related to such packaging), the
12 manufacturer or product seller of the drug shall
13 not be held liable for punitive damages unless
14 such packaging or labeling is found by the trier
15 of fact by clear and convincing evidence to be
16 substantially out of compliance with such regu-
17 lations.

18 (D) EXCEPTION.—subparagraph (A) shall
19 not apply in any health care lawsuit in which—

20 (i) a person, before or after premarket
21 approval, clearance, or licensure of such
22 medical product, knowingly misrepresented
23 to or withheld from the Food and Drug
24 Administration information that is re-
25 quired to be submitted under the Federal

1 Food, Drug, and Cosmetic Act (21 U.S.C.
2 301 et seq.) or section 351 of the Public
3 Health Service Act (42 U.S.C. 262) that is
4 material and is causally related to the
5 harm which the claimant allegedly suf-
6 fered; or

7 (ii) a person made an illegal payment
8 to an official of the Food and Drug Ad-
9 ministration for the purpose of either se-
10 curing or maintaining approval, clearance,
11 or licensure of such medical product.

12 (g) AUTHORIZATION OF PAYMENT OF FUTURE DAM-
13 AGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.—

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

1 (2) **APPLICABILITY.**—This subsection applies to
2 all actions which have not been first set for trial or
3 retrial before the effective date of this Act.

4 (h) **EFFECT ON OTHER LAWS.**—

5 (1) **VACCINE INJURY.**—

6 (A) To the extent that title **XXI** of the
7 Public Health Service Act establishes a Federal
8 rule of law applicable to a civil action brought
9 for a vaccine-related injury or death—

10 (i) this section does not affect the ap-
11 plication of the rule of law to such an ac-
12 tion; and

13 (ii) any rule of law prescribed by this
14 section in conflict with a rule of law of
15 such title **XXI** shall not apply to such ac-
16 tion.

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

24 (2) **OTHER FEDERAL LAW.**—Except as provided
25 in this section, nothing in this section shall be

1 deemed to affect any defense available to a defend-
2 ant in a health care lawsuit or action under any
3 other provision of Federal law.

4 (i) STATE FLEXIBILITY AND PROTECTION OF
5 STATES' RIGHTS.—

6 (1) PREEMPTION OF STATE LAW.—The provi-
7 sions governing health care lawsuits set forth in this
8 section preempt, subject to paragraphs (1) and (2),
9 State law to the extent that State law prevents the
10 application of any provisions of law established by or
11 under this section.

12 (2) SUPERCEDE CHAPTER 171 OF TITLE 28,
13 UNITED STATES CODE.—The provisions governing
14 health care lawsuits set forth in this section super-
15 sede chapter 171 of title 28, United States Code, to
16 the extent that such chapter—

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

23 (B) prohibits the introduction of evidence
24 regarding collateral source benefits, or man-

1 dates or permits subrogation or a lien on collat-
2 eral source benefits.

3 (3) PROTECTION OF STATES' RIGHTS AND
4 OTHER CAWS.—

5 (A) APPLICATION OF STATE LAW.—Any
6 issue that is not governed by any provision of
7 law established by or under this section (includ-
8 ing State standards of negligence) shall be gov-
9 erned by otherwise applicable State or Federal
10 law.

11 (B) LIMITATION ON PREEMPTION.—This
12 section shall not preempt or supersede any
13 State or Federal law that imposes greater pro-
14 cedural or substantive protections for health
15 care providers and health care organizations
16 from liability, loss, or damages than those pro-
17 vided by this section or create a cause of action.

18 (4) STATE FLEXIBILITY.—No provision of this
19 section shall be construed to preempt—

20 (A) subject to subsection (c)(1), any State
21 law (whether effective before, on, or after the
22 date of the enactment of this Act) that specifies
23 a particular monetary amount of compensatory
24 or punitive damages (or the total amount of
25 damages) that may be awarded in a health care

1 lawsuit, regardless of whether such monetary
2 amount is greater or lesser than is provided for
3 under this section; or

4 (B) any defense available to a party in a
5 health care lawsuit under any other provision of
6 State or Federal law.

7 (j) DEFINITIONS.—In this section:

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) COMPENSATORY DAMAGES.—The term
19 “compensatory damages” means objectively
20 verifiable monetary losses incurred as a result of the
21 provision of, use of, or payment for (or failure to
22 provide, use, or pay for) health care services or med-
23 ical products, such as past and future medical ex-
24 penses, loss of past and future earnings, cost of ob-
25 taining domestic services, loss of employment, and

1 loss of business or employment opportunities, dam-
2 ages for physical and emotional pain, suffering, in-
3 convenience, physical impairment, mental anguish,
4 disfigurement, loss of enjoyment of life, loss of soci-
5 ety and companionship, loss of consortium (other
6 than loss of domestic service), hedonic damages, in-
7 jury to reputation, and all other nonpecuniary losses
8 of any kind or nature. The term "compensatory
9 damages" includes economic damages and non-
10 economic damages, as such terms are defined in this
11 section.

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

16 (6) ECONOMIC DAMAGES.—The term "economic
17 damages" means objectively verifiable monetary
18 losses incurred as a result of the provision of, use
19 of, or payment for (or failure to provide, use, or pay
20 for) health care services or medical products, such as
21 past and future medical expenses, loss of past and
22 future earnings, cost of obtaining domestic services,
23 loss of employment, and loss of business or employ-
24 ment opportunities.

1 (7) HEALTH CARE LAWSUIT.—The term
2 “health care lawsuit” means any health care liability
3 claim concerning the provision of health care goods
4 or services or any medical product affecting inter-
5 state commerce, or any health care liability action
6 concerning the provision of health care goods or
7 services or any medical product affecting interstate
8 commerce, brought in a State or Federal court or
9 pursuant to an alternative dispute resolution system,
10 against a health care provider, a health care organi-
11 zation, or the manufacturer, distributor, supplier,
12 marketer, promoter, or seller of a medical product,
13 regardless of the theory of liability on which the
14 claim is based, or the number of claimants, plain-
15 tiffs, defendants, or other parties, or the number of
16 claims or causes of action, in which the claimant al-
17 leges a health care liability claim. Such term does
18 not include a claim or action which is based on
19 criminal liability; which seeks civil fines or penalties
20 paid to Federal, State, or local government; or which
21 is grounded in antitrust.

22 (8) HEALTH CARE LIABILITY ACTION.—The
23 term “health care liability action” means a civil ac-
24 tion brought in a State or Federal court or pursuant
25 to an alternative dispute resolution system, against

1 a health care provider, a health care organization, or
2 the manufacturer, distributor, supplier, marketer,
3 promoter, or seller of a medical product, regardless
4 of the theory of liability on which the claim is based,
5 or the number of plaintiffs, defendants, or other par-
6 ties, or the number of causes of action, in which the
7 claimant alleges a health care liability claim.

8 (9) HEALTH CARE LIABILITY CLAIM.—The
9 term “health care liability claim” means a demand
10 by any person, whether or not pursuant to ADR,
11 against a health care provider, health care organiza-
12 tion, or the manufacturer, distributor, supplier, mar-
13 keter, promoter, or seller of a medical product, in-
14 cluding, but not limited to, third-party claims, cross-
15 claims, counter-claims, or contribution claims, which
16 are based upon the provision of, use of, or payment
17 for (or the failure to provide, use, or pay for) health
18 care services or medical products, regardless of the
19 theory of liability on which the claim is based, or the
20 number of plaintiffs, defendants, or other parties, or
21 the number of causes of action.

22 (10) HEALTH CARE ORGANIZATION.—The term
23 “health care organization” means any person or en-
24 tity which is obligated to provide or pay for health
25 benefits under any health plan, including any person

1 or entity acting under a contract or arrangement
2 with a health care organization to provide or admin-
3 ister any health benefit.

4 (11) 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.

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

19 (13) MALICIOUS INTENT TO INJURE.—The
20 term “malicious intent to injure” means inten-
21 tionally causing or attempting to cause physical in-
22 jury other than providing health care goods or serv-
23 ices.

24 (14) MEDICAL PRODUCT.—The term “medical
25 product” means a drug, device, or biological product

1 intended for humans, and the terms “drug”, “de-
2 vice”, and “biological product” have the meanings
3 given such terms in sections 201(g)(1) and 201(h)
4 of the Federal Food, Drug and Cosmetic Act (21
5 U.S.C. 321(g)(1) and (h)) and section 351(a) of the
6 Public Health Service Act (42 U.S.C. 262(a)), re-
7 spectively, including any component or raw material
8 used therein, but excluding health care services.

9 (15) NONECONOMIC DAMAGES.—The term
10 “noneconomic damages” means damages for phys-
11 ical and emotional pain, suffering, inconvenience,
12 physical impairment, mental anguish, disfigurement,
13 loss of enjoyment of life, loss of society and compan-
14 ionship, loss of consortium (other than loss of do-
15 mestic service), hedonic damages, injury to reputa-
16 tion, and all other nonpecuniary losses of any kind
17 or nature.

18 (16) PUNITIVE DAMAGES.—The term “punitive
19 damages” means damages awarded, for the purpose
20 of punishment or deterrence, and not solely for com-
21 pensatory purposes, against a health care provider,
22 health care organization, or a manufacturer, dis-
23 tributor, or supplier of a medical product. Punitive
24 damages are neither economic nor noneconomic
25 damages.

1 (17) RECOVERY.—The term “recovery” means
2 the net sum recovered after deducting any disburse-
3 ments or costs incurred in connection with prosecu-
4 tion or settlement of the claim, including all costs
5 paid or advanced by any person. Costs of health care
6 incurred by the plaintiff and the attorneys’ office
7 overhead costs or charges for legal services are not
8 deductible disbursements or costs for such purpose.

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

16 (k) APPLICABILITY; EFFECTIVE DATE.—This section
17 shall apply to any health care lawsuit brought in a Federal
18 or State court, or subject to an alternative dispute resolu-
19 tion system, that is initiated on or after the date of the
20 enactment of this Act, except that any health care lawsuit
21 arising from an injury occurring prior to the date of the
22 enactment of this Act shall be governed by the applicable
23 statute of limitations provisions in effect at the time the
24 injury occurred.

1 (1) SENSE OF CONGRESS.—It is the sense of Congress
2 that a health insurer should be liable for damages for
3 harm caused when it makes a decision as to what care
4 is medically necessary and appropriate.

