

AMENDMENT

OFFERED BY MR. HELLER OF NEVADA

Add after division D the following:

**1 DIVISION E—STEPS TOWARD
2 HEALTH CARE ACCESS AND
3 REFORM**

4 SEC. 4001. TABLE OF CONTENTS OF DIVISION.

5 The table of contents of this division is as follows:

Sec. 4001. Table of contents of division.

TITLE I—MEDICAL LIABILITY REFORM

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Sec. 4102. Compensating patient injury.

Sec. 4103. Maximizing patient recovery.

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1 **TITLE I—MEDICAL LIABILITY**
2 **REFORM**

3 **SEC. 4101. ENCOURAGING SPEEDY RESOLUTION OF**
4 **CLAIMS.**

5 The time for the commencement of a health care law-
6 suit shall be 3 years after the date of manifestation of
7 injury or 1 year after the claimant discovers, or through
8 the use of reasonable diligence should have discovered, the
9 injury, whichever occurs first. In no event shall the time
10 for commencement of a health care lawsuit exceed 3 years
11 after the date of manifestation of injury unless tolled for
12 any of the following—

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

18 Actions by a minor shall be commenced within 3 years
19 from the date of the alleged manifestation of injury except
20 that actions by a minor under the full age of 6 years shall
21 be commenced within 3 years of manifestation of injury
22 or prior to the minor's 8th birthday, whichever provides
23 a longer period. Such time limitation shall be tolled for
24 minors for any period during which a parent or guardian
25 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 **SEC. 4102. COMPENSATING PATIENT INJURY.**

4 (a) **UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL**
5 **ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.**—In any
6 health care lawsuit, nothing in this title shall limit a claim-
7 ant's recovery of the full amount of the available economic
8 damages, notwithstanding the limitation in subsection (b).

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

15 (c) **NO DISCOUNT OF AWARD FOR NONECONOMIC**
16 **DAMAGES.**—For purposes of applying the limitation in
17 subsection (b), future noneconomic damages shall not be
18 discounted to present value. The jury shall not be in-
19 formed about the maximum award for noneconomic dam-
20 ages. An award for noneconomic damages in excess of
21 \$250,000 shall be reduced either before the entry of judg-
22 ment, or by amendment of the judgment after entry of
23 judgment, and such reduction shall be made before ac-
24 counting for any other reduction in damages required by
25 law. If separate awards are rendered for past and future

1 noneconomic damages and the combined awards exceed
2 \$250,000, the future noneconomic damages shall be re-
3 duced first.

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

16 **SEC. 4103. MAXIMIZING PATIENT RECOVERY.**

17 (a) **COURT SUPERVISION OF SHARE OF DAMAGES**
18 **ACTUALLY PAID TO CLAIMANTS.**—In any health care law-
19 suit, the court shall supervise the arrangements for pay-
20 ment of damages to protect against conflicts of interest
21 that may have the effect of reducing the amount of dam-
22 ages awarded that are actually paid to claimants. In par-
23 ticular, in any health care lawsuit in which the attorney
24 for a party claims a financial stake in the outcome by vir-
25 tue of a contingent fee, the court shall have the power

1 to restrict the payment of a claimant's damage recovery
2 to such attorney, and to redirect such damages to the
3 claimant based upon the interests of justice and principles
4 of equity. In no event shall the total of all contingent fees
5 for representing all claimants in a health care lawsuit ex-
6 ceed the following limits:

7 (1) 40 percent of the first \$50,000 recovered by
8 the claimants.

9 (2) 33 $\frac{1}{3}$ percent of the next \$50,000 recovered
10 by the claimants.

11 (3) 25 percent of the next \$500,000 recovered
12 by the claimants.

13 (4) 15 percent of any amount by which the re-
14 covery by the claimants is in excess of \$600,000.

15 (b) APPLICABILITY.—The limitations in this section
16 shall apply whether the recovery is by judgment, settle-
17 ment, mediation, arbitration, or any other form of alter-
18 native dispute resolution. In a health care lawsuit involv-
19 ing a minor or incompetent person, a court retains the
20 authority to authorize or approve a fee that is less than
21 the maximum permitted under this section. The require-
22 ment for court supervision in the first two sentences of
23 subsection (a) applies only in civil actions.

1 **SEC. 4104. ADDITIONAL COLLATERAL SOURCE BENEFITS.**

2 In any health care lawsuit involving injury or wrong-
3 ful death, any party may introduce evidence of collateral
4 source benefits. If a party elects to introduce such evi-
5 dence, any opposing party may introduce evidence of any
6 amount paid or contributed or reasonably likely to be paid
7 or contributed in the future by or on behalf of the oppos-
8 ing party to secure the right to such collateral source bene-
9 fits. No provider of collateral source benefits shall recover
10 any amount against the claimant or receive any lien or
11 credit against the claimant's recovery or be equitably or
12 legally subrogated to the right of the claimant in a health
13 care lawsuit involving injury or wrongful death. This sec-
14 tion shall apply to any health care lawsuit that is settled
15 as well as a health care lawsuit that is resolved by a fact
16 finder. This section shall not apply to section 1862(b) (42
17 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C.
18 1396a(a)(25)) of the Social Security Act.

19 **SEC. 4105. PUNITIVE DAMAGES.**

20 (a) **IN GENERAL.**—Punitive damages may, if other-
21 wise permitted by applicable State or Federal law, be
22 awarded against any person in a health care lawsuit only
23 if it is proven by clear and convincing evidence that such
24 person acted with malicious intent to injure the claimant,
25 or that such person deliberately failed to avoid unneces-
26 sary injury that such person knew the claimant was sub-

1 stantially certain to suffer. In any health care lawsuit
2 where no judgment for compensatory damages is rendered
3 against such person, no punitive damages may be awarded
4 with respect to the claim in such lawsuit. No demand for
5 punitive damages shall be included in a health care lawsuit
6 as initially filed. A court may allow a claimant to file an
7 amended pleading for punitive damages only upon a mo-
8 tion by the claimant and after a finding by the court, upon
9 review of supporting and opposing affidavits or after a
10 hearing, after weighing the evidence, that the claimant has
11 established by a substantial probability that the claimant
12 will prevail on the claim for punitive damages. At the re-
13 quest of any party in a health care lawsuit, the trier of
14 fact shall consider in a separate proceeding—

15 (1) whether punitive damages are to be award-
16 ed and the amount of such award; and

17 (2) the amount of punitive damages following a
18 determination of punitive liability.

19 If a separate proceeding is requested, evidence relevant
20 only to the claim for punitive damages, as determined by
21 applicable State law, shall be inadmissible in any pro-
22 ceeding to determine whether compensatory damages are
23 to be awarded.

24 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
25 AGES.—

1 (1) **FACTORS CONSIDERED.**—In determining
2 the amount of punitive damages, if awarded, in a
3 health care lawsuit, the trier of fact shall consider
4 only the following—

5 (A) the severity of the harm caused by the
6 conduct of such party;

7 (B) the duration of the conduct or any
8 concealment of it by such party;

9 (C) the profitability of the conduct to such
10 party;

11 (D) the number of products sold or med-
12 ical procedures rendered for compensation, as
13 the case may be, by such party, of the kind
14 causing the harm complained of by the claim-
15 ant;

16 (E) any criminal penalties imposed on such
17 party, as a result of the conduct complained of
18 by the claimant; and

19 (F) the amount of any civil fines assessed
20 against such party as a result of the conduct
21 complained of by the claimant.

22 (2) **MAXIMUM AWARD.**—The amount of punitive
23 damages, if awarded, in a health care lawsuit may
24 not exceed \$250,000 or two times the amount of

1 economic damages awarded, whichever is greater.

2 The jury shall not be informed of this limitation.

3 (c) NO PUNITIVE DAMAGES FOR PRODUCTS THAT
4 COMPLY WITH FDA STANDARDS.—

5 (1) IN GENERAL.—

6 (A) No punitive damages may be awarded
7 against the manufacturer or distributor of a
8 medical product, or a supplier of any compo-
9 nent or raw material of such medical product,
10 based on a claim that such product caused the
11 claimant's harm where—

12 (i)(I) such medical product was sub-
13 ject to premarket approval, clearance, or li-
14 censure by the Food and Drug Administra-
15 tion with respect to the safety of the for-
16 mulation or performance of the aspect of
17 such medical product which caused the
18 claimant's harm or the adequacy of the
19 packaging or labeling of such medical
20 product; and

21 (II) such medical product was so ap-
22 proved, cleared, or licensed; or

23 (ii) such medical product is generally
24 recognized among qualified experts as safe
25 and effective pursuant to conditions estab-

1 lished by the Food and Drug Administra-
2 tion and applicable Food and Drug Admin-
3 istration regulations, including without
4 limitation those related to packaging and
5 labeling, unless the Food and Drug Admin-
6 istration has determined that such medical
7 product was not manufactured or distrib-
8 uted in substantial compliance with appli-
9 cable Food and Drug Administration stat-
10 utes and regulations.

11 (B) RULE OF CONSTRUCTION.—Subpara-
12 graph (A) may not be construed as establishing
13 the obligation of the Food and Drug Adminis-
14 tration to demonstrate affirmatively that a
15 manufacturer, distributor, or supplier referred
16 to in such subparagraph meets any of the con-
17 ditions described in such subparagraph.

18 (2) LIABILITY OF HEALTH CARE PROVIDERS.—
19 A health care provider who prescribes, or who dis-
20 penses pursuant to a prescription, a medical product
21 approved, licensed, or cleared by the Food and Drug
22 Administration shall not be named as a party to a
23 product liability lawsuit involving such product and
24 shall not be liable to a claimant in a class action
25 lawsuit against the manufacturer, distributor, or

1 seller of such product. Nothing in this paragraph
2 prevents a court from consolidating cases involving
3 health care providers and cases involving products li-
4 ability claims against the manufacturer, distributor,
5 or product seller of such medical product.

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

18 (4) EXCEPTION.—Paragraph (1) shall not
19 apply in any health care lawsuit in which—

20 (A) a person, before or after premarket ap-
21 proval, clearance, or licensure of such medical
22 product, knowingly misrepresented to or with-
23 held from the Food and Drug Administration
24 information that is required to be submitted
25 under the Federal Food, Drug, and Cosmetic

1 Act (21 U.S.C. 301 et seq.) or section 351 of
2 the Public Health Service Act (42 U.S.C. 262)
3 that is material and is causally related to the
4 harm which the claimant allegedly suffered; or
5 (B) a person made an illegal payment to
6 an official of the Food and Drug Administra-
7 tion for the purpose of either securing or main-
8 taining approval, clearance, or licensure of such
9 medical product.

10 **SEC. 4106. 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, equaling or exceeding \$50,000 is made against a
16 party with sufficient insurance or other assets to fund a
17 periodic payment of such a judgment, the court shall, at
18 the request of any party, enter a judgment ordering that
19 the future damages be paid by periodic payments. In any
20 health care lawsuit, the court may be guided by the Uni-
21 form Periodic Payment of Judgments Act promulgated by
22 the National Conference of Commissioners on Uniform
23 State Laws.

1 (b) **APPLICABILITY.**—This section applies to all ac-
2 tions which have not been first set for trial or retrial be-
3 fore the effective date of this Act.

4 **SEC. 4107. EFFECT ON OTHER LAWS.**

5 (a) **VACCINE INJURY.**—

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

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

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

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

22 (b) **OTHER FEDERAL LAW.**—Except as provided in
23 this section, nothing in this title shall be deemed to affect
24 any defense available to a defendant in a health care law-
25 suit or action under any other provision of Federal law.

1 SEC. 4108. STATE FLEXIBILITY AND PROTECTION OF
2 STATES' RIGHTS.

3 (a) HEALTH CARE LAWSUITS.—The provisions gov-
4 erning health care lawsuits set forth in this title preempt,
5 subject to subsections (b) and (c), State law to the extent
6 that State law prevents the application of any provisions
7 of law established by or under this title. The provisions
8 governing health care lawsuits set forth in this title super-
9 sede chapter 171 of title 28, United States Code, to the
10 extent that such chapter—

11 (1) provides for a greater amount of damages
12 or contingent fees, a longer period in which a health
13 care lawsuit may be commenced, or a reduced appli-
14 cability or scope of periodic payment of future dam-
15 ages, than provided in this title; or

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

20 (b) PROTECTION OF STATES' RIGHTS AND OTHER
21 LAWS.—(1) Any issue that is not governed by any provi-
22 sion of law established by or under this title (including
23 State standards of negligence) shall be governed by other-
24 wise applicable State or Federal law.

25 (2) This title shall not preempt or supersede any
26 State or Federal law that imposes greater procedural or

1 substantive protections for health care providers and
2 health care organizations from liability, loss, or damages
3 than those provided by this title or create a cause of ac-
4 tion.

5 (c) STATE FLEXIBILITY.—No provision of this title
6 shall be construed to preempt—

7 (1) any State law (whether effective before, on,
8 or after the date of the enactment of this Act) that
9 specifies a particular monetary amount of compen-
10 satory or punitive damages (or the total amount of
11 damages) that may be awarded in a health care law-
12 suit, regardless of whether such monetary amount is
13 greater or lesser than is provided for under this title,
14 notwithstanding section 4104; or

15 (2) any defense available to a party in a health
16 care lawsuit under any other provision of State or
17 Federal law.

18 **SEC. 4109. APPLICABILITY; EFFECTIVE DATE.**

19 This title shall apply to any health care lawsuit
20 brought in a Federal or State court, or subject to an alter-
21 native dispute resolution system, that is initiated on or
22 after the date of the enactment of this Act, except that
23 any health care lawsuit arising from an injury occurring
24 prior to the date of the enactment of this Act shall be

1. governed by the applicable statute of limitations provisions
- 2 in effect at the time the injury occurred.

3 **SEC. 4110. SENSE OF CONGRESS.**

4 It is the sense of Congress that a health insurer
5 should be liable for damages for harm caused when it
6 makes a decision as to what care is medically necessary
7 and appropriate.

8 **SEC. 4111. DEFINITIONS.**

9 For purposes of this title:

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

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

24 (3) **COLLATERAL SOURCE BENEFITS.**—The
25 term “collateral source benefits” means any amount

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

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

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

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

18 (D) any other publicly or privately funded
19 program.

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

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

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

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

1 loss of employment, and loss of business or employ-
2 ment opportunities.

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

24 (8) HEALTH CARE LIABILITY ACTION.—The
25 term “health care liability action” means a civil ac-

1 tion brought in a State or Federal court or pursuant
2 to an alternative dispute resolution system, against
3 a health care provider, a health care organization, or
4 the manufacturer, distributor, supplier, marketer,
5 promoter, or seller of a medical product, regardless
6 of the theory of liability on which the claim is based,
7 or the number of plaintiffs, defendants, or other par-
8 ties, or the number of causes of action, in which the
9 claimant alleges a health care liability claim.

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

24 (10) HEALTH CARE ORGANIZATION.—The term
25 “health care organization” means any person or en-

1 tity which is obligated to provide or pay for health
2 benefits under any health plan, including any person
3 or entity acting under a contract or arrangement
4 with a health care organization to provide or admin-
5 ister any health benefit.

6 (11) HEALTH CARE PROVIDER.—The term
7 “health care provider” means any person or entity
8 required by State or Federal laws or regulations to
9 be licensed, registered, or certified to provide health
10 care services, and being either so licensed, reg-
11 istered, or certified, or exempted from such require-
12 ment by other statute or regulation.

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

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

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

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

20 (16) **PUNITIVE DAMAGES.**—The term “punitive
21 damages” means damages awarded for the purpose
22 of punishment or deterrence, and not solely for com-
23 pensatory purposes, against a health care provider,
24 health care organization, or a manufacturer, dis-
25 tributor, or supplier of a medical product. Punitive

1 damages are neither economic nor noneconomic
2 damages.

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

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

18 **TITLE II—IMPROVING ACCESS**
19 **FOR RURAL AND INDIGENT**
20 **PATIENTS**

21 **SEC. 4201. IMPROVING ACCESS FOR RURAL AND INDIGENT**
22 **PATIENTS.**

23 (a) **LOAN FORGIVENESS FOR PRIMARY CARE PRO-**
24 **VIDERS.—**

1 (1) IN GENERAL.—The Secretary of Health and
2 Human Services shall carry out a program of enter-
3 ing into contracts with eligible individuals under
4 which—

5 (A) the individual agrees to serve for a pe-
6 riod of not less than 4 years as a primary care
7 provider in a medically underserved community
8 (as defined in section 799B of the Public
9 Health Service Act (42 U.S.C. 295p)); and

10 (B) in consideration of such service, the
11 Secretary agrees to pay not more than
12 \$100,000 on the principal and interest on the
13 individual's graduate educational loans.

14 (2) ELIGIBILITY.—To be eligible to enter into a
15 contract under subsection (1), an individual must—

16 (A) have a graduate degree in medicine,
17 osteopathic medicine, or another health profes-
18 sion from an accredited (as determined by the
19 Secretary of Health and Human Services) insti-
20 tution of higher education; and

21 (B) have practiced as a primary care pro-
22 vider for a period (excluding any residency or
23 fellowship training period) of not less than 3
24 years in a medically underserved community (as

1 defined in section 799B of the Public Health
2 Service Act (42 U.S.C. 295p)).

3 (3) INSTALLMENTS.—Payments under this sec-
4 tion may be made in installments of not more than
5 \$25,000 for each year of service described in para-
6 graph (1) (A).

7 (4) APPLICABILITY OF CERTAIN PROVISIONS.—
8 The provisions of subpart III of part D of title III
9 of the Public Health Service Act shall, except as in-
10 consistent with this section, apply to the program es-
11 tablished under this section in the same manner and
12 to the same extent as such provisions apply to the
13 National Health Service Corps Loan Repayment
14 Program established in such subpart.

15 (b) PERMITTING STATE DESIGNATION OF CRITICAL
16 ACCESS HOSPITALS.—Section 1820(c)(2)(B)(i)(II) of the
17 Social Security Act (42 U.S.C. 1395i-4(c)(2)(B)(i)(II)) is
18 amended by inserting “or on or after the date of enact-
19 ment of the Affordable Health Care for America Act”
20 after “January 1, 2006,”.

21 (c) PATIENT FAIRNESS AND INDIGENT CARE PRO-
22 MOTION.—

23 (1) IN GENERAL.—Section 166 of the Internal
24 Revenue Code of 1986 (relating to bad debts) is
25 amended by redesignating subsection (f) as sub-

1 section (g) and by inserting after subsection (e) the
2 following new subsection:

3 “(f) UNPAID MEDICAL CARE PROVIDED TO LOW-IN-
4 COME INDIVIDUALS.—

5 “(1) IN GENERAL.—In the case of a taxpayer
6 to whom this subsection applies, the deduction under
7 subsection (a) for worthless qualified medical care
8 debt shall not be less than 75 percent of the tax-
9 payer’s charge for such care.

10 “(2) TAXPAYER TO WHOM SUBSECTION AP-
11 PLIES.—This subsection shall apply to any taxpayer
12 who is engaged in the trade or business of providing
13 medical care other than as an employee and who
14 used the cash receipts and disbursements method of
15 accounting.

16 “(3) QUALIFIED MEDICAL CARE DEBT.—For
17 purposes of this subsection, the term ‘qualified med-
18 ical care debt’ means any debt for medical care pro-
19 vided by the taxpayer to a low-income individual who
20 is a citizen or legal resident of the United States.

21 “(4) DETERMINATION OF CHARGE.—The
22 amount of the taxpayer’s charge which may be taken
23 into account—

1 “(A) shall not exceed the amount of the
2 charge that would be recognized for purposes of
3 title XVIII of the Social Security Act, and

4 “(B) shall not include any amount for
5 which the taxpayer is not entitled to reimburse-
6 ment from the low-income individual.

7 “(5) LOW-INCOME INDIVIDUAL.—For purposes
8 of this subsection, the term ‘low-income individual’
9 means an individual who, at the time the medical
10 care attributable to the debt is provided, has an an-
11 nual household income below 135 percent of the pov-
12 erty line (as defined in section 673 of the Commu-
13 nity Services Block Grant Act (42 U.S.C. 9902)) ap-
14 plicable to the size of the family involved, and is a
15 citizen or legal resident of the United States.

16 “(6) MEDICAL CARE.—For purposes of this
17 subsection, the term ‘medical care’ has the meaning
18 given to such term by section 213(d).

19 “(7) REGULATIONS.—The Secretary shall pre-
20 scribe such regulations as may be necessary or ap-
21 propriate to carry out this section, including regula-
22 tions providing for methods of establishing that an
23 individual is a low-income individual for purposes of
24 this section.”

1 (2) **EFFECTIVE DATE.**—The amendment made
2 by this section shall apply to taxable years beginning
3 after the date of the enactment of this Act.

4 **TITLE III—PROMOTING AFFORD-**
5 **ABLE PRESCRIPTION DRUGS**
6 **BY DEFINING OBJECTIVES IN**
7 **NEGOTIATION OF TRADE**
8 **AGREEMENTS**

9 **SEC. 4301. PROMOTING AFFORDABLE PRESCRIPTION**
10 **DRUGS BY DEFINING OBJECTIVES IN NEGO-**
11 **TIATION OF TRADE AGREEMENTS.**

12 (a) **IN GENERAL.**—Section 2102(a) of the Bipartisan
13 Trade Promotion Authority Act of 2002 (19 U.S.C.
14 3802(a)) is amended—

15 (1) by striking “and” at the end of paragraph
16 (8);

17 (2) by striking the period at the end of para-
18 graph (9) and inserting “; and”; and

19 (3) by adding at the end the following:

20 “(10) to avoid negotiating trade agreements
21 that could restrict, or be interpreted to restrict, the
22 access of consumers in the United States to pharma-
23 ceutical imports from countries with a pharma-
24 ceutical infrastructure that is equivalent, or supe-
25 rior, to that of the United States—

1 “(A) by or through the use and develop-
2 ment of the doctrine of international patent ex-
3 haustion, as interpreted or applied by United
4 States courts on the date of enactment of this
5 Act; or

6 “(B) by making it a violation for the
7 United States to enact legislation permitting
8 pharmaceutical imports without the consent of
9 patent owners when the products involved have
10 been sold outside the United States.”.

11 (b) CERTAIN PROHIBITIONS.—Notwithstanding any
12 other provision of law, the United States Trade Represent-
13 ative—

14 (1) may not enter into a bilateral or multilat-
15 eral trade agreement that, with respect to the impor-
16 tation of pharmaceutical products without the con-
17 sent of the patent owners, includes provisions that
18 are the same or similar to the provisions of—

19 (A) paragraph 2 of Article 16.7 of the
20 United States-Singapore Free Trade Agree-
21 ment;

22 (B) paragraph 4 of Article 17.9 of the
23 United States-Australia Free Trade Agreement;
24 or

1 (C) paragraph 4 of Article 15.9 of the
2 United States-Morocco Free Trade Agreement;
3 and

4 (2) may not, with respect to the importation of
5 pharmaceutical products without the consent of the
6 patent owners, negotiate an agreement or under-
7 standing with respect to any of the provisions re-
8 ferred to in paragraph (1).

9 **TITLE IV—ENCOURAGING**
10 **PREVENTIVE CARE**

11 **SEC. 4401. ENCOURAGING PREVENTIVE CARE.**

12 (a) **MOBILE MAMMOGRAPHY PROMOTION.**—

13 (1) **REFUNDS.**—Section 6427 of the Internal
14 Revenue Code of 1986 (relating to fuels not used for
15 taxable purposes) is amended by inserting after sub-
16 section (f) the following new subsection:

17 “(g) **FUELS USED IN MOBILE MAMMOGRAPHY VEHI-**
18 **CLES.**—Except as provided in subsection (k), if any fuel
19 on which tax was imposed by section 4041 or 4081 is used
20 in any highway vehicle designed exclusively to provide mo-
21 bile mammography services to patients within such vehi-
22 cle, the Secretary shall pay (without interest) to the ulti-
23 mate purchaser of such fuel an amount equal to the aggre-
24 gate amount of the tax imposed on such fuel.”

1 (2) EXEMPTION FROM RETAIL TAX.—Section
2 4041 of such Code is amended by adding at the end
3 the following new subsection:

4 “(n) FUELS USED IN MOBILE MAMMOGRAPHY VEHI-
5 CLES.—No tax shall be imposed under this section on any
6 liquid sold for use in, or used in, any highway vehicle de-
7 signed exclusively to provide mobile mammography serv-
8 ices to patients within such vehicle.”

9 (3) EFFECTIVE DATE.—The amendments made
10 by this section shall take effect on the date of the
11 enactment of this Act.

12 (b) MEDICARE LUNG CANCER EARLY DETECTION.—
13 Section 1834 of the Social Security Act (42 U.S.C.
14 1395m) is amended—

15 (1) in subsection (b)(1)(B), by striking “sub-
16 section (c)(1)(A)” and inserting “subsections
17 (c)(1)(A) and (n)”; and

18 (2) by adding at the end the following new sub-
19 section:

20 “(n) PAYMENT FOR CHEST RADIOGRAPHY SERVICES
21 THAT USE COMPUTER AIDED DETECTION TECHNOLOGY
22 FOR THE EARLY DETECTION OF LUNG CANCER.—

23 “(1) IN GENERAL.—Notwithstanding any other
24 provision of this part, with respect to chest radiog-
25 raphy services (identified as of September 1, 2006,

1 by HCPCS codes 71010, 71020, 71021, 71022, and
2 71030, and as subsequently modified by the Sec-
3 retary) furnished on or after January 1, 2010; that
4 use Computer Aided Detection technology for the
5 early detection of lung cancer (as defined in para-
6 graph (4)), the amount of payment shall be equal
7 to—

8 “(A) with respect to the technical compo-
9 nent of such services—

10 “(i) the amount of payment under the
11 fee schedule established under section
12 1848 for such component for the year that
13 would otherwise apply; plus

14 “(ii) the amount described in para-
15 graph (2); and

16 “(B) with respect to the professional com-
17 ponent of such services—

18 “(i) the amount of payment under the
19 fee schedule established under section
20 1848 for such component for the year that
21 would otherwise apply; plus

22 “(ii) the amount described in para-
23 graph (3).

1 “(2) AMOUNT DESCRIBED FOR TECHNICAL
2 COMPONENT.—The amount described in this para-
3 graph for services furnished—

4 “(A) during 2010 is \$12; or

5 “(B) during a subsequent year is the
6 amount established under this paragraph for
7 the preceding year, increased by the update de-
8 termined under section 1848(d) for the year.

9 “(3) AMOUNT DESCRIBED FOR PROFESSIONAL
10 COMPONENT.—The amount described in this para-
11 graph for services furnished—

12 “(A) during 2010 is \$4; and

13 “(B) during a subsequent year is the
14 amount established under this paragraph for
15 the preceding year increased by the update de-
16 termined under section 1848(d) for the year.

17 “(4) COMPUTER AIDED DETECTION TECH-
18 NOLOGY FOR THE EARLY DETECTION OF LUNG CAN-
19 CER DEFINED.—In this subsection, the term ‘Com-
20 puter Aided Detection technology for the early detec-
21 tion of lung cancer’ means a computer software
22 technology which allows for the production of a dig-
23 ital chest x-ray image or the conversion of a chest
24 x-ray into a digital image to be subsequently ana-
25 lyzed for early lung cancer nodules and which the

1 Food and Drug Administration has granted approval
2 or clearance.

3 “(5) NEW CODES.—The Secretary shall estab-
4 lish new codes for chest radiography services de-
5 scribed in paragraph (1) in order to implement this
6 subsection.”

7 (c) VETERANS TRAVEL TAX RELIEF.—

8 (1) IN GENERAL.—Part VII of subchapter B of
9 chapter I of the Internal Revenue Code of 1986 (re-
10 lating to additional itemized deductions for individ-
11 uals) is amended by redesignating section 224 as
12 section 225, and by inserting after section 223 the
13 following new section:

14 **“SEC. 224. TRAVEL EXPENSES OF VETERANS FOR HEALTH**
15 **CARE AT MEDICAL CENTERS OF THE DE-**
16 **PARTMENT OF VETERANS AFFAIRS.**

17 “(a) ALLOWANCE OF DEDUCTION.—In the case of an
18 individual, there shall be allowed as a deduction the quali-
19 fied travel expenses for the taxable year.

20 “(b) LIMITATIONS.—

21 “(1) DOLLAR LIMITATION.—The amount al-
22 lowed as a deduction under subsection (a) for a tax-
23 able year shall not exceed \$400.

24 “(2) LIMITATION BASED ON ADJUSTED GROSS
25 INCOME.—The amount allowable as a deduction

1 under subsection (a) shall be reduced (but not below
2 zero) by an amount which bears the same ratio to
3 the amount so allowable (determined without regard
4 to this paragraph but with regard to paragraph (1))
5 as—

6 “(A) the amount (if any) by which the tax-
7 payer’s adjusted gross income exceeds \$75,000
8 (\$150,000 in the case of a joint return), bears
9 to

10 “(B) \$10,000 (\$20,000 in the case of a
11 joint return).

12 “(3) ADJUSTMENTS FOR INFLATION.—In the
13 case of a taxable year beginning after 2009, each of
14 the dollar amounts in paragraph (2) shall be in-
15 creased by an amount equal to—

16 “(A) such dollar amount, multiplied by

17 “(B) the cost-of-living adjustment deter-
18 mined under section 1(f)(3) for the calendar
19 year in which the taxable year begins, deter-
20 mined by substituting ‘calendar year 2008’ for
21 ‘calendar year 1992’ in subparagraph (B)
22 thereof.

23 If any amount as increased under the preceding sen-
24 tence is not a multiple of \$100, such amount shall
25 be rounded to the nearest multiple of \$100.

1 “(c) QUALIFIED TRAVEL EXPENSES.—For purposes
2 of this section—

3 “(1) IN GENERAL.—The term ‘qualified travel
4 expenses’ means amounts paid for travel expenses of
5 a veteran and a family member of the veteran to a
6 medical center of the Department of Veterans Af-
7 fairs for—

8 “(A) treatment relating to a service-con-
9 nected disability, or

10 “(B) examination conducted by the Sec-
11 retary of Veterans Affairs relating to a claim
12 for disability compensation or pension under
13 the laws administered by the Secretary of Vet-
14 erans Affairs.

15 “(2) REIMBURSEMENTS BY DEPARTMENT OF
16 VETERANS AFFAIRS.—The term ‘qualified travel ex-
17 penses’ does not include any travel expense which is
18 reimbursed by the Department of Veterans Affairs
19 or any other insurance plan.

20 “(3) LIMITATION.—Travel expenses incurred by
21 a veteran shall not be taken into account under
22 paragraph (1) unless—

23 “(A) the principal place of abode of the
24 veteran is more than 25 miles from the medical

1 center in which the treatment is provided or ex-
2 amination conducted, and

3 “(B) such medical center is the nearest
4 medical center of the Department of Veterans
5 Affairs to such place of abode.

6 “(4) TRAVEL EXPENSES.—The term ‘travel ex-
7 penses’ includes transportation, food, and lodging.

8 “(d) OTHER DEFINITIONS.—For purposes of this
9 section—

10 “(1) VETERAN.—The term ‘veteran’ has the
11 meaning given such term by section 101(2) of title
12 38, United States Code.

13 “(2) SERVICE-CONNECTED DISABILITY.—The
14 term ‘service-connected disability’ has the meaning
15 given such term under section 101(13) of such Code.

16 “(3) FAMILY MEMBER.—The members of an in-
17 dividual’s family shall be determined under section
18 4946(d); except that such members also shall in-
19 clude the brothers and sisters (whether by the whole
20 or half blood) of the individual and their spouses.”.

21 (2) DEDUCTION ALLOWED WHETHER OR NOT
22 TAXPAYER ITEMIZES OTHER DEDUCTIONS.—Sub-
23 section (a) of section 62 of such Code (defining ad-
24 justed gross income) is amended by inserting before
25 the last sentence the following new paragraph:

1 “(22) TRAVEL EXPENSES OF VETERANS FOR
2 HEALTH CARE AT MEDICAL CENTERS OF THE DE-
3 PARTMENT OF VETERANS AFFAIRS.—The deduction
4 allowed by section 224.”

5 (3) CLERICAL AMENDMENTS.—The table of sec-
6 tions for part VII of subchapter B of chapter 1 of
7 such Code is amended by striking the item relating
8 to section 224 and inserting the following:

“Sec. 224. Travel expenses of veterans for health care at medical centers of the
Department of Veterans Affairs.

“Sec. 225. Cross reference.”

9 (4) EFFECTIVE DATE.—The amendments made
10 by this section shall apply to taxable years beginning
11 after December 31, 2009.

