

115

**Amendment to H.R. 3962, as Introduced  
Offered by Mr. Price of Georgia (#2)**

Strike Sec. 2401 of Title IV of Division C and insert the following new section:

Sec. 2401. Affirmative Defense Based on Compliance with Best Practice Guidelines.

(a) Selection and Issuance of Best Practices Guidelines-

(1) IN GENERAL- The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall provide for the selection and issuance of best practice guidelines (each in this subsection referred to as a 'guideline') in accordance with paragraphs (2) and (3).

(2) DEVELOPMENT PROCESS- Not later than 90 days after the date of the enactment of this Act, the Secretary shall enter into a contract with a qualified physician consensus-building organization (such as the Physician Consortium for Performance Improvement), in concert and agreement with physician specialty organizations, to develop guidelines for treatment of medical conditions for application under subsection (b). Under the contract and not later than 18 months after the date of the enactment of this Act, the organization shall submit best practice guidelines for issuance as guidelines under paragraph (3).

(3) ISSUANCE-

(A) IN GENERAL- Not later than 2 years after the date of the enactment of this Act, the Secretary shall issue, by regulation, after notice and opportunity for public comment, guidelines that have been recommended under paragraph (2) for application under subsection (b).

(B) LIMITATION- The Secretary may not issue guidelines unless they have been approved or endorsed by qualified physician consensus-building organization involved and physician specialty organizations.

(C) DISSEMINATION- The Secretary shall broadly disseminate the guidelines so issued.

(b) Limitation on Damages-

(1) LIMITATION ON NONECONOMIC DAMAGES- In any health care lawsuit, no noneconomic damages may awarded with respect to treatment that is within a guideline issued under subsection (a).

(2) LIMITATION ON PUNITIVE DAMAGES- In any health care lawsuit, no punitive damages may be awarded against a health care practitioner based on a claim that such treatment caused the claimant harm if--

(A) such treatment was subject to the quality review by a qualified physician consensus-building organization;

(B) such treatment was approved in a guideline that underwent full review by such organization, public comment, approval by the Secretary, and dissemination as described in subparagraph (a); and

(C) such medical treatment is generally recognized among qualified experts (including medical providers and relevant physician specialty organizations) as safe, effective, and appropriate.

(c) Use-

- (1) INTRODUCTION AS EVIDENCE- Guidelines under subsection (a) may not be introduced as evidence of negligence or deviation in the standard of care in any civil action unless they have previously been introduced by the defendant.
- (2) NO PRESUMPTION OF NEGLIGENCE- There would be no presumption of negligence if a participating physician does not adhere to such guidelines.

(d) Construction- Nothing in this section shall be construed as preventing a State from--

- (1) replacing their current medical malpractice rules with rules that rely, as a defense, upon a health care provider's compliance with a guideline issued under subsection (a); or
- (2) applying additional guidelines or safe-harbors that are in addition to, but not in lieu of, the guidelines issued under subsection (a).

Redesignate any sections and make technical and conforming corrections as necessary.