

**MOTION TO RECOMMIT H.R. 847 WITH
INSTRUCTIONS**

M__ . ____ moves to recommit the bill H.R. 847 to the Committee on Energy and Commerce with instructions to report the same back to the House forthwith with the following amendment:

In subparagraph (A) of section 3312(c)(1) of the Public Health Service Act, as added by section 101 of the bill, strike “the payment rates that would apply to the provision of such treatment and services by the facility under the Federal Employees Compensation Act” and insert “payment rates equal to the payment rates for similar services under parts A and B of title XVIII of the Social Security Act”.

Strike title III and insert the following (and make such changes to the table of contents in section 1(b) as may be necessary):

1 **TITLE III—REPEAL OF CERTAIN**
2 **SPENDING PROVISIONS IN**
3 **PATIENT PROTECTION AND**
4 **AFFORDABLE CARE ACT**

5 **SEC. 301. REPEALS.**

6 (a) IN GENERAL.—The following provisions are here-
7 by repealed:

8 (1) Subsections (a), (b), (c), (e), (g), (h), (i),
9 (j), (k), (l), and (m) of section 1899A of the Social
10 Security Act (relating to Independent Payment Advi-
11 sory Board) and subsections (b) and (c) of section
12 3403 of the Patient Protection and Affordable Care
13 Act (and the amendments made by such sub-
14 sections).

15 (2) Section 4002 of such Act (relating to the
16 Prevention and Public Health Fund).

17 (3) Subsections (a), (b), (c), and (d) of section
18 6301 of such Act (and the amendments made by
19 such subsections) (relating to patient-centered out-
20 comes research).

21 (4) Section 10502 of such Act (relating to im-
22 proving infrastructure of a single health care facil-
23 ity).

24 (b) CONFORMING AMENDMENTS.—In the table of
25 contents in section 101 of the Patient Protection and Af-

1 fordable Care Act, strike the items relating to sections
2 3403, 4002, and 10502.

At the end of the bill, add the following new title
(and make such changes to the table of contents in section 1(b) as may be necessary):

3 **TITLE V—ENACTING REAL**
4 **MEDICAL LIABILITY REFORM**

5 **SEC. 501. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

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

14 (1) upon proof of fraud;

15 (2) intentional concealment; or

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

19 Actions by a minor shall be commenced within 3 years
20 from the date of the alleged manifestation of injury except
21 that actions by a minor under the full age of 6 years shall
22 be commenced within 3 years of manifestation of injury

1 or prior to the minor's 8th birthday, whichever provides
2 a longer period. Such time limitation shall be tolled for
3 minors for any period during which a parent or guardian
4 and a health care provider or health care organization
5 have committed fraud or collusion in the failure to bring
6 an action on behalf of the injured minor.

7 **SEC. 502. COMPENSATING PATIENT INJURY.**

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

13 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any
14 health care lawsuit, the amount of noneconomic damages,
15 if available, may be as much as \$250,000, regardless of
16 the number of parties against whom the action is brought
17 or the number of separate claims or actions brought with
18 respect to the same injury.

19 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
20 DAMAGES.—For purposes of applying the limitation in
21 subsection (b), future noneconomic damages shall not be
22 discounted to present value. The jury shall not be in-
23 formed about the maximum award for noneconomic dam-
24 ages. An award for noneconomic damages in excess of
25 \$250,000 shall be reduced either before the entry of judg-

1 ment, or by amendment of the judgment after entry of
2 judgment, and such reduction shall be made before ac-
3 counting for any other reduction in damages required by
4 law. If separate awards are rendered for past and future
5 noneconomic damages and the combined awards exceed
6 \$250,000, the future noneconomic damages shall be re-
7 duced first.

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

20 **SEC. 503. MAXIMIZING PATIENT RECOVERY.**

21 (a) COURT SUPERVISION OF SHARE OF DAMAGES
22 ACTUALLY PAID TO CLAIMANTS.—In any health care law-
23 suit, the court shall supervise the arrangements for pay-
24 ment of damages to protect against conflicts of interest
25 that may have the effect of reducing the amount of dam-

1 ages awarded that are actually paid to claimants. In par-
2 ticular, in any health care lawsuit in which the attorney
3 for a party claims a financial stake in the outcome by vir-
4 tue of a contingent fee, the court shall have the power
5 to restrict the payment of a claimant's damage recovery
6 to such attorney, and to redirect such damages to the
7 claimant based upon the interests of justice and principles
8 of equity. In no event shall the total of all contingent fees
9 for representing all claimants in a health care lawsuit ex-
10 ceed the following limits:

11 (1) 40 percent of the first \$50,000 recovered by
12 the claimant(s).

13 (2) $33\frac{1}{3}$ percent of the next \$50,000 recovered
14 by the claimant(s).

15 (3) 25 percent of the next \$500,000 recovered
16 by the claimant(s).

17 (4) 15 percent of any amount by which the re-
18 covery by the claimant(s) is in excess of \$600,000.

19 (b) APPLICABILITY.—The limitations in this section
20 shall apply whether the recovery is by judgment, settle-
21 ment, mediation, arbitration, or any other form of alter-
22 native dispute resolution. In a health care lawsuit involv-
23 ing a minor or incompetent person, a court retains the
24 authority to authorize or approve a fee that is less than
25 the maximum permitted under this section. The require-

1 ment for court supervision in the first two sentences of
2 subsection (a) applies only in civil actions.

3 **SEC. 504. ADDITIONAL HEALTH BENEFITS.**

4 In any health care lawsuit involving injury or wrong-
5 ful death, any party may introduce evidence of collateral
6 source benefits. If a party elects to introduce such evi-
7 dence, any opposing party may introduce evidence of any
8 amount paid or contributed or reasonably likely to be paid
9 or contributed in the future by or on behalf of the oppos-
10 ing party to secure the right to such collateral source bene-
11 fits. No provider of collateral source benefits shall recover
12 any amount against the claimant or receive any lien or
13 credit against the claimant's recovery or be equitably or
14 legally subrogated to the right of the claimant in a health
15 care lawsuit involving injury or wrongful death. This sec-
16 tion shall apply to any health care lawsuit that is settled
17 as well as a health care lawsuit that is resolved by a fact
18 finder. This section shall not apply to section 1862(b) (42
19 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C.
20 1396a(a)(25)) of the Social Security Act.

21 **SEC. 505. PUNITIVE DAMAGES.**

22 (a) IN GENERAL.—Punitive damages may, if other-
23 wise permitted by applicable State or Federal law, be
24 awarded against any person in a health care lawsuit only
25 if it is proven by clear and convincing evidence that such

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

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

20 (2) the amount of punitive damages following a
21 determination of punitive liability.

22 If a separate proceeding is requested, evidence relevant
23 only to the claim for punitive damages, as determined by
24 applicable State law, shall be inadmissible in any pro-

1 ceeding to determine whether compensatory damages are
2 to be awarded.

3 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
4 AGES.—

5 (1) FACTORS CONSIDERED.—In determining
6 the amount of punitive damages, if awarded, in a
7 health care lawsuit, the trier of fact shall consider
8 only the following—

9 (A) the severity of the harm caused by the
10 conduct of such party;

11 (B) the duration of the conduct or any
12 concealment of it by such party;

13 (C) the profitability of the conduct to such
14 party;

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

20 (E) any criminal penalties imposed on such
21 party, as a result of the conduct complained of
22 by the claimant; and

23 (F) the amount of any civil fines assessed
24 against such party as a result of the conduct
25 complained of by the claimant.

1 (2) **MAXIMUM AWARD.**—The amount of punitive
2 damages, if awarded, in a health care lawsuit may
3 be as much as \$250,000 or as much as two times
4 the amount of economic damages awarded, which-
5 ever is greater. The jury shall not be informed of
6 this limitation.

7 **SEC. 506. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
8 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
9 **SUITS.**

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

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

24 **SEC. 507. DEFINITIONS.**

25 In this title:

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

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

15 (3) COLLATERAL SOURCE BENEFITS.—The
16 term “collateral source benefits” means any amount
17 paid or reasonably likely to be paid in the future to
18 or on behalf of the claimant, or any service, product,
19 or other benefit provided or reasonably likely to be
20 provided in the future to or on behalf of the claim-
21 ant, as a result of the injury or wrongful death, pur-
22 suant to—

23 (A) any State or Federal health, sickness,
24 income-disability, accident, or workers’ com-
25 pensation law;

1 (B) any health, sickness, income-disability,
2 or accident insurance that provides health bene-
3 fits or income-disability coverage;

4 (C) any contract or agreement of any
5 group, organization, partnership, or corporation
6 to provide, pay for, or reimburse the cost of
7 medical, hospital, dental, or income-disability
8 benefits; and

9 (D) any other publicly or privately funded
10 program.

11 (4) COMPENSATORY DAMAGES.—The term
12 “compensatory damages” means objectively
13 verifiable monetary losses incurred as a result of the
14 provision of, use of, or payment for (or failure to
15 provide, use, or pay for) health care services or med-
16 ical products, such as past and future medical ex-
17 penses, loss of past and future earnings, cost of ob-
18 taining domestic services, loss of employment, and
19 loss of business or employment opportunities, dam-
20 ages for physical and emotional pain, suffering, in-
21 convenience, physical impairment, mental anguish,
22 disfigurement, loss of enjoyment of life, loss of soci-
23 ety and companionship, loss of consortium (other
24 than loss of domestic service), hedonic damages, in-
25 jury to reputation, and all other nonpecuniary losses

1 of any kind or nature. The term “compensatory
2 damages” includes economic damages and non-
3 economic damages, as such terms are defined in this
4 section.

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

9 (6) ECONOMIC DAMAGES.—The term “economic
10 damages” means objectively verifiable monetary
11 losses incurred as a result of the provision of, use
12 of, or payment for (or failure to provide, use, or pay
13 for) health care services or medical products, such as
14 past and future medical expenses, loss of past and
15 future earnings, cost of obtaining domestic services,
16 loss of employment, and loss of business or employ-
17 ment opportunities.

18 (7) HEALTH CARE LAWSUIT.—The term
19 “health care lawsuit” means any health care liability
20 claim concerning the provision of health care goods
21 or services or any medical product affecting inter-
22 state commerce, or any health care liability action
23 concerning the provision of health care goods or
24 services or any medical product affecting interstate
25 commerce, brought in a State or Federal court or

1 pursuant to an alternative dispute resolution system,
2 against a health care provider, a health care organi-
3 zation, or the manufacturer, distributor, supplier,
4 marketer, promoter, or seller of a medical product,
5 regardless of the theory of liability on which the
6 claim is based, or the number of claimants, plain-
7 tiffs, defendants, or other parties, or the number of
8 claims or causes of action, in which the claimant al-
9 leges a health care liability claim. Such term does
10 not include a claim or action which is based on
11 criminal liability; which seeks civil fines or penalties
12 paid to Federal, State, or local government; or which
13 is grounded in antitrust.

14 (8) HEALTH CARE LIABILITY ACTION.—The
15 term “health care liability action” means a civil ac-
16 tion brought in a State or Federal court or pursuant
17 to an alternative dispute resolution system, against
18 a health care provider, a health care organization, or
19 the manufacturer, distributor, supplier, marketer,
20 promoter, or seller of a medical product, regardless
21 of the theory of liability on which the claim is based,
22 or the number of plaintiffs, defendants, or other par-
23 ties, or the number of causes of action, in which the
24 claimant alleges a health care liability claim.

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

15 (10) HEALTH CARE ORGANIZATION.—The term
16 “health care organization” means any person or en-
17 tity which is obligated to provide or pay for health
18 benefits under any health plan, including any person
19 or entity acting under a contract or arrangement
20 with a health care organization to provide or admin-
21 ister any health benefit.

22 (11) HEALTH CARE PROVIDER.—The term
23 “health care provider” means any person or entity
24 required by State or Federal laws or regulations to
25 be licensed, registered, or certified to provide health

1 care services, and being either so licensed, reg-
2 istered, or certified, or exempted from such require-
3 ment by other statute or regulation.

4 (12) HEALTH CARE GOODS OR SERVICES.—The
5 term “health care goods or services” means any
6 goods or services provided by a health care organiza-
7 tion, provider, or by any individual working under
8 the supervision of a health care provider, that relates
9 to the diagnosis, prevention, or treatment of any
10 human disease or impairment, or the assessment or
11 care of the health of human beings.

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

17 (14) MEDICAL PRODUCT.—The term “medical
18 product” means a drug, device, or biological product
19 intended for humans, and the terms “drug”, “de-
20 vice”, and “biological product” have the meanings
21 given such terms in sections 201(g)(1) and 201(h)
22 of the Federal Food, Drug and Cosmetic Act (21
23 U.S.C. 321(g)(1) and (h)) and section 351(a) of the
24 Public Health Service Act (42 U.S.C. 262(a)), re-

1 spectively, including any component or raw material
2 used therein, but excluding health care services.

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

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

20 (17) RECOVERY.—The term “recovery” means
21 the net sum recovered after deducting any disburse-
22 ments or costs incurred in connection with prosecu-
23 tion or settlement of the claim, including all costs
24 paid or advanced by any person. Costs of health care
25 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 (18) STATE.—The term “State” means each of
4 the several States, the District of Columbia, the
5 Commonwealth of Puerto Rico, the Virgin Islands,
6 Guam, American Samoa, the Northern Mariana Is-
7 lands, the Trust Territory of the Pacific Islands, and
8 any other territory or possession of the United
9 States, or any political subdivision thereof.

10 **SEC. 508. EFFECT ON OTHER LAWS.**

11 (a) VACCINE INJURY.—

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

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

18 (B) any rule of law prescribed by this title
19 in conflict with a rule of law of such title XXI
20 shall not apply to such action.

21 (2) If there is an aspect of a civil action
22 brought for a vaccine-related injury or death to
23 which a Federal rule of law under title XXI of the
24 Public Health Service Act does not apply, then this
25 title or otherwise applicable law (as determined

1 under this title) will apply to such aspect of such ac-
2 tion.

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

7 **SEC. 509. STATE FLEXIBILITY AND PROTECTION OF**
8 **STATES' RIGHTS.**

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

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

22 (2) prohibits the introduction of evidence re-
23 garding collateral source benefits, or mandates or
24 permits subrogation or a lien on collateral source
25 benefits.

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

6 (2) This title shall not preempt or supersede any
7 State or Federal law that imposes greater procedural or
8 substantive protections for health care providers and
9 health care organizations from liability, loss, or damages
10 than those provided by this title or create a cause of ac-
11 tion.

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

14 (1) any State law (whether effective before, on,
15 or after the date of the enactment of this Act) that
16 specifies a particular monetary amount of compen-
17 satory or punitive damages (or the total amount of
18 damages) that may be awarded in a health care law-
19 suit, regardless of whether such monetary amount is
20 greater or lesser than is provided for under this title,
21 notwithstanding section 502(a); or

22 (2) any defense available to a party in a health
23 care lawsuit under any other provision of State or
24 Federal law.

1 **SEC. 510. APPLICABILITY; EFFECTIVE DATE.**

2 This title shall apply to any health care lawsuit
3 brought in a Federal or State court, or subject to an alter-
4 native dispute resolution system, that is initiated on or
5 after October 1, 2011, except that any health care lawsuit
6 arising from an injury occurring prior to such date shall
7 be governed by the applicable statute of limitations provi-
8 sions in effect at the time the injury occurred.

