

**MOTION TO RECOMMIT H.R. 3962, WITH  
INSTRUCTIONS  
OFFERED BY MR. CANTOR OF VIRGINIA**

Mr. Cantor of Virginia moves to recommit the bill, H.R. 3962, to the Committee on Energy and Commerce with instructions to report the same back to the House forthwith with the following amendments:

Page 1209, after line 15, insert the following new title (and conform the table of contents of division B, and the table of divisions, titles and subtitles in section 1(b), accordingly):

1 **TITLE X—SENIORS PROTECTION**  
2 **AND MEDICARE REGIONAL**  
3 **PAYMENT EQUITY FUND**

4 **SEC. 1911. FINDINGS.**

5 Congress finds the following:

6 (1) When analyzing the Medicare cuts in divi-  
7 sion B, The Office of the Actuary (OACT) of the  
8 Centers for Medicare & Medicaid Services noted that  
9 “The additional demand for health services could be  
10 difficult to meet initially with existing health pro-  
11 vider resources and could lead to price increases,

1 cost-shifting, and changes in providers' willingness  
2 to treat patients with low-reimbursement health cov-  
3 erage.”.

4 (2) When analyzing the Medicare cuts con-  
5 tained in division B, OACT predicts that, “Over  
6 time, a sustained reduction in payment updates,  
7 based on productivity expectations that are difficult  
8 to attain, would cause Medicare payment rates to  
9 grow more slowly than, and in a way that was unre-  
10 lated to, the provider's costs of furnishing services to  
11 beneficiaries. Thus, providers for whom Medicare  
12 constitutes a substantive portion of their business  
13 could find it difficult to remain profitable and might  
14 end their participation in the program (possibly  
15 jeopardizing access to care for beneficiaries).”.

16 (3) The Medicare Payment Advisory Commis-  
17 sion (MedPAC) found that 28 percent of seniors  
18 currently have difficulty finding a new physician to  
19 treat them.

20 (4) Medicare geographic payment inequities are  
21 well documented and have been extensively studied.

22 (5) The Congressional Budget Office states that  
23 per capita health care spending varies widely across  
24 the United States.

1           (6) Low-cost, high-quality States are setting the  
2           national standard for Medicare yet they are penal-  
3           ized by the current Medicare reimbursement for-  
4           mula.

5           (7) Geographic payment inequities must be re-  
6           solved for health care reform to be successful and  
7           for Medicare to achieve long-term sustainability.

8           (8) Rural counties face unique challenges in de-  
9           livering health care.

10          (9) MedPAC finds that every senior currently  
11          has the ability to enroll in a Medicare Advantage  
12          plan instead of the traditional government program.  
13          The Commission predicts that because of Medicare  
14          cuts contained in division B, 1 in 5 seniors will no  
15          longer have this choice and be forced to receive their  
16          Medicare benefits from the traditional program.

17          (10) OACT predicts that the Medicare cuts  
18          contained in division B will reduce seniors' projected  
19          enrollment in Medicare Advantage plans by 64 per-  
20          cent.

21          (11) MedPAC estimates that, on average, Medi-  
22          care physician reimbursements are 20 percent lower  
23          than the reimbursements physicians receive from  
24          private health plans.

1           (12) MedPAC predicts that, on average, Medi-  
2           care hospital reimbursements will be 6.9 percent  
3           below the cost of providing care in 2009.

4 **SEC. 1912. SENIORS PROTECTION AND MEDICARE RE-**  
5 **GIONAL PAYMENT EQUITY FUND .**

6           (a) ESTABLISHMENT.—The Secretary of Health and  
7 Human Services (in this section referred to as the “Sec-  
8 retary”) shall establish under this title a Seniors Protec-  
9 tion and Medicare Regional Payment Equity Fund (in this  
10 section referred to as the “Fund”) which shall be available  
11 to the Secretary to provide for improvements (described  
12 in subsection (b)(1)) under the Medicare program under  
13 title XVIII of the Social Security Act.

14           (b) IMPROVEMENTS MADE BY FUND.—

15           (1) IN GENERAL.—The improvements described  
16 in this paragraph are the following:

17           (A) CORRECTING PAYMENT INEQUITIES.—

18           In order to correct inequities in Medicare pay-  
19 ment policies that punish high-quality, low-cost  
20 counties (as defined in paragraph (2)) and to  
21 promote high quality, cost effective patient care,  
22 by providing additional funding to Medicare  
23 providers located in such counties.

24           (B) PRESERVING SENIORS’ CHOICE.—In  
25 order to preserve seniors’ ability to choose the

1 Medicare health benefits that best meet their  
2 needs, by providing additional funding to ensure  
3 that every Medicare beneficiary continues to  
4 have access to at least 1 Medicare Advantage  
5 plan under part C of the Medicare program.

6 (C) ACCESS TO MEDICALLY NECESSARY  
7 CARE AND TREATMENT.—By providing such ad-  
8 ditional funding as may be necessary to ensure  
9 access by Medicare beneficiaries to medically  
10 necessary care and treatment, including care  
11 and treatment furnished by physicians, hos-  
12 pitals, and other health care providers under  
13 the Medicare program, without wait lines or  
14 coverage determinations based solely on the  
15 basis of cost.

16 (2) HIGH QUALITY, LOW-COST COUNTY DE-  
17 FINED.—In this subsection, the term “high quality,  
18 low-cost county” means a county (or equivalent  
19 area) in which, as determined by the Secretary—

20 (A) the quality of care exceeds the national  
21 average; and

22 (B) the per beneficiary fee-for-service  
23 Medicare costs are substantially lower than the  
24 national average.

25 (c) FUNDING.—

1           (1) IN GENERAL.—There shall be available to  
2           the Fund—

3                   (A) \$13,500,000,000 for expenditures from  
4           the Fund during 5-year period beginning with  
5           2010; and

6                   (B) \$40,500,000,000 for expenditures  
7           from the Fund during the 5-year period begin-  
8           ning with 2015.

9           Such amounts reflect savings in Federal expendi-  
10          tures and increases in Federal revenues estimated to  
11          result from the provisions of division E.

12          (2) FUNDING LIMITATION.—Amounts in the  
13          Fund shall be available in advance of appropriations  
14          but only if the total amount obligated from the  
15          Fund does not exceed the amount available to the  
16          Fund under paragraph (1). The Secretary may obli-  
17          gate funds from the Fund only if the Secretary de-  
18          termines (and the Chief Actuary of the Centers for  
19          Medicare & Medicaid Services and the appropriate  
20          budget officer certify) that there are available in the  
21          Fund sufficient amounts to cover all such obligations  
22          incurred consistent with the previous sentence.

          Add at the end the following (and conform the table  
of divisions, titles, and subtitles in section 1(b) accord-  
ingly):

1     **DIVISION E—ENACTING REAL**  
2     **MEDICAL LIABILITY REFORM**

TABLE OF CONTENTS OF DIVISION

- Sec. 4101. Encouraging speedy resolution of claims.
- Sec. 4102. Compensating patient injury.
- Sec. 4103. Maximizing patient recovery.
- Sec. 4104. Additional health benefits.
- Sec. 4105. Punitive damages.
- Sec. 4106. Authorization of payment of future damages to claimants in health care lawsuits.
- Sec. 4107. Definitions.
- Sec. 4108. Effect on other laws.
- Sec. 4109. State flexibility and protection of states' rights.
- Sec. 4110. Applicability; effective date.

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     person 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

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

9 **SEC. 4102. COMPENSATING PATIENT INJURY.**

10 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL  
11 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any  
12 health care lawsuit, nothing in this division shall limit a  
13 claimant's recovery of the full amount of the available eco-  
14 nomic damages, notwithstanding the limitation in sub-  
15 section (b).

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

22 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC  
23 DAMAGES.—For purposes of applying the limitation in  
24 subsection (b), future noneconomic damages shall not be  
25 discounted to present value. The jury shall not be in-

1 formed about the maximum award for noneconomic dam-  
2 ages. An award for noneconomic damages in excess of  
3 \$250,000 shall be reduced either before the entry of judg-  
4 ment, or by amendment of the judgment after entry of  
5 judgment, and such reduction shall be made before ac-  
6 counting for any other reduction in damages required by  
7 law. If separate awards are rendered for past and future  
8 noneconomic damages and the combined awards exceed  
9 \$250,000, the future noneconomic damages shall be re-  
10 duced first.

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

23 **SEC. 4103. MAXIMIZING PATIENT RECOVERY.**

24 (a) COURT SUPERVISION OF SHARE OF DAMAGES  
25 ACTUALLY PAID TO CLAIMANTS.—In any health care law-

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

14           (1) 40 percent of the first \$50,000 recovered by  
15           the claimant(s).

16           (2)  $33\frac{1}{3}$  percent of the next \$50,000 recovered  
17           by the claimant(s).

18           (3) 25 percent of the next \$500,000 recovered  
19           by the claimant(s).

20           (4) 15 percent of any amount by which the re-  
21           covery by the claimant(s) is in excess of \$600,000.

22           (b) APPLICABILITY.—The limitations in this section  
23 shall apply whether the recovery is by judgment, settle-  
24 ment, mediation, arbitration, or any other form of alter-  
25 native dispute resolution. In a health care lawsuit involv-

1 ing a minor or incompetent person, a court retains the  
2 authority to authorize or approve a fee that is less than  
3 the maximum permitted under this section. The require-  
4 ment for court supervision in the first two sentences of  
5 subsection (a) applies only in civil actions.

6 **SEC. 4104. ADDITIONAL HEALTH BENEFITS.**

7 In any health care lawsuit involving injury or wrong-  
8 ful death, any party may introduce evidence of collateral  
9 source benefits. If a party elects to introduce such evi-  
10 dence, any opposing party may introduce evidence of any  
11 amount paid or contributed or reasonably likely to be paid  
12 or contributed in the future by or on behalf of the oppos-  
13 ing party to secure the right to such collateral source bene-  
14 fits. No provider of collateral source benefits shall recover  
15 any amount against the claimant or receive any lien or  
16 credit against the claimant's recovery or be equitably or  
17 legally subrogated to the right of the claimant in a health  
18 care lawsuit involving injury or wrongful death. This sec-  
19 tion shall apply to any health care lawsuit that is settled  
20 as well as a health care lawsuit that is resolved by a fact  
21 finder. This section shall not apply to section 1862(b) (42  
22 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C.  
23 1396a(a)(25)) of the Social Security Act.

1 **SEC. 4105. PUNITIVE DAMAGES.**

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

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

25 (2) the amount of punitive damages following a  
26 determination of punitive liability.

1 If a separate proceeding is requested, evidence relevant  
2 only to the claim for punitive damages, as determined by  
3 applicable State law, shall be inadmissible in any pro-  
4 ceeding to determine whether compensatory damages are  
5 to be awarded.

6 (b) DETERMINING AMOUNT OF PUNITIVE DAM-  
7 AGES.—

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

12 (A) the severity of the harm caused by the  
13 conduct of such party;

14 (B) the duration of the conduct or any  
15 concealment of it by such party;

16 (C) the profitability of the conduct to such  
17 party;

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

23 (E) any criminal penalties imposed on such  
24 party, as a result of the conduct complained of  
25 by the claimant; and

1 (F) the amount of any civil fines assessed  
2 against such party as a result of the conduct  
3 complained of by the claimant.

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

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 division.

4 **SEC. 4107. DEFINITIONS.**

5 In this division:

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

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

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

1 ant, as a result of the injury or wrongful death, pur-  
2 suant to—

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

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

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

14 (D) any other publicly or privately funded  
15 program.

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

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

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

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

23 (7) HEALTH CARE LAWSUIT.—The term  
24 “health care lawsuit” means any health care liability  
25 claim concerning the provision of health care goods

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

19 (8) HEALTH CARE LIABILITY ACTION.—The  
20 term “health care liability action” means a civil ac-  
21 tion brought in a State or Federal court or pursuant  
22 to an alternative dispute resolution system, against  
23 a health care provider, a health care organization, or  
24 the manufacturer, distributor, supplier, marketer,  
25 promoter, or seller of a medical product, regardless

1 of the theory of liability on which the claim is based,  
2 or the number of plaintiffs, defendants, or other par-  
3 ties, or the number of causes of action, in which the  
4 claimant alleges a health care liability claim.

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

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

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

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

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

21          (14) MEDICAL PRODUCT.—The term “medical  
22          product” means a drug, device, or biological product  
23          intended for humans, and the terms “drug”, “de-  
24          vice”, and “biological product” have the meanings  
25          given such terms in sections 201(g)(1) and 201(h)

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

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

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

23 (17) RECOVERY.—The term “recovery” means  
24 the net sum recovered after deducting any disburse-  
25 ments or costs incurred in connection with prosecu-

1       tion or settlement of the claim, including all costs  
2       paid or advanced by any person. Costs of health care  
3       incurred by the plaintiff and the attorneys' office  
4       overhead costs or charges for legal services are not  
5       deductible disbursements or costs for such purpose.

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

13 **SEC. 4108. EFFECT ON OTHER LAWS.**

14       (a) VACCINE INJURY.—

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

19           (A) this division does not affect the appli-  
20      cation of the rule of law to such an action; and

21           (B) any rule of law prescribed by this divi-  
22      sion in conflict with a rule of law of such title  
23      XXI shall not apply to such action.

24           (2) If there is an aspect of a civil action  
25      brought for a vaccine-related injury or death to

1       which a Federal rule of law under title XXI of the  
2       Public Health Service Act does not apply, then this  
3       division or otherwise applicable law (as determined  
4       under this division) will apply to such aspect of such  
5       action.

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

10   **SEC. 4109. STATE FLEXIBILITY AND PROTECTION OF**  
11                           **STATES' RIGHTS.**

12       (a) HEALTH CARE LAWSUITS.—The provisions gov-  
13       erning health care lawsuits set forth in this division pre-  
14       empt, subject to subsections (b) and (c), State law to the  
15       extent that State law prevents the application of any pro-  
16       visions of law established by or under this division. The  
17       provisions governing health care lawsuits set forth in this  
18       division supersede chapter 171 of title 28, United States  
19       Code, to the extent that such chapter—

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

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

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

10          (2) This division shall not preempt or supersede any  
11          State or Federal law that imposes greater procedural or  
12          substantive protections for health care providers and  
13          health care organizations from liability, loss, or damages  
14          than those provided by this division or create a cause of  
15          action.

16          (c) STATE FLEXIBILITY.—No provision of this divi-  
17          sion shall be construed to preempt—

18               (1) any State law (whether effective before, on,  
19               or after the date of the enactment of this Act) that  
20               specifies a particular monetary amount of compen-  
21               satory or punitive damages (or the total amount of  
22               damages) that may be awarded in a health care law-  
23               suit, regardless of whether such monetary amount is  
24               greater or lesser than is provided for under this divi-  
25               sion, notwithstanding section 4102(a); or

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

4 **SEC. 4110. APPLICABILITY; EFFECTIVE DATE.**

5           This division shall apply to any health care lawsuit  
6           brought in a Federal or State court, or subject to an alter-  
7           native dispute resolution system, that is initiated on or  
8           after the date of the enactment of this Act, except that  
9           any health care lawsuit arising from an injury occurring  
10          prior to the date of the enactment of this Act shall be  
11          governed by the applicable statute of limitations provisions  
12          in effect at the time the injury occurred.

