

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4942

To improve patient access to health care services, extend the solvency of the Medicare Trust Fund, and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 2002

Mr. WELDON of Florida (for himself and Mr. GREENWOOD) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To improve patient access to health care services, extend the solvency of the Medicare Trust Fund, and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

3        **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Medicare Solvency and  
5        Enhanced Benefits Act of 2002”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—

3 (1) Congress finds that our current civil justice  
4 system is adversely affecting patient access to health  
5 care services, better patient care, and cost-efficient  
6 health care, in that the health care liability system  
7 is a costly and ineffective mechanism for resolving  
8 claims of health care liability and compensating in-  
9 jured patients, and is a deterrent to the sharing of  
10 information among health care professionals which  
11 impedes efforts to improve patient safety and quality  
12 of care.

13 (2) Congress finds that the current health care  
14 liability system encourages health care providers to  
15 practice defensive medicine to protect themselves  
16 from lawsuits. These additional tests and procedures  
17 result in additional costs to senior citizens and too  
18 often provide little to improve the health of the pa-  
19 tient. Their sole purposes in too many instances  
20 serves the purpose of protecting against possible  
21 lawsuits.

22 (3) Congress finds that the current health care  
23 liability system encourages health care providers to  
24 practice defensive medicine, which results in added  
25 costs to the Medicare Trust Fund. Health care pro-  
26 viders often order tests to rule out any possible seri-

1       ous illness. Often these tests provide little benefit to  
2       the patient.

3               (4) Congress finds that the current liability sys-  
4       tem diverts valuable resources away from improved  
5       patient care and expanded Medicare benefits and in-  
6       stead misdirects them toward tests and procedures  
7       that do little to improve patient health, but serve  
8       primarily to protect the health care provider from  
9       excessive lawsuits.

10              (5) Congress finds that when the State of Cali-  
11       fornia enacted medical malpractice reform legislation  
12       (MICRA), Medicare benefited in that unnecessary  
13       procedures and tests were not ordered.

14              (6) Congress finds that senior citizens spend a  
15       larger portion of their income on health care than  
16       other age groups, and that it is in the best interest  
17       of senior citizens to help lower the cost of health  
18       care and make the Medicare Trust Fund more sol-  
19       vent.

20       (b) PURPOSE.—It is the purpose of this Act to imple-  
21       ment reasonable, comprehensive, and effective health care  
22       liability reforms designed to—

23              (1) improve the solvency of and extend the life  
24       of the Medicare Trust Fund by reducing the costs

1 associated with defensive medicine and excessive  
2 malpractice awards;

3 (2) improve the availability of health care serv-  
4 ices in cases in which health care liability actions  
5 have been shown to be a factor in the decreased  
6 availability of services;

7 (3) reduce the incidence of “defensive medi-  
8 cine” and lower the cost of health care liability in-  
9 surance, all of which contribute to the escalation of  
10 health care costs;

11 (4) ensure that persons with meritorious health  
12 care injury claims receive fair, adequate, and timely  
13 compensation, including reasonable noneconomic  
14 damages;

15 (5) improve the fairness and cost-effectiveness  
16 of our current health care liability system to resolve  
17 disputes over, and provide compensation for, health  
18 care liability by reducing uncertainty in the amount  
19 of compensation provided to injured individuals; and

20 (6) provide an increased sharing of information  
21 in the health care system which will reduce unin-  
22 tended injury and improve patient care.

23 **SEC. 3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

24 A medicare-related health care lawsuit may be com-  
25 menced no later than 3 years after the date of injury or

1 1 year after the claimant discovers, or through the use  
2 of reasonable diligence should have discovered, the injury,  
3 whichever occurs first. In no event shall the time for com-  
4 mencement of a medicare-related health care lawsuit ex-  
5 ceed 3 years, except that in the case of an alleged injury  
6 sustained by a minor before the age of 6, a medicare-re-  
7 lated health care lawsuit may be commenced by or on be-  
8 half of the minor until the later of 3 years from the date  
9 of injury, or the date on which the minor attains the age  
10 of 8.

11 **SEC. 4. COMPENSATING PATIENT INJURY.**

12 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL  
13 ECONOMIC LOSSES.—In any medicare-related health care  
14 lawsuit, the full amount of a claimant’s economic loss may  
15 be fully recovered without limitation.

16 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any  
17 medicare-related health care lawsuit, the amount of non-  
18 economic damages recovered by a claimant may be as  
19 much as \$250,000, regardless of the number of parties  
20 against whom the action is brought or the number of sepa-  
21 rate claims or actions brought with respect to the same  
22 occurrence.

23 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC  
24 DAMAGES.—In any medicare-related health care lawsuit,  
25 an award for future noneconomic damages shall not be

1 discounted to present value. The jury shall not be in-  
2 formed about the maximum award for noneconomic dam-  
3 ages. An award for noneconomic damages in excess of  
4 \$250,000 shall be reduced either before the entry of judg-  
5 ment, or by amendment of the judgment after entry of  
6 judgment, and such reduction shall be made before ac-  
7 counting for any other reduction in damages required by  
8 law. If separate awards are rendered for past and future  
9 noneconomic damages and the combined awards exceed  
10 \$250,000, the future noneconomic damages shall be re-  
11 duced first.

12 (d) FAIR SHARE RULE.—In any medicare-related  
13 health care lawsuit, each party shall be liable for that par-  
14 ty’s several share of any damages only and not for the  
15 share of any other person. Each party shall be liable only  
16 for the amount of damages allocated to such party in di-  
17 rect proportion to such party’s percentage of responsi-  
18 bility. A separate judgment shall be rendered against each  
19 such party for the amount allocated to such party. For  
20 purposes of this section, the trier of fact shall determine  
21 the proportion of responsibility of each party for the claim-  
22 ant’s harm.

23 **SEC. 5. MAXIMIZING PATIENT RECOVERY.**

24 (a) COURT SUPERVISION OF SHARE OF DAMAGES  
25 ACTUALLY PAID TO CLAIMANTS.—In any medicare-re-

1 lated health care lawsuit, the court shall supervise the ar-  
2 rangements for payment of damages to protect against  
3 conflicts of interest that may have the effect of reducing  
4 the amount of damages awarded that are actually paid  
5 to claimants. In particular, in any medicare-related health  
6 care lawsuit in which the attorney for a party claims a  
7 financial stake in the outcome by virtue of a contingent  
8 fee, the court shall have the power to restrict the payment  
9 of a claimant's damage recovery to such attorney, and to  
10 redirect such damages to the claimant based upon the in-  
11 terests of justice and principles of equity. In no event shall  
12 the total of all contingent fees for representing all claim-  
13 ants in a medicare-related health care lawsuit exceed the  
14 following limits:

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

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

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

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

23           (b) APPLICABILITY.—The limitations in this section  
24 shall apply whether the recovery is by judgment or settle-  
25 ment, or by mediation, arbitration, or any other form of

1 alternative dispute resolution. In a medicare-related health  
2 care lawsuit involving a minor or incompetent person, a  
3 court retains the authority to authorize or approve a fee  
4 that is less than the maximum permitted under this sec-  
5 tion.

6 (c) DEFINITION.—In this section, the term “contin-  
7 gent fee” includes all compensation to any person or per-  
8 sons which is payable only if a recovery is effected on be-  
9 half of one or more claimants.

10 **SEC. 6. ADDITIONAL HEALTH BENEFITS.**

11 (a) IN GENERAL.—In any medicare-related health  
12 care lawsuit, any party may introduce evidence of collat-  
13 eral source benefits. If a party elects to introduce such  
14 evidence, any opposing party may introduce evidence of  
15 any amount paid or contributed or reasonably likely to be  
16 paid or contributed in the future by or on behalf of the  
17 opposing party to secure the right to such collateral source  
18 benefits. No provider of collateral source benefits shall re-  
19 cover any amount against the claimant or receive any lien  
20 or credit against the claimant’s recovery or be equitably  
21 or legally subrogated to the right of the claimant in a  
22 medicare-related health care lawsuit. This section shall  
23 apply to any medicare-related health care lawsuit that is  
24 settled as well as a medicare-related health care lawsuit  
25 that is resolved by a fact finder.

1 (b) DEFINITION.—In this section, the term “collat-  
2 eral source benefits” means any amount paid or reason-  
3 ably likely to be paid in the future to or on behalf of the  
4 claimant, or any service, product or other benefit provided  
5 or reasonably likely to be provided in the future to or on  
6 behalf of the claimant, as a result of the injury or wrongful  
7 death, pursuant to—

8 (1) any State or Federal health, sickness, in-  
9 come-disability, accident, or workers’ compensation  
10 law;

11 (2) any health, sickness, income-disability, or  
12 accident insurance that provides health benefits or  
13 income-disability coverage;

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

18 (4) any other publicly or privately funded pro-  
19 gram.

20 **SEC. 7. PUNITIVE DAMAGES.**

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

1 injure the claimant, or that such person deliberately failed  
2 to avoid unnecessary injury that such person knew the  
3 claimant was substantially certain to suffer. In any medi-  
4 care-related health care lawsuit where no judgment for  
5 compensatory damages is rendered against such person,  
6 no punitive damages may be awarded with respect to the  
7 claim in such lawsuit. No demand for punitive damages  
8 shall be included in a medicare-related 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 medicare-related health care law-  
17 suit, the trier of fact shall consider in a separate  
18 proceeding—

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

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

23 If a separate proceeding is requested, evidence relevant  
24 only to the claim for punitive damages, as determined by  
25 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 under subsection  
7 (a), the trier of fact shall consider only the fol-  
8 lowing:

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 awarded in a medicare-related health care  
3 lawsuit may be up to as much as two times the  
4 amount of economic damages awarded or \$250,000,  
5 whichever is greater. The jury shall not be informed  
6 of this limitation.

7           (c) NO CIVIL MONETARY PENALTIES FOR PRODUCTS  
8 THAT COMPLY WITH FDA STANDARDS.—

9           (1) IN GENERAL.—No punitive damages may be  
10 awarded in a medicare-related health care lawsuit  
11 against the manufacturer or distributor of a medical  
12 product based on a medicare-related liability claim  
13 that such product caused the claimant’s harm  
14 where—

15                   (A)(i) such medical product was subject to  
16 premarket approval or clearance by the Food  
17 and Drug Administration with respect to the  
18 safety of the formulation or performance of the  
19 aspect of such medical product which caused  
20 the claimant’s harm or the adequacy of the  
21 packaging or labeling of such medical product;  
22 and

23                   (ii) such medical product was so approved  
24 or cleared; or

1 (B) such medical product is generally rec-  
2 ognized among qualified experts as safe and ef-  
3 fective pursuant to conditions established by the  
4 Food and Drug Administration and applicable  
5 Food and Drug Administration regulations, in-  
6 cluding without limitation those related to pack-  
7 aging and labeling.

8 (2) LIABILITY OF HEALTH CARE PROVIDERS.—

9 A person who prescribes a drug or device (including  
10 blood products) approved by the Food and Drug Ad-  
11 ministration that constitutes a medicare-related item  
12 or service shall not be named as a party to a product  
13 liability lawsuit involving such drug or device and  
14 shall not be liable to a claimant in a class action  
15 lawsuit against the manufacturer, distributor, or  
16 product seller of such drug or device.

17 (3) PACKAGING.—In a medicare-related health  
18 care lawsuit for harm which is alleged to relate to  
19 the adequacy of the packaging or labeling of a drug  
20 which is required to have tamper-resistant packaging  
21 under regulations of the Secretary of Health and  
22 Human Services (including labeling regulations re-  
23 lated to such packaging), the manufacturer or prod-  
24 uct seller of the drug shall not be held liable for pu-  
25 nitive damages unless such packaging or labeling is

1 found by the trier of fact by clear and convincing  
2 evidence to be substantially out of compliance with  
3 such regulations.

4 (4) EXCEPTION.—Paragraph (1) shall not  
5 apply in any medicare-related health care lawsuit in  
6 which—

7 (A) a person, before or after premarket ap-  
8 proval or clearance of such medical product,  
9 knowingly misrepresented to or withheld from  
10 the Food and Drug Administration information  
11 that is required to be submitted under the Fed-  
12 eral Food, Drug, and Cosmetic Act (21 U.S.C.  
13 301 et seq.) or section 351 of the Public Health  
14 Service Act (42 U.S.C. 262) that is material  
15 and is causally related to the harm which the  
16 claimant allegedly suffered; or

17 (B) a person made an illegal payment to  
18 an official of the Food and Drug Administra-  
19 tion for the purpose of either securing or main-  
20 taining approval or clearance of such medical  
21 product.

22 (d) DEFINITIONS.—In this section:

23 (2) MALICIOUS INTENT TO INJURE.—The term  
24 “malicious intent to injure” means intentionally

1 causing or attempting to cause physical injury other  
2 than providing health care goods or services.

3 (3) **MEDICAL PRODUCT.**—The term “medical  
4 product” means a drug or device intended for hu-  
5 mans, and the terms “drug” and “device” have the  
6 meanings given such terms in sections 201(g)(1) and  
7 201(h) of the Federal Food, Drug and Cosmetic Act  
8 (21 U.S.C. 321), respectively, including any compo-  
9 nent or raw material used therein, but excluding  
10 health care services.

11 **SEC. 8. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**  
12 **AGES TO CLAIMANTS IN MEDICARE-RELATED**  
13 **HEALTH CARE LAWSUITS.**

14 (a) **IN GENERAL.**—In any medicare-related health  
15 care lawsuit, if an award of future damages, without re-  
16 duction to present value, equaling or exceeding \$50,000  
17 is made against a party with sufficient insurance or other  
18 assets to fund a periodic payment of such a judgment,  
19 the court shall, at the request of any party, enter a judg-  
20 ment ordering that the future damages be paid by periodic  
21 payments in accordance with the Uniform Periodic Pay-  
22 ment of Judgments Act promulgated by the National Con-  
23 ference of Commissioners on Uniform 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. 9. 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 Act 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 Act  
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 Act or otherwise applicable law (as determined  
20 under this Act) 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 Act shall be deemed to affect  
24 any defense available to a defendant in a medicare-related

1 health care lawsuit or action under any other provision  
2 of Federal law.

3 **SEC. 10. STATE FLEXIBILITY AND PROTECTION OF STATES'**  
4 **RIGHTS.**

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

14 (1) provides for a greater amount of damages  
15 or contingent fees, a longer period in which a medi-  
16 care-related health care lawsuit may be commenced,  
17 or a reduced applicability or scope of periodic pay-  
18 ment of future damages, than provided in this Act;  
19 or

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

24 (b) **PROTECTION OF STATES' RIGHTS.**—Any issue  
25 that is not governed by any provision of law established

1 by or under this Act (including State standards of neg-  
2 ligence) shall be governed by otherwise applicable State  
3 or Federal law. This Act does not preempt or supersede  
4 any law that imposes greater protections (such as a short-  
5 er statute of limitations) for health care providers and  
6 health care organizations from liability, loss, or damages  
7 than those provided by this Act.

8 (c) STATE FLEXIBILITY.—No provision of this Act  
9 shall be construed to preempt—

10 (1) any State statutory limit (whether enacted  
11 before, on, or after the date of the enactment of this  
12 Act) on the amount of compensatory or punitive  
13 damages (or the total amount of damages) that may  
14 be awarded in a medicare-related health care law-  
15 suit, whether or not such State limit permits the re-  
16 covery of a specific dollar amount of damages that  
17 is greater or lesser than is provided for under this  
18 Act, notwithstanding section 4(a); or

19 (2) any defense available to a party in a medi-  
20 care-related health care lawsuit under any other pro-  
21 vision of State or Federal law.

22 **SEC. 11. NO MEDICARE+CHOICE CAUSE OF ACTION.**

23 No provision of this Act may be construed to create  
24 a cause of action against a Medicare+Choice plan under  
25 part C of title XVIII of the Social Security Act.

1 **SEC. 12. DEFINITIONS.**

2 In this Act:

3 (1) **MEDICARE-RELATED HEALTH CARE LAW-**  
4 **SUIT.**—The term “medicare-related health care law-  
5 suit” means any action concerning medicare-related  
6 items or services, brought in a State or Federal  
7 court or pursuant to alternative dispute resolution,  
8 against any person, regardless of the theory of liabil-  
9 ity on which the claim is based, in which the claim-  
10 ant alleges a medicare-related liability claim.

11 (2) **MEDICARE-RELATED LIABILITY CLAIM.**—  
12 The term “medicare-related liability claim” means a  
13 demand by any person, whether or not pursuant to  
14 alternative dispute resolution, against any person,  
15 based upon the provision of, use of, or payment for  
16 (or the failure to provide, use, or pay for) medicare-  
17 related items or services, regardless of the theory of  
18 liability on which the claim is based, or the number  
19 of plaintiffs, defendants, or other parties, or the  
20 number of causes of action.

21 (3) **MEDICARE-RELATED ITEMS OR SERVICES.**—  
22 The term “medicare-related items or services”  
23 means items or services for which payment may be  
24 made under title XVIII of the Social Security Act  
25 (including under a Medicare+Choice plan under  
26 part C of such title).

1           (4) ALTERNATIVE DISPUTE RESOLUTION.—The  
2 term “alternative dispute resolution” means a sys-  
3 tem that provides for the resolution of claims in a  
4 manner other than through a civil action brought in  
5 a State or Federal court.

6           (5) CLAIMANT.—The term “claimant” means  
7 any person who brings a medicare-related health  
8 care lawsuit, including a person who asserts or  
9 claims a right to legal or equitable contribution, in-  
10 demnity or subrogation, arising out of a medicare-  
11 related claim, and any person on whose behalf such  
12 a claim is asserted or such an action is brought,  
13 whether deceased, incompetent, or a minor.

14           (6) COMPENSATORY DAMAGES.—The term  
15 “compensatory damages”—

16           (A) means objectively verifiable monetary  
17 losses incurred as a result of the provision of,  
18 use of, or payment for (or failure to provide,  
19 use, or pay for) medicare-related items or serv-  
20 ices, such as past and future medical expenses,  
21 loss of past and future earnings, cost of obtain-  
22 ing domestic services, loss of employment, and  
23 loss of business or employment opportunities,  
24 damages for physical and emotional pain, suf-  
25 fering, inconvenience, physical impairment,

1           mental anguish, disfigurement, loss of enjoy-  
2           ment of life, loss of society and companionship,  
3           loss of consortium (other than loss of domestic  
4           service), hedonic damages, injury to reputation,  
5           and all other nonpecuniary losses of any kind or  
6           nature; and

7                   (B) includes economic damages and non-  
8           economic damages, as such terms are defined in  
9           this section.

10           (7) ECONOMIC DAMAGES.—The term “economic  
11           damages” means objectively verifiable monetary  
12           losses, such as past and future medical expenses,  
13           loss of past and future earnings, cost of obtaining  
14           domestic services, loss of employment, and loss of  
15           business or employment opportunities.

16           (8) NONECONOMIC DAMAGES.—The term “non-  
17           economic damages” means damages for physical and  
18           emotional pain, suffering, inconvenience, physical  
19           impairment, mental anguish, disfigurement, loss of  
20           enjoyment of life, loss of society and companionship,  
21           loss of consortium (other than loss of domestic serv-  
22           ice), hedonic damages, injury to reputation, and all  
23           other nonpecuniary losses of any kind or nature.

24           (9) PUNITIVE DAMAGES.—The term “punitive  
25           damages” means damages awarded, for the purpose

1 of punishment or deterrence, and not solely for com-  
2 pensatory purposes. Punitive damages are neither  
3 economic nor noneconomic damages.

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

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

19 (12) HEALTH CARE PROVIDER.—The term  
20 “health care provider” means any person or entity  
21 required by State or Federal laws or regulations to  
22 be licensed, registered, or certified to provide health  
23 care services, and being either so licensed, reg-  
24 istered, or certified, or exempted from such require-  
25 ment by other statute or regulation.

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

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

16 **SEC. 13. SENSE OF CONGRESS.**

17          It is the sense of Congress that any savings generated  
18          by this Act due to reduced Federal Medicare expenditures  
19          associated with defensive medicine and higher medical  
20          malpractice insurance rates should be placed in a Medi-  
21          care Trust Fund to be used solely to meet Medicare ex-  
22          penditures, including current benefits, enhanced or new  
23          benefits, or the costs associated with the enactment of a  
24          prescription drugs benefit.

1 **SEC. 14. APPLICABILITY; EFFECTIVE DATE.**

2       This Act shall apply to any medicare-related health  
3 care lawsuit brought in a Federal or State court, or sub-  
4 ject to alternative dispute resolution, that is initiated on  
5 or after the date of the enactment of this Act, except that  
6 any medicare-related health care lawsuit arising from an  
7 injury occurring prior to the date of the enactment of this  
8 Act shall be governed by the applicable statute of limita-  
9 tions provisions in effect at the time the injury occurred.

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