



## **Summary of H.R. 5, the "Help, Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2011**

- Table of Contents (Sec. 1)
- Findings and Purpose Statement (Sec. 2)
- Sets a statute of limitations of 3 years after the proof of injury date or 1 year after the claimant discovers the injury, whichever comes first, with certain exceptions (Note: for minors under the age of 6 years, lawsuit must be commenced within 3 years of proof of injury or prior to the minor's 8th birthday, whichever provides a longer period) (Sec. 3)
- Does not limit the recovery amount of economic damages (Sec. 4)
- Limits the recovery amount of non-economic damages to \$250,000, regardless of the number of defendants or the number of separate claims or actions brought with respect to the alleged injury (Sec. 4)
- Makes each party liable only for the amount of damages directly proportional to such party's percentage of responsibility (Sec. 4)
- Limits the payment of attorney contingency fees. The bill would create a sliding scale calculating the percentage of an award an attorney could collect based on the amount the claimant recovered. (Sec. 5)
- Allows into evidence the introduction of collateral source benefits and the amount paid to secure such benefits. Prohibits a provider of collateral source benefits (e.g., health plans) from recovering any amount from an award in a health care lawsuit involving injury or wrongful death. This section does not affect Medicare or Medicaid subrogation rights (Sec. 6)
- Authorizes the award of punitive damages only when: (1) it is proven by clear and convincing evidence that a person acted with malicious intent to injure the claimant or deliberately failed to avoid unnecessary injury the claimant was substantially certain to suffer; and (2) compensatory damages are awarded (Sec. 7)
- Limits punitive damages to the greater of two times the amount of economic damages or \$250,000 (Sec. 7)
- Prohibits punitive damages in the case of products approved, cleared, or licensed by the Food and Drug Administration (FDA), or otherwise considered in compliance with FDA standards (Sec. 7)
- Prohibits the naming of a health care provider who prescribes or dispenses pursuant to a prescription an FDA-approved medical product as a party in a product liability suit or as part of a class action lawsuit against the manufacturer, distributor, or seller of an FDA-approved medical product (Sec. 7)
- Requires, at the request of any party, that future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act (Sec. 8)
- Definitions (Sec. 9)
- Preserves the federal vaccine injury law and applicable rules. Any other provisions of federal law that provide a defense to a defendant in a health care lawsuit or action will remain in effect (Sec. 10)

- Protects any State laws not covered by the Act (e.g., state standards for negligence) (Sec. 11)
- Protects substantive and procedural Federal and State laws that provide greater protection for health care providers and organizations (Sec. 11)
- Protects existing and future State laws that specify a specific amount of compensatory damages or punitive damages or the total amount of damages that may be awarded in a health care lawsuit regardless of whether the amount is greater or lesser than \$250,000 (Sec. 11)
- Effective Date: Applies to health care lawsuits brought in federal or state court or subject to an alternative dispute resolution system that is initiated on or after the date of the enactment of the Act. If the lawsuit involves an injury that occurred prior to the date of enactment of the Act, it will be governed by the applicable statute of limitations that was in effect at the time the injury occurred (Sec.12)