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AMENDMENT

OFFERED BY Mr. Burgess 7

[AINS-EC_001]

Add at the end of title XIX of division B the following:

1 SEC. 1906. LIABILITY PROTECTIONS.

2 (a) IN GENERAL.—The protections provided in each
3 of subsections (b) through (o) shall apply in the case of
4 a health care provider with respect to items, services, and
5 treatments for which such provider seeks reimbursement
6 under Medicare under title XVIII of the Social Security
7 Act or under a State plan under title XIX of such Act.

8 (b) CAP ON NON-ECONOMIC DAMAGES AGAINST
9 HEALTH CARE PRACTITIONERS.—When an individual is
10 injured or dies as the result of health care, a person enti-
11 tled to non-economic damages may not recover, from the
12 class of liable health care practitioners (regardless of the
13 theory of liability), more than \$250,000 such damages.

14 (c) CAP ON NON-ECONOMIC DAMAGES AGAINST
15 HEALTH CARE INSTITUTIONS.—When an individual is in-
16 jured or dies as the result of health care, a person entitled
17 to non-economic damages may not recover—

1 (1) from any single liable health care institution
2 (regardless of the theory of liability), more than
3 \$250,000 such damages; and

4 (2) from the class of liable health care institu-
5 tions (regardless of the theory of liability), more
6 than \$500,000 such damages.

7 (d) CAP, IN WRONGFUL DEATH CASES, ON TOTAL
8 DAMAGES AGAINST ANY SINGLE HEALTH CARE PRACTI-
9 TIONER.—

10 (1) IN GENERAL.—When an individual dies as
11 the result of health care, a person entitled to dam-
12 ages may not recover, from any single liable health
13 care practitioner (regardless of the theory of liabil-
14 ity), more than \$1,400,000 in total damages.

15 (2) TOTAL DAMAGES DEFINED.— In this sec-
16 tion, the term “total damages” includes compen-
17 satory damages, punitive damages, statutory dam-
18 ages, and any other type of damages.

19 (3) ADJUSTMENT FOR INFLATION.— For each
20 calendar year after the calendar year of the enact-
21 ment of this Act, the dollar amount referred to in
22 subsection (a) shall be adjusted to reflect changes in
23 the Consumer Price Index of the Bureau of Labor
24 Statistics of the Department of Labor. The adjust-
25 ment shall be based on the relationship between—

1 (A) the Consumer Price Index data most
2 recently published as of January 1 of the cal-
3 endar year of the enactment of this Act; and

4 (B) the Consumer Price Index data most
5 recently published as of January 1 of the cal-
6 endar year concerned.

7 (4) Applicability of Adjustment- The dollar
8 amount that applies to a recovery is the dollar
9 amount for the calendar year during which the
10 amount of the recovery is made final.

11 (e) LIMITATION OF INSURER LIABILITY WHEN IN-
12 SURER REJECTS CERTAIN SETTLEMENT OFFERS.—In a
13 civil action, to the extent the civil action seeks damages
14 for the injury or death of an individual as the result of
15 health care, when the insurer of a health care practitioner
16 or health care institution rejects a reasonable settlement
17 offer within policy limits, the insurer is not, by reason of
18 that rejection, liable for damages in an amount that ex-
19 ceeds the liability of the insured.

20 (f) MANDATORY JURY INSTRUCTION ON CAP ON
21 DAMAGES.—In a civil action tried to a jury, to the extent
22 the civil action seeks damages for the injury or death of
23 an individual as the result of health care, the court shall
24 instruct the jury that the jury is not to consider whether,
25 or to what extent, a limitation on damages applies.

1 (g) DETERMINATION OF NEGLIGENCE; MANDATORY
2 JURY INSTRUCTION.—

3 (1) IN GENERAL.— When an individual is in-
4 jured or dies as the result of health care, liability for
5 negligence may not be based solely on a bad result.

6 (2) MANDATORY JURY INSTRUCTION.— In a
7 civil action tried to a jury, to the extent the civil ac-
8 tion seeks damages for the injury or death of an in-
9 dividual as the result of health care and alleges li-
10 ability for negligence, the court shall instruct the
11 jury as provided in paragraph (1).

12 (h) EXPERT REPORTS REQUIRED TO BE SERVED IN
13 CIVIL ACTIONS.—

14 (1) SERVICE REQUIRED.—To the extent a
15 pleading filed in a civil action seeks damages against
16 a health care practitioner for the injury or death of
17 an individual as the result of health care, the party
18 filing the pleading shall, not later than 120 days
19 after the date on which the pleading was filed, serve
20 on each party against whom such damages are
21 sought a qualified expert report.

22 (2) QUALIFIED EXPERT REPORT.— As used in
23 paragraph (1), a qualified expert report is a written
24 report of a qualified health care expert that—

1 (A) includes a curriculum vitae for that ex-
2 pert; and

3 (B) sets forth a summary of the expert
4 opinion of that expert as to—

5 (i) the standard of care applicable to
6 that practitioner;

7 (ii) how that practitioner failed to
8 meet that standard of care; and

9 (iii) the causal relationship between
10 that failure and the injury or death of the
11 individual.

12 (3) MOTION TO ENFORCE.— A party not
13 served as required by paragraph (1) may move the
14 court to enforce that subsection. On such a motion,
15 the court—

16 (A) shall dismiss, with prejudice, the
17 pleading as it relates to that party; and

18 (B) shall award to that party the attorney
19 fees reasonably incurred by that party to re-
20 spond to that pleading.

21 (4) USE OF EXPERT REPORT.—

22 (A) IN GENERAL.—Except as otherwise
23 provided in this section, a qualified expert re-
24 port served under paragraph (1) may not, in
25 that civil action—

1 (i) be offered by any party as evi-
2 dence;

3 (ii) be used by any party in discovery
4 or any other pretrial proceeding; or

5 (iii) be referred to by any party at
6 trial.

7 (B) VIOLATIONS.—

8 (i) BY OTHER PARTY.—If subpara-
9 graph (A) is violated by a party other than
10 the party who served the report, the court
11 shall, on motion of any party or on its own
12 motion, take such measures as the court
13 considers appropriate, which may include
14 the imposition of sanctions.

15 (ii) BY SERVING PARTY.—If subpara-
16 graph (A) is violated by the party who
17 served the report, subparagraph (A) shall
18 no longer apply to any party.

19 (i) EXPERT OPINIONS RELATING TO PHYSICIANS
20 MAY BE PROVIDED ONLY BY ACTIVELY PRACTICING
21 PHYSICIANS.—

22 (1) IN GENERAL.—A physician-related opinion
23 may be provided only by an actively practicing physi-
24 cian who is determined by the court to be qualified

1 on the basis of training and experience to render
2 that opinion.

3 (2) CONSIDERATIONS REQUIRED.— In deter-
4 mining whether an actively practicing physician is
5 qualified under paragraph (1), the court shall, ex-
6 cept on good cause shown, consider whether that
7 physician is board-certified, or has other substantial
8 training, in an area of medical practice relevant to
9 the health care to which the opinion relates.

10 (3) DEFINITIONS.— In this section:

11 (A) The term “actively practicing physi-
12 cian” means an individual who—

13 (i) is licensed to practice medicine in
14 the United States or, if the individual is a
15 defendant providing a physician-related
16 opinion with respect to the health care pro-
17 vided by that defendant, is a graduate of
18 a medical school accredited by the Liaison
19 Committee on Medical Education or the
20 American Osteopathic Association;

21 (ii) is practicing medicine when the
22 opinion is rendered, or was practicing med-
23 icine when the health care was provided;
24 and

1 (iii) has knowledge of the accepted
2 standards of care for the health care to
3 which the opinion relates.

4 (B) The term “physician-related opinion”
5 means an expert opinion as to any one or more
6 of the following:

7 (i) The standard of care applicable to
8 a physician.

9 (ii) Whether a physician failed to
10 meet such a standard of care.

11 (iii) Whether there was a causal rela-
12 tionship between such a failure by a physi-
13 cian and the injury or death of an indi-
14 vidual.

15 (C) The term “practicing medicine” in-
16 cludes training residents or students at an ac-
17 credited school of medicine or osteopathy, and
18 serving as a consulting physician to other physi-
19 cians who provide direct patient care.

20 (j) PAYMENT OF FUTURE DAMAGES ON PERIODIC OR
21 ACCRUAL BASIS.—

22 (1) IN GENERAL.—When future damages are
23 awarded against a health care practitioner to a per-
24 son for the injury or death of an individual as a re-
25 sult of health care, and the present value of those

1 future damages is \$100,000 or more, that health
2 care practitioner may move that the court order pay-
3 ment on a periodic or accrual basis of those dam-
4 ages. On such a motion, the court—

5 (A) shall order that payment be made on
6 an accrual basis of future damages described in
7 paragraph (2)(A); and

8 (B) may order that payment be made on
9 a periodic or accrual basis of any other future
10 damages that the court considers appropriate.

11 (2) Future Damages Defined- In this section,
12 the term “future damages” means—

13 (A) the future costs of medical, health
14 care, or custodial services;

15 (B) noneconomic damages, such as pain
16 and suffering or loss of consortium;

17 (C) loss of future earnings; and

18 (D) any other damages incurred after the
19 award is made.

20 (k) UNANIMOUS JURY REQUIRED FOR PUNITIVE OR
21 EXEMPLARY DAMAGES.—When an individual is injured or
22 dies as the result of health care, a jury may not award
23 punitive or exemplary damages against a health care prac-
24 titioner or health care institution unless the jury is unani-
25 mous with regard to both the liability of that party for

1 such damages and the amount of the award of such dam-
2 ages.

3 (l) PROPORTIONATE LIABILITY.—When an individual
4 is injured or dies as the result of health care and a person
5 is entitled to damages for that injury or death, each per-
6 son responsible is liable only for a proportionate share of
7 the total damages that directly corresponds to that per-
8 son's proportionate share of the total responsibility.

9 (m) DEFENSE-INITIATED SETTLEMENT PROCESS.—

10 (1) IN GENERAL.—In a civil action, to the ex-
11 tent the civil action seeks damages for the injury or
12 death of an individual as the result of health care,
13 a health care practitioner or health care institution
14 against which such damages are sought may serve
15 one or more qualified settlement offers under this
16 section to a person seeking such damages. If the
17 person seeking such damages does not accept such
18 an offer, that person may thereafter serve one or
19 more qualified settlement offers under this section to
20 the party whose offer was not accepted.

21 (2) QUALIFIED SETTLEMENT OFFER.— A
22 qualified settlement offer under this section is an
23 offer, in writing, to settle the matter as between the
24 offeror and the offeree, which—

1 (A) specifies that it is made under this sec-
2 tion;

3 (B) states the terms of settlement; and

4 (C) states the deadline within which the
5 offer must be accepted.

6 (3) EFFECT OF OFFER.— If the offeree of a
7 qualified settlement offer does not accept that offer,
8 and thereafter receives a judgment at trial that, as
9 between the offeror and the offeree, is significantly
10 less favorable than the terms of settlement in that
11 offer, that offeree is responsible for those litigation
12 costs reasonably incurred, after the deadline stated
13 in the offer, by the offeror to respond to the claims
14 of the offeree.

15 (4) LITIGATION COSTS DEFINED.—In this sub-
16 section, the term “litigation costs” include court
17 costs, filing fees, expert witness fees, attorney fees,
18 and any other costs directly related to carrying out
19 the litigation.

20 (5) SIGNIFICANTLY LESS FAVORABLE DE-
21 FINED.—In this subsection, a judgment is signifi-
22 cantly less favorable than the terms of settlement
23 if—

24 (A) in the case of an offeree seeking dam-
25 ages, the offeree’s award at trial is less than 80

1 percent of the value of the terms of settlement;
2 and

3 (B) in the case of an offeree against whom
4 damages are sought, the offeror's award at trial
5 is more than 120 percent of the value of the
6 terms of settlement.

7 (n) STATUTE OF LIMITATIONS; STATUTE OF
8 REPOSE.—

9 (1) STATUTE OF LIMITATIONS.—When an indi-
10 vidual is injured or dies as the result of health care,
11 the statute of limitations shall be as follows:

12 (A) INDIVIDUALS OF AGE 12 AND OVER.—

13 If the individual has attained the age of 12
14 years, the claim must be brought either—

15 (i) within 2 years after the negligence
16 occurred; or

17 (ii) within 2 years after the health
18 care on which the claim is based is com-
19 pleted.

20 (B) INDIVIDUALS UNDER AGE 12.—If the
21 individual has not attained the age of 12 years,
22 the claim must be brought before the individual
23 attains the age of 14 years.

24 (2) STATUTE OF REPOSE.— When an indi-
25 vidual is injured or dies as the result of health care,

1 the statute of repose shall be as follows: The claim
2 must be brought within 10 years after the act or
3 omission on which the claim is based is completed.

4 (3) TOLLING.—

5 (A) STATUTE OF LIMITATIONS.—The stat-
6 ute of limitations required by paragraph (1)
7 may be tolled if applicable law so provides, ex-
8 cept that it may not be tolled on the basis of
9 minority.

10 (B) STATUTE OF REPOSE.—The statute of
11 repose required by paragraph (2) may not be
12 tolled for any reason.

13 (c) LIMITATION ON LIABILITY FOR GOOD SAMARI-
14 TANS PROVIDING EMERGENCY HEALTH CARE.—

15 (1) WILLFUL OR WANTON NEGLIGENCE RE-
16 QUIRED.— A health care practitioner or health care
17 institution that provides emergency health care on a
18 Good Samaritan basis is not liable for damages
19 caused by that care except for willful or wanton neg-
20 ligence or more culpable misconduct.

21 (2) GOOD SAMARITAN BASIS.— For purposes
22 of this section, care is provided on a Good Samari-
23 tan basis if it is not provided for or in expectation
24 of remuneration. Being entitled to remuneration is

1 relevant to, but is not determinative of, whether it
2 is provided for or in expectation of remuneration.

3 (p) DEFINITIONS.—In this section:

4 (1) HEALTH CARE INSTITUTION.—The term
5 “health care institution” includes institutions such
6 as—

7 (A) an ambulatory surgical center;

8 (B) an assisted living facility;

9 (C) an emergency medical services pro-
10 vider;

11 (D) a home health agency;

12 (E) a hospice;

13 (F) a hospital;

14 (G) a hospital system;

15 (H) an intermediate care facility for the
16 mentally retarded;

17 (I) a nursing home; and

18 (J) an end stage renal disease facility.

19 (2) HEALTH CARE PRACTITIONER.—The term
20 “health care practitioner” includes a physician and
21 a physician entity.

22 (3) PHYSICIAN ENTITY.—The term “physician
23 entity” includes—

24 (A) a partnership or limited liability part-
25 nership created by a group of physicians;

- 1 (B) a company created by physicians; and
- 2 (C) a nonprofit health corporation whose
- 3 board is composed of physicians.



