
PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 1215) TO
IMPROVE PATIENT ACCESS TO HEALTH CARE SERVICES
AND PROVIDE IMPROVED MEDICAL CARE BY REDUCING
THE EXCESSIVE BURDEN THE LIABILITY SYSTEM PLACES
ON THE HEALTH CARE DELIVERY SYSTEM

June 13, 2017.—Referred to the House Calendar and ordered to be printed.

MR. BURGESS, from the Committee on Rules, submitted the following

R E P O R T

[To accompany H. Res. __]

The Committee on Rules, having had under consideration House Resolution ____, by a record vote of 7 to 3, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 1215, the Protecting Access to Care Act of 2017, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on the Judiciary. The resolution waives all points of order against consideration of the bill. The resolution makes in order as original text for purpose of amendment an amendment in the nature of a substitute consisting of the text of Rules Committee Print 115-10 and provides that it shall be considered as read. The resolution waives all points of order against that amendment in the nature of a substitute. The resolution makes in order only those further amendments printed in this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments printed in this report. The resolution provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of the bill includes a waiver of section 303 of the Congressional Budget Act, which prohibits consideration of legislation providing a change in revenues for a fiscal year until the budget resolution for that year has been agreed to.

Although the resolution waives all points of order against the amendment in the nature of a substitute made in order as original text, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendments printed in this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee Record Vote No. 62

Motion by Mr. McGovern to report an open rule. Defeated: 3-7

Majority Members	Vote	Minority Members	Vote
Mr. Cole.....	Nay	Ms. Slaughter.....	Yea
Mr. Woodall.....	Nay	Mr. McGovern.....	Yea
Mr. Burgess.....	Nay	Mr. Hastings of Florida.....	Yea
Mr. Collins.....	Nay	Mr. Polis.....	
Mr. Byrne.....			
Mr. Newhouse.....	Nay		
Mr. Buck.....	Nay		
Ms. Cheney.....			
Mr. Sessions, Chairman.....	Nay		

Rules Committee Record Vote No. 63

Motion by Mr. Cole to report the rule. Adopted: 7-3

Majority Members	Vote	Minority Members	Vote
Mr. Cole.....	Yea	Ms. Slaughter.....	Nay
Mr. Woodall.....	Yea	Mr. McGovern.....	Nay
Mr. Burgess.....	Yea	Mr. Hastings of Florida.....	Nay
Mr. Collins.....	Yea	Mr. Polis.....	
Mr. Byrne.....			
Mr. Newhouse.....	Yea		
Mr. Buck.....	Yea		
Ms. Cheney.....			
Mr. Sessions, Chairman.....	Yea		

SUMMARY OF THE AMENDMENTS MADE IN ORDER

1. Sessions (TX), Burgess (TX): Begins the tolling of the statute of limitations on the date of the alleged breach or tort, rather than the date of the injury, which is not always a date certain. The statute of limits will be three years after the alleged breach or one year after the claimant discovers the breach, whichever occurs first. (10 minutes)
2. Burgess (TX), Sessions (TX): Clarifies that health care services as defined in H.R. 1215 include safety, professional, and administrative services directly related to health care. (10 minutes)
3. Roe (TN), Hudson (NC), Marshall (KS), Bucshon (IN): Limits who qualifies as an expert witness, in medical malpractice negligence cases, based on professional qualifications as well as geographic relation to where the case in chief is being litigated. (10 minutes)
4. Hudson (NC), Abraham (LA), Harris (MD), Roe (TN), Marshall (KS), Bucshon (IN), DesJarlais (TN): Allows a physician to apologize to a patient for an unintended outcome without having the apology count against them in the court of law. Defers to the state law where "sorry provisions" are already in statute. Requires a plaintiff to provide a notice of intent to the physician 90 days before the lawsuit is filed. Defers to state laws that directly address Notices of Intent. Requires a plaintiff to have a physician in the same specialty as the defendant physician to sign an affidavit certifying the merits of the case before the lawsuit could be brought to court. Defers to state laws that directly address Affidavits of Merit. Requires that for any "expert witness" called to testify during trial, the witness would need to meet the same licensing requirements as the defendant physician. Defers to state laws that directly address Expert Witness Qualifications. (10 minutes)
5. Barr (KY): Gives affirmative defense to defendants in health care liability cases if they can show they complied with clinical practice guidelines. (10 minutes)

TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
SESSIONS OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10
MINUTES

24
AMENDMENT TO RULES COMMITTEE PRINT 115-

10

OFFERED BY Mr. Sessions

Page 1, strike line 7 and all that follows through
page 2, line 18 and insert the following:

1 (a) STATUTE OF LIMITATIONS.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), the time for the commencement of a
4 health care lawsuit shall be, whichever occurs first of
5 the following:

6 (A) 3 years after the date of the occur-
7 rence of the breach or tort;

8 (B) 3 years after the date the medical or
9 health care treatment that is the subject of the
10 claim is completed; or

11 (C) 1 year after the claimant discovers, or
12 through the use of reasonable diligence should
13 have discovered, the injury.

14 (2) TOLLING.—In no event shall the time for
15 commencement of a health care lawsuit exceed 3
16 years after the date of the occurrence of the breach
17 or tort or 3 years after the date the medical or
18 health care treatment that is the subject of the claim

1 is completed (whichever occurs first) unless tolled
2 for any of the following—

3 (A) upon proof of fraud;

4 (B) intentional concealment; or

5 (C) the presence of a foreign body, which
6 has no therapeutic or diagnostic purpose or ef-
7 fect, in the person of the injured person.

8 (3) ACTIONS BY A MINOR.—Actions by a minor
9 shall be commenced within 3 years after the date of
10 the occurrence of the breach or tort or 3 years after
11 the date of the medical or health care treatment that
12 is the subject of the claim is completed (whichever
13 occurs first) except that actions by a minor under
14 the full age of 6 years shall be commenced within 3
15 years after the date of the occurrence of the breach
16 or tort, 3 years after the date of the medical or
17 health care treatment that is the subject of the claim
18 is completed, or 1 year after the injury is discovered,
19 or through the use of reasonable diligence should
20 have been discovered, or prior to the minor's 8th
21 birthday, whichever provides a longer period. Such
22 time limitation shall be tolled for minors for any pe-
23 riod during which a parent or guardian and a health
24 care provider have committed fraud or collusion in

1 the failure to bring an action on behalf of the in-
2 jured minor.



2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BURGESS OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

AMENDMENT TO RULES COMMITTEE PRINT 115-

10

OFFERED BY MR. BURGESS OF TEXAS

Page 12, line 13, insert after “goods or services” the following: “(including safety, professional, or administrative services directly related to health care)”.



3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ROE OF
TENNESSEE OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

15R

AMENDMENT TO RULES COMMITTEE PRINT 115-

10

OFFERED BY MR. ROE OF TENNESSEE

Add, at the end of the bill, the following (and amend the table of contents accordingly):

1 SEC. 11. LIMITATION ON EXPERT WITNESS TESTIMONY.

2 (a) IN GENERAL.—No person in a health care profes-
3 sion requiring licensure under the laws of a State shall
4 be competent to testify in any court of law to establish
5 the following facts—

6 (1) the recognized standard of acceptable pro-
7 fessional practice and the specialty thereof, if any,
8 that the defendant practices, which shall be the type
9 of acceptable professional practice recognized in the
10 defendant's community or in a community similar to
11 the defendant's community that was in place at the
12 time the alleged injury or wrongful action occurred,

13 (2) that the defendant acted with less than or
14 failed to act with ordinary and reasonable care in ac-
15 cordance with the recognized standard, and

16 (3) that as a proximate result of the defend-
17 ant's negligent act or omission, the claimant suf-

1 fered injuries which would not otherwise have oc-
2 curred,
3 unless the person was licensed to practice, in the State
4 or a contiguous bordering State, a profession or specialty
5 which would make the person's expert testimony relevant
6 to the issues in the case and had practiced this profession
7 or specialty in one of these States during the year pre-
8 ceding the date that the alleged injury or wrongful act
9 occurred.

10 (b) APPLICABILITY.—The requirements set forth in
11 subsection (a) shall also apply to expert witnesses testi-
12 fying for the defendant as rebuttal witnesses.

13 (c) WAIVER AUTHORITY.—The court may waive the
14 requirements in this subsection if it determines that the
15 appropriate witnesses otherwise would not be available.



4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HUDSON OF NORTH CAROLINA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

6R

AMENDMENT TO RULES COMMITTEE PRINT 115-

10

OFFERED BY MR. HUDSON OF NORTH CAROLINA

Add, at the end of the bill, the following:

1 SEC. 11. COMMUNICATIONS FOLLOWING UNANTICIPATED
2 OUTCOME.

3 (a) PROVIDER COMMUNICATIONS.—In any health
4 care liability action, any and all statements, affirmations,
5 gestures, or conduct expressing apology, fault, sympathy,
6 commiseration, condolence, compassion, or a general sense
7 of benevolence which are made by a health care provider
8 or an employee of a health care provider to the patient,
9 a relative of the patient, or a representative of the patient
10 and which relate to the discomfort, pain, suffering, injury,
11 or death of the patient as the result of the unanticipated
12 outcome of medical care shall be inadmissible for any pur-
13 pose as evidence of an admission of liability or as evidence
14 of an admission against interest.

15 (b) STATE FLEXIBILITY.—No provision of this sec-
16 tion shall be construed to preempt any State law (whether
17 effective before, on, or after the date of the enactment of
18 this Act) that makes additional communications inadmis-

1 sible as evidence of an admission of liability or as evidence
2 of an admission against interest.

3 **SEC. 12. EXPERT WITNESS QUALIFICATIONS.**

4 (a) IN GENERAL.—In any health care lawsuit, an in-
5 dividual shall not give expert testimony on the appropriate
6 standard of practice or care involved unless the individual
7 is licensed as a health professional in one or more States
8 and the individual meets the following criteria:

9 (1) If the party against whom or on whose be-
10 half the testimony is to be offered is or claims to be
11 a specialist, the expert witness shall specialize at the
12 time of the occurrence that is the basis for the law-
13 suit in the same specialty or claimed specialty as the
14 party against whom or on whose behalf the testi-
15 mony is to be offered. If the party against whom or
16 on whose behalf the testimony is to be offered is or
17 claims to be a specialist who is board certified, the
18 expert witness shall be a specialist who is board cer-
19 tified in that specialty or claimed specialty.

20 (2) During the 1-year period immediately pre-
21 ceding the occurrence of the action that gave rise to
22 the lawsuit, the expert witness shall have devoted a
23 majority of the individual's professional time to one
24 or more of the following:

1 (A) The active clinical practice of the same
2 health profession as the defendant and, if the
3 defendant is or claims to be a specialist, in the
4 same specialty or claimed specialty.

5 (B) The instruction of students in an ac-
6 credited health professional school or accredited
7 residency or clinical research program in the
8 same health profession as the defendant and, if
9 the defendant is or claims to be a specialist, in
10 an accredited health professional school or ac-
11 credited residency or clinical research program
12 in the same specialty or claimed specialty.

13 (3) If the defendant is a general practitioner,
14 the expert witness shall have devoted a majority of
15 the witness's professional time in the 1-year period
16 preceding the occurrence of the action giving rise to
17 the lawsuit to one or more of the following:

18 (A) Active clinical practice as a general
19 practitioner.

20 (B) Instruction of students in an accred-
21 ited health professional school or accredited
22 residency or clinical research program in the
23 same health profession as the defendant.

24 (b) LAWSUITS AGAINST ENTITIES.—If the defendant
25 in a health care lawsuit is an entity that employs a person

1 against whom or on whose behalf the testimony is offered,
2 the provisions of subsection (a) apply as if the person were
3 the party or defendant against whom or on whose behalf
4 the testimony is offered.

5 (c) POWER OF COURT.—Nothing in this subsection
6 shall limit the power of the trial court in a health care
7 lawsuit to disqualify an expert witness on grounds other
8 than the qualifications set forth under this subsection.

9 (d) LIMITATION.—An expert witness in a health care
10 lawsuit shall not be permitted to testify if the fee of the
11 witness is in any way contingent on the outcome of the
12 lawsuit.

13 (e) STATE FLEXIBILITY.—No provision of this sec-
14 tion shall be construed to preempt any State law (whether
15 effective before, on, or after the date of the enactment of
16 this Act) that places additional qualification requirements
17 upon any individual testifying as an expert witness.

18 **SEC. 13. AFFIDAVIT OF MERIT.**

19 (a) REQUIRED FILING.—Subject to subsection (b),
20 the plaintiff in a health care lawsuit alleging negligence
21 or, if the plaintiff is represented by an attorney, the plain-
22 tiff's attorney shall file simultaneously with the health
23 care lawsuit an affidavit of merit signed by a health pro-
24 fessional who meets the requirements for an expert wit-
25 ness under section 14 of this Act. The affidavit of merit

1 shall certify that the health professional has reviewed the
2 notice and all medical records supplied to him or her by
3 the plaintiff's attorney concerning the allegations con-
4 tained in the notice and shall contain a statement of each
5 of the following:

6 (1) The applicable standard of practice or care.

7 (2) The health professional's opinion that the
8 applicable standard of practice or care was breached
9 by the health professional or health facility receiving
10 the notice.

11 (3) The actions that should have been taken or
12 omitted by the health professional or health facility
13 in order to have complied with the applicable stand-
14 ard of practice or care.

15 (4) The manner in which the breach of the
16 standard of practice or care was the proximate cause
17 of the injury alleged in the notice.

18 (5) A listing of the medical records reviewed.

19 (b) FILING EXTENSION.—Upon motion of a party for
20 good cause shown, the court in which the complaint is filed
21 may grant the plaintiff or, if the plaintiff is represented
22 by an attorney, the plaintiff's attorney an additional 28
23 days in which to file the affidavit required under sub-
24 section (a).

1 (c) STATE FLEXIBILITY.—No provision of this sec-
2 tion shall be construed to preempt any State law (whether
3 effective before, on, or after the date of the enactment of
4 this Act) that establishes additional requirements for the
5 filing of an affidavit of merit or similar pre-litigation docu-
6 mentation.

7 **SEC. 14. NOTICE OF INTENT TO COMMENCE LAWSUIT.**

8 (a) ADVANCE NOTICE.—A person shall not com-
9 mence a health care lawsuit against a health care provider
10 unless the person has given the health care provider 90
11 days written notice before the action is commenced.

12 (b) EXCEPTIONS.—A health care lawsuit against a
13 health care provider filed within 6 months of the statute
14 of limitations expiring as to any claimant, or within 1 year
15 of the statute of repose expiring as to any claimant, shall
16 be exempt from compliance with this section.

17 (c) STATE FLEXIBILITY.—No provision of this sec-
18 tion shall be construed to preempt any State law (whether
19 effective before, on, or after the date of the enactment of
20 this Act) that establishes a different time period for the
21 filing of written notice.



5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BARR
OF KENTUCKY OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

17R

AMENDMENT TO RULES COMMITTEE PRINT 115-

10

OFFERED BY MR. BARR OF KENTUCKY

Add, at the end of the bill, the following (and amend the table of contents accordingly):

1 SEC. 11. AFFIRMATIVE DEFENSE.

2 (a) IN GENERAL.—In the case of a health care law-
3 suit, it shall be an affirmative defense to any health care
4 liability claim alleged therein that the defendant complied
5 with a clinical practice guideline that was established, pub-
6 lished, maintained, and updated on a regular basis by an
7 eligible professional organization and that is applicable to
8 the provision or use of health care services or medical
9 products for which the health care liability claim is
10 brought.

11 (b) DEFINITIONS.—For purposes of this section:

12 (1) CLINICAL PRACTICE GUIDELINE.—The term
13 “clinical practice guideline” means systematically de-
14 veloped statements based on the review of clinical
15 evidence for assisting a health care provider to de-
16 termine the appropriate health care in specific clin-
17 ical circumstances.

1 (2) ELIGIBLE PROFESSIONAL ORGANIZATION.—

2 The term “eligible professional organization” means
3 a national or State medical society or medical spe-
4 cialty society.

