



# Medical Liability Reform

## House Committee on Energy and Commerce Full Committee Mark Up of H.R. 5, the HEALTH Act

May 11, 2011

### OUTCOME

The House Committee on Energy and Commerce **favorably reported out** H.R. 5, the HEALTH Act, by a vote of **30-20**. The vote was along party lines, except for the following: **Reps. Terry (R-NE) and Griffith (R-VA) voted against the bill and Rep. Matheson (D-UT) voted for it.**

### AMENDMENTS

A series of amendments were offered and discussed. However, only one amendment – offered by Rep. Dingell (D-MI) -- passed by voice vote. The amendment would exclude from punitive damage protection a defendant who causes a medical product to be misbranded or adulterated (according to FDA definition).

A number of amendments focused on **states' rights** – asserting that federal law should not preempt state laws and require a one-size-fits all solution. The Baldwin amendment on this subject was defeated by a roll-call vote (20-29). Reps. Terry (R-NE) and Griffith (R-VA) voted for the amendment. Rep. Matheson (D-UT) voted against it.

### HEALTH ACT SUMMARY

On January 24, 2011, Rep. Phil Gingrey, MD (R-GA) introduced H.R. 5, the "Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2011," which currently has 131 cosponsors.

This legislation sets conditions for lawsuits arising from health care liability claims regarding health care goods or services or any medical product affecting interstate commerce, including:

- setting a statute of limitations of three years after the date of manifestation of injury or one year after the claimant discovers the injury, with certain exceptions,
- limiting noneconomic damages to \$250,000 and making each party liable only for the amount of damages directly proportional to such party's percentage of responsibility,
- allowing the court to restrict the payment of attorney contingency fees, including limiting the fees to a decreasing percentage based on the increasing value of the amount awarded.
- allowing the introduction of collateral source benefits and the amount paid to secure such benefits as evidence and prohibiting a provider of such benefits from recovering any amount from an award in a health care lawsuit involving injury or wrongful death,
- authorizing the award of punitive damages only where: (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. Limits punitive damages to the greater of two times the amount of economic damages or \$250,000,
- denying 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, and
- providing for periodic payments of future damages.