

113TH CONGRESS  
1ST SESSION

# S. 1769

To limit the establishment of certain standards of care or duties of care owed by health care providers to patients in any medical malpractice or medical product liability action or claim.

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 21, 2013

Mr. TOOMEY (for himself and Mr. CARPER) introduced the following bill;  
which was read twice and referred to the Committee on the Judiciary

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## A BILL

To limit the establishment of certain standards of care or duties of care owed by health care providers to patients in any medical malpractice or medical product liability action or claim.

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 “Standard of Care Pro-  
5       tection Act”.

1 **SEC. 2. RULE OF CONSTRUCTION REGARDING HEALTH**  
2 **CARE PROVIDER STANDARDS OF CARE.**

3 (a) IN GENERAL.—The development, recognition, or  
4 implementation of any guideline or other standard under  
5 any Federal health care provision shall not be construed  
6 to establish the standard of care or duty of care owed by  
7 a health care provider to a patient in any medical mal-  
8 practice or medical product liability action or claim.

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

10 (1) FEDERAL HEALTH CARE PROVISION.—The  
11 term “Federal health care provision” means any  
12 provision of the Patient Protection and Affordable  
13 Care Act (Public Law 111–148), title I and subtitle  
14 B of title III of the Health Care and Education Rec-  
15 onciliation Act of 2010 (Public Law 111–152), and  
16 titles XVIII and XIX of the Social Security Act (42  
17 U.S.C. 1395 et seq. and 1396 et seq.).

18 (2) HEALTH CARE PROVIDER.—The term  
19 “health care provider” means any individual or enti-  
20 ty—

21 (A) licensed, registered, or certified under  
22 Federal or State laws or regulations to provide  
23 health care services; or

24 (B) required to be so licensed, registered,  
25 or certified but that is exempted by other law  
26 or regulation.

1           (3) MEDICAL MALPRACTICE OR MEDICAL PROD-  
2           UCT LIABILITY ACTION OR CLAIM.—The term “med-  
3           ical malpractice or medical product liability action or  
4           claim” means a medical malpractice action or claim  
5           (as defined in section 431(7) of the Health Care  
6           Quality Improvement Act of 1986 (42 U.S.C.  
7           11151(7))) and includes a liability action or claim  
8           relating to a health care provider’s prescription or  
9           provision of a drug, device, or biological product (as  
10          such terms are defined in section 201 of the Federal  
11          Food, Drug, and Cosmetic Act (21 U.S.C. 321) or  
12          section 351 of the Public Health Service Act (42  
13          U.S.C. 262)).

14          (4) STATE.—The term “State” includes the 50  
15          States, the District of Columbia, Puerto Rico, and  
16          any other commonwealth, possession, or territory of  
17          the United States.

18          (c) NO PREEMPTION.—No provision of the Patient  
19          Protection and Affordable Care Act (Public Law 111–  
20          148), title I or subtitle B of title III of the Health Care  
21          and Education Reconciliation Act of 2010 (Public Law  
22          111–152), or title XVIII or XIX of the Social Security  
23          Act (42 U.S.C. 1395 et seq. and 1396 et seq.) shall be  
24          construed to preempt any State or common law governing

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- 1 medical malpractice or medical product liability actions or
- 2 claims.

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