

STATE ATTORNEYS GENERAL
A Communication From the Attorneys General
of

Arizona * Iowa * Maine * Minnesota * New York * Vermont * West Virginia * Wisconsin * U.S. Virgin Islands



FAX TRANSMITTAL

March 25, 2003

TO: Senator Bill Frist
Senator Thomas Daschle

FROM: Attorney General Mike Hatch, Minnesota
Attorney General Terry Goddard, Arizona
Attorney General Tom Miller, Iowa
Attorney General G. Steven Rowe, Maine
Attorney General Eliot Spitzer, New York
Attorney General Iver Stridiron, U.S. Virgin Islands
Attorney General William H. Sorrell, Vermont
Attorney General Darrell V. McGraw, Jr., West Virginia
Attorney General Peg Lautenschlager, Wisconsin

SUBJECT: Health Act, S. 607

Attached is a letter detailing our opposition to the so-called Health Act, S. 607 which may come up for debate this week.

cc: Senator Judd Gregg
Senator Michael Enzi
Senator Lamar Alexander
Senator Christopher Bond
Senator Mike DeWine
Senator Pat Roberts
Senator Jeff Sessions
Senator John Ensign
Senator Lindsey Graham
Senator John Warner

Senator Edward Kennedy
Senator Christopher Dodd
Senator Tom Harkin
Senator Barbara Mikulski
Senator Jeff Bingaman
Senator Patty Murray
Senator Jack Reed
Senator John Edwards
Senator Hillary Rodham Clinton
Senator Patrick Leahy

Senator Orrin Hatch
Senator Charles Grassley
Senator Arlen Specter
Senator Jon Kyl
Senator Larry Craig
Senator Saxby Chambliss
Senator John Cornyn

Senator Joseph Biden
Senator Herbert Kohl
Senator Dianne Feinstein
Senator Russ Feingold
Senator Charles Schumer
Senator Richard Durbin

Senator James Jeffords

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The Honorable Bill Frist
Senate Majority Leader
United States Senate
Senate Russell Office Building Room 416
Washington, D.C. 20510

The Honorable Thomas Daschle
Senate Minority Leader
United States Senate
Senate Hart Office Building Room 509
Washington, D.C. 20510

Dear Majority Leader Frist and Minority Leader Daschle:

We, the undersigned Attorneys General, urge you to oppose the so-called Health Act, S. 607, which may come up for debate on the Senate floor during the week of March 24.

This bill diminishes the deterrence necessary to ensure patient safety in nursing homes, hospitals, and with pharmaceutical products. While States try to protect patients through administrative regulation, such regulation clearly is insufficient to encourage safe and responsible behavior by providers. An effective state tort system deters pharmaceutical companies, medical device manufacturers, nursing homes and other health care providers from taking unreasonable risks with our citizens' health. The "Health Act" undermines this deterrent effect because it shields these companies from being fairly accountable for their acts.

According to the National Institutes of Health, as many as 98,000 Americans die each year as a result of preventable malpractice. Hundreds of thousands of others are also injured. Most malpractice cases involve a very small number of providers who successfully evade the regulatory process. The victims most severely injured by these few providers will suffer a lifetime of pain, disfigurement and disability without fair compensation. It will particularly harm our parents, our children and our most vulnerable citizens. This includes people such as Linda McDougal, a United States Navy veteran, wife, and mother who recently testified in the Senate Judiciary Committee about doctors who wrongfully removed both of her breasts. It also includes people like the family of 17-year-old Jessica Santillan, who died when doctors failed to check whether her blood type matched that of the organ donor. The bill's "one-size-fits-all" damage limitation not only ignores victims like Jessica and Linda, it also revictimizes the hundreds of thousands of Americans and their families who are injured or die from malpractice each year.

The bill is also an unwarranted infringement on states' rights. For more than 200 years, states have developed tort systems appropriate to their specific needs. The "Health Act" is unprecedented in that it preempts *state* law on *state* claims brought in *state* courts. The bill preempts numerous laws regulating health care traditionally decided by state courts and legislatures, including admissibility of evidence, statute of limitations, joint and several liability, and the amount of damages. This bill expressly permits states to further shield health care providers from liability, but prohibits states from enacting greater protections for injured patients and consumers. It should be each state's prerogative to determine how to compensate its injured citizens and address those who hurt them.

Ironically, S. 607 will not reduce doctors' medical malpractice premiums. More than 25 years ago, California placed a \$250,000 damages cap on medical malpractice victims' non-economic damages. In spite of that, doctors' premiums continued to rise faster than the national average. The fact of the matter is, insurance companies invest their premium dollars in the financial markets. The history of the insurance cycle shows that whenever there has been a downturn in the economy, as there is today, insurance companies have increased premiums to make up for losses in the market. Further, the catastrophic losses paid out by the industry after the September 11, 2001 tragedy caused a dramatic increase in reinsurance rates, which have had a devastating impact on specialty markets such as medical malpractice. Even the American Insurance Association admits that lawmakers who enact tort "reform" should not expect insurance rates to drop.

A cornerstone of our great democracy has been that juries, not elected officials, decide justice based on the facts of each individual case. Elected officials who trust American citizens in the ballot box should trust those same citizens in the jury box. We urge Congress to oppose S. 607. If you have any questions, please feel free to call us.

Sincerely,



Attorney General Mike Hatch
Attorney General of Minnesota



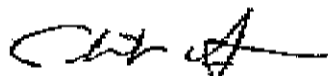
Attorney General Terry Goddard
Attorney General of Arizona



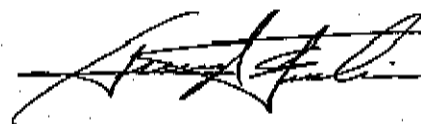
Attorney General Tom Miller
Attorney General of Iowa



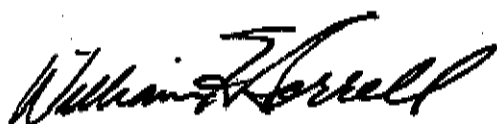
Attorney General G. Steven Rowe
Attorney General of Maine



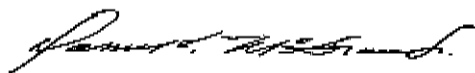
Attorney General Eliot Spitzer
Attorney General of New York



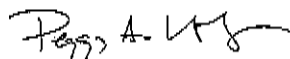
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