



Consumer Federation of America



February 26, 2003

United States House of Representatives
Washington, D.C. 20515

Re: Oppose Proposed Legislation Capping Recoveries for Survivors of Medical Negligence

Dear Representative:

We are writing to strongly urge that you oppose legislation capping recoveries for survivors of medical negligence. Experience has shown that damage cap provisions would do little or nothing to reduce medical malpractice insurance premiums paid by doctors while hurting severely injured patients.

For example, California's experience with its Medical Injury Compensation Reform Act, or "MICRA," shows it has not lowered medical malpractice premiums. On the contrary, malpractice premiums nearly doubled in the four years after MICRA's \$250,000 non-economic damage cap took effect in the mid-1970s. According to research by nationally recognized actuary J. Robert Hunter (a former Texas State Insurance Commissioner and Federal Insurance Administrator under Presidents Ford and Carter), malpractice premiums in California have stayed close to national premium trends in recent years.

Moreover, damage caps in other states, including Florida, West Virginia, and Nevada, have not effectively lowered malpractice premiums. When the Florida State Legislature required insurers to stipulate whether tort reforms passed in the mid-1980s would lower rates, insurers conceded the cap on non-economic damages would not result in reduced premiums. And, after Nevada recently enacted severe damage caps, insurers in that state announced they would still not lower premium rates.

Similarly, a federal cap of \$250,000 on non-economic damages is not likely to reduce malpractice premiums because it does not address the root causes of the malpractice insurance crisis: insurer business practices and the "boom and bust" insurance cycle. The three medical malpractice crises that have occurred since the mid-1970s have coincided precisely with the bottom of the insurance cycle, in which the operating income of the industry declined below the amount of the premium written. According to the National Association of Insurance Commissioners, the three major causes of sharp underwriting cycles are large "loss shocks," changes in interest rates, and under-pricing. Lower interest rates and under-pricing have been in place for quite some time and September 11th provided the extremely painful shock loss.

Interest rates ? and to a lesser degree, stock prices ? are important because insurance companies invest premiums in bonds and stocks before paying them out in claims. The investment “float” on medical malpractice insurance is particularly long ? about six years.

When interest rates decline, as they have significantly over the last six years ? or the market is down ? insurance companies must make up for this loss in income by raising rates.

As interest rates have dropped sharply in the last few years, insurers have had to cover a lot of lost income. That is because they under-priced premiums for so long. According to Hunter, inflation-adjusted malpractice premiums actually declined by 32.5 percent per doctor from 1991 to 2000. It would take a rate hike of 50 percent to increase rates to the same level as existed ten years ago.

Furthermore, non-economic damage caps also disproportionately affect children, seniors, low-wage workers, and stay-at-home mothers. Non-economic damages are an important jury tool for protecting these groups because they tend to have lower income. The impact of non-economic damage caps on children who suffer lifelong debilitating injuries, such as brain damage, is especially harsh.

We are also concerned a federal law focused on imposing recovery caps would ignore the best way to prevent medical malpractice lawsuits AND protect patients: reducing medical errors. As you may be aware, the Institute of Medicine has reported between 44,000 and 98,000 Americans die in hospitals each year from preventable medical errors. This estimate does not count many thousands of medical mistakes that result only in injury or occur outside of hospitals. Furthermore, researchers at Harvard University have found only one in eight medical malpractice victims actually files a claim. Sadly, a small minority of repeat offenders commits the majority of medical errors. Data from the National Practitioner Database shows five percent of all doctors are responsible for fifty-four percent of malpractice claims paid. The medical lobby and insurers have proposed nothing to bring down malpractice rates by curbing this epidemic.

Each time the insurance cycle turns, the response by insurers is predictable. They shift from inadequate under-pricing to unconscionable overpricing, cut back on coverage and blame larger jury verdicts for the problem. As organizations dedicated to protecting the rights and interests of consumers, we strongly urge you to address the problems of insurer business practices and medical errors instead of proposing to roll back the legal rights of Americans. Finally, we respectfully request a meeting with you and representatives from each of our organizations to answer any questions you may have and further discuss our concerns.

Sincerely,

Joanne Doroshow
Center for Justice and Democracy

Jeff Blum
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Travis Plunkett
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