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Joan Claybrook, President

**Council of the District of Columbia
Committee on Human Services**

**Public Hearing on Bill 15-915,
Free Clinic Assistance Program Extension Act of 2004**

**Testimony of Frank Clemente
Director, Public Citizen's Congress Watch
October 8, 2004**

Chairwoman Allen and members of the Committee, I thank you for the opportunity to testify today. Public Citizen, which was founded in 1971, is a 160,000 member non-profit organization based in Washington, D.C. About 1,000 District residents are members of Public Citizen.

Public Citizen has been very active on patient safety issues for decades. Among other things, our Health Research Group periodically publishes state-by-state reports on Questionable Doctors (www.questionabledoctors.org) and periodically ranks the quality of state medical boards at disciplining doctors. We are the country's leading watchdog over the FDA on drug safety issues.

Our Congress Watch division, which I direct, has been very active in legislative fights over medical malpractice issues for years. Among other things, in the last two years we have produced about 25 national and state studies debunking the claims that there is a medical malpractice insurance crisis caused by lawsuits and the legal system. Fundamentally, we believe that the spike in insurance rates the last two years is temporary and due to being in the downside of the insurance cycle.

Public Citizen recognizes that the current state of the insurance market can cause hardships to clinics that operate at the margins. Therefore, we support the Free Clinic Assistance Program Extension Act of 2004 (FCAA), which would continue coverage for the three clinics currently under the FCAA. We also urge the Council to extend the program to other primary care safety net clinics that meet the criteria of the FCAA.

The FCAA has the important objective of helping free clinics meet the health care needs of some of the District's most disadvantaged residents. There are significant barriers to health care for many D.C. residents – not the least of which is that a large percentage of the population lacks any health insurance. Free clinics make basic health care services accessible to these individuals, and other people with inadequate health coverage. In doing so, they contribute immeasurably to the health and well-being of the community at large. The FCAA helps these clinics that provide such an invaluable service to D.C. residents to stay open.

While Public Citizen endorses continuing the FCAA's indemnification from civil suits for clinics and their personnel, as a group advocating for patients' safety we feel it is important to point out that the tort system protects the public by placing the economic consequences of injuries upon those who cause them. When the financial burdens caused by injuries are shifted away from the medical providers who are in the best position to avoid causing injuries, there is less incentive to take safety precautions. I don't mean to question the quality of medical care available at the clinics covered by the FCAA program. It must be first rate since no one has ever brought a claim against a clinic that involved the indemnification afforded by the FCAA. But it is important when considering such programs that we also acknowledge the long term need to dramatically reduce medical errors and negligence – both to better protect patients and to reduce insurance costs.

I would like to take a moment to address an issue that is not specifically in the FCAA extension, but which we discovered while reviewing the legislation. That is the cross reference to § 7-402 of the D.C. Code, regarding "Health care professional volunteer assistance protection." This provision provides *immunity* from civil damages to medical professionals practicing in obstetrics and gynecology who provide health care or treatment at or on behalf of a free health clinic without the expectation or intention of being compensated. This immunity does not cover an intentional wrong or wanton disregard for a patient's health or safety.

Regardless of whether malpractice premiums are rising for medical professionals, including OBGYNs, Public Citizen does not believe that there is ever a justification for granting a health professional immunity from civil damages. If OBGYNs are going to provide free care, at most they should be indemnified by the District government – not immunized.

It is critical that those who volunteer at free health clinics be held to the same standard of care as other medical professionals and to the same standard of care that they themselves are held to when practicing elsewhere. Using employment status as a basis for liability would yield the questionable result that an individual would be subject to one level of liability while working on a shift for his employer at a higher-end hospital, and another level several hours later while performing the same duties as a clinic volunteer. The degree of accountability for a licensed or certified professional should remain constant, whether the individual is paid or provides his services under some other arrangement.

Furthermore, providing immunity to medical professionals who volunteer at free health clinics has a disproportionate impact on low-income citizens. It is extremely unjust to deny *any* compensation – as this immunity provision does – to those who are least equipped to absorb a financial setback. Such immunity means a patient seriously harmed by an OBGYN under this program could not recover anything – not medical expenses, lost income from missing work, or the real costs of pain and suffering. It would be a much better policy for the Council to amend this provision to provide indemnification, rather than immunity, for OBGYNs that commit medical errors or negligence when providing free care at clinics.

Finally, providing immunity to medical volunteers who injure someone as a consequence of their carelessness certainly clashes with the goal of improving the quality of health care in the District. While providing health care to our citizens is a goal of the first order, Public Citizen hopes that we can all agree that it should not be at the expense of providing quality care.