PATIENT SAFETY SHOULD BE PRIORITY #1

Patient safety, not limiting access to courts, should be Congress's top priority

Spikes in the cost of medical liability insurance today cause a predictable response – insurers and doctors blame patients injured by medical negligence and attempt to shift costs to patients by limiting court access and capping compensation awards.[1] The promise of the medical lobby is that insurance rates will come down and that doctors will be able to continue practicing.[2] That promise has proven illusory because, for example, capping compensation awards has not driven down rates.[3] Unfortunately, such false promises have produced problematic legislation – in particular, Senate bill 1337 (109th Congress) sponsored by Senator Enzi (R-Wyo.).

The problems with S. 1337

S. 1337 outlines three pilot programs to replace state courts with administrative alternatives that, while billed as "voluntary," would be mandatory for patients. While vague, they share a common goal – bar the courtroom door for injured patients and ration compensation to save liability costs for insurers. As described in the attached materials, the plans would compensate fewer people for less money, off-load costs onto patients and taxpayers, and offer nothing concrete to improve patient safety. To control liability costs, S. 1337 offers alternatives that unfairly force patients to bear the brunt of a cyclical industry despite clear evidence that insurance premium spikes are now stabilizing, that those spikes reflect an underwriting cycle *not* driven by medical malpractice claims,[4] and that physicians are not an endangered species, but a growing population.[5]

Public policy decisions should be grounded in fact, not fiction and false promises. Americans strongly believe that individuals injured by the negligence of others deserve their day in court.[6] Before a fundamental right to the courts – guaranteed in virtually every state – is abrogated, certain principles must be guaranteed. The alternatives outlined in S. 1337 are grossly inadequate and, even if implemented, would not prevent future spikes, as the underlying problem of the liability insurance market is left unaddressed.[7]

What's really driving up health care costs is an epidemic of preventable medical errors – not medical liability costs, which *are less than one percent of health care spending*. Correcting errors and instituting systemic improvements in settings like hospitals would save thousands of lives and literally billions of health-care dollars.

The analyses below set out the major arguments in favor of medical error correction and against alternatives, like "health courts," which limit patient access to the courts.

- Medical Errors: The Real Crisis

- Medical Malpractice Rates In Decline
- A Move In The Wrong Direction
- With "Health Courts" 90 Percent of Victims Get Nothing
- The Hidden Costs of "Health Courts"
- The Great Medical Malpractice Hoax: NPDB Data Continue to Show Medical Liability System Produces Rational Outcomes
- Claims of Doctor Supply Shortage Unsupported by Facts

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[1] Premium spikes have occurred three times in the last 30 years, most recently in 2001-2005. See Center for Justice and Democracy, *"Caps" Do Not Cause Insurance Rates To Drop*, at http://centerjd.org/MB_2007publicopinion.htm. The assumption is that caps reduce insurance rates, which has proven not to be the case. Id.

[2] The assumption is that physicians are leaving practice. To the contrary, statistics of the American Medical Association show the number of practicing physicians actually is growing faster than the population. See "*Claims of Doctor Supply Crisis Not Supported by Facts*," Public Citizen (May 8, 2006).

[3] Actually, competition drives down rates. The assumption that caps reduce insurance rates has proven not to be the case. For example, in October 2006, an Illinois a malpractice insurer, MedPro, was able to expand coverage and cut rates by 30 percent because, according to the company and state officials, 2005 insurance reforms brought competition to the market, while caps on patient damage awards had no effect on the company's decision. See Adam Jadhav, "*Minor insurer is cutting malpractice rates for* doctors," St. Louis Post –Dispatch, Oct. 13, 2006. See generally Center for Justice and Democracy, *"Caps" Do Not Cause Insurance Rates To Drop*, at http://centerjd.org/MB_2007publicopinion.htm. Not surprisingly, those with the most to gain by limiting medical malpractice liability continue to propagate this and other myths. See Center for Justice and Democracy, *Debunking Myths About Tort System Costs*, at http://centerjd.org/MB_2007publicopinion.htm.

[4] See Baicker, Katherine and Chandra, Amitabh, "*Defensive Medicine and Disappearing Doctors?"* Regulation, Vol. 28, No. 3 (Fall 2005) at 28 (economic study published by CATO Institute showing that cyclical spikes in physician premiums are not linked to medical malpractice suits, but rather that other factors, including the underwriting cycle, drive premium spikes).

[5] See "*Claims of Doctor Supply Crisis not Supported by Facts*," Public Citizen (May 8, 2006).

[6] See Center for Justice and Democracy, *Public Rejects Extreme "Tort Reform" Agenda*, at http://centerjd.org/MB_2007publicopinion.htm.

[7] Medical liability insurers are not subject to anti-trust laws, as they are exempt under the McCarran-Ferguson Act.