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March 19, 2012

U.S. House of Representatives
Washington, D.C. 20515

RE: H.R. 5

Dear Representative:

Public Citizen is a national nonprofit organization with over 250,000 members and supporters. We represent consumer interests on a broad range of issues including consumer rights in the marketplace, product safety, financial regulation, safe and affordable health care, and corporate and government accountability.

Republican leadership has indicated the House will vote this week on legislation tying repeal of the Independent Payment Advisory Board with H.R. 5, a deeply flawed medical liability proposal. H.R. 5 would prove devastating to medical malpractice victims, overturn numerous state laws, and escalate the costs of existing government programs by saddling the state with costs created by private wrongdoers. We urge you to reject H.R. 5, or as the liability bill is inaptly titled, the Help Efficient, Accessible, Low-Cost, Timely Healthcare Act.

H.R. 5 aims to shield the entire health industry from much of its liability for wrongdoing, including for some of its most egregious conduct. The bill would shield physicians and hospitals, drug and medical device manufacturers, and nursing home operators. Backers of H.R. 5 contend that restricting the accountability of private industry will save health care costs. In fact, it likely will increase health care costs. H.R. 5 will not only shield the private parties whose negligent or reckless acts caused the injuries; it will force the injured victims and their families to turn to public, taxpayer-funded programs such as Medicare, Medicaid, and disability benefits for medical care and other financial assistance. Already, the Department of Health and Human Services pays \$4.4 billion a year for the consequences of medical errors, according to its 2010 study.

The provisions of H.R. 5 are particularly misguided at a time when medical errors have reached crisis levels. For over a decade, numerous studies and reports have concluded that the U.S. faces a staggering injury and death toll from medical errors and growing costs to provide care and treatment for injuries caused by those errors. We urge you to focus on reducing these medical errors that injure or kill well over 100,000 Americans a year, instead of entertaining a harmful proposal that will devastate patients and their families while protecting the wrongdoers. In a fair and just system, wrongdoers (individuals or corporations) are held accountable for conduct that harms others.

One of the many harmful provisions of H.R. 5 would place an inhumane and arbitrary cap on non-economic damages at \$250,000. "Non-economic" damages are harder to quantify than lost wages or medical bills, but they compensate real injuries. They are awarded for the pain and suffering that accompany any loss of normal functions (for example blindness, paralysis, loss of sexual function, lost bowel and bladder control, loss of limb, disfigurement, and loss of fertility) and inability to engage in daily activities or to pursue hobbies. H.R. 5's one-size-fits-all cap also will be most harmful to the catastrophically injured and the least economically fortunate patients, such as children, women, and seniors.

H.R. 5 is also remarkable in that it would grant medical device manufacturers and pharmaceutical companies immunity from punitive damages, which are awarded only in the most egregious instances of wrongdoing. If these companies are shielded from accountability in court, they will have less incentive to ensure their products' safety.

The bill contains several other unjust and unwarranted provisions such as:

- 1) Leaving patients without compensation for the share of damages assigned to an uninsured, underinsured or bankrupt defendant.
- 2) Imposing unreasonable restrictions on the time period for patients to file a lawsuit to seek compensation for their injuries.
- 3) Reducing a wrongdoer's responsibility to pay a victim's medical costs when those costs could be paid by someone else, such as a private insurer or Medicare. This provision would let the wrongdoer off the hook and force consumers and taxpayers to pay the costs of the wrongdoer's misconduct.
- 4) Allowing negligent providers to pay out compensation over many years, shortchanging victims who need the compensation immediately to cover their health care costs.
- 5) Limiting fees for patients' attorneys while providing no limits on the health industry's legal fees.

Finally, this bill would overturn numerous state laws. For decades, states have determined their own rules for deciding negligence cases, including medical malpractice claims. A one-size-fits-all federal policy on medical liability could easily miss important factors in particular states – and likely would create harmful unintended consequences in state court systems.

For all of these reasons we ask that you vote "NO" on H.R. 5.

Sincerely,



David Arkush
Director



Christine Hines
Consumer and Civil Justice Counsel

Public Citizen, Congress Watch division

cc: Harry Reid, Senate Majority Leader
Mitch McConnell, Senate Minority Leader