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## H.R. 5: A Cruel Proposal in Congress That Will Hurt Patients

H.R. 5 is a cruel law that reduces the protections and rights our country provides to those who are injured by medical malpractice. Adding to the already existing barriers to court for injured patients, H.R. 5 presents a peril to family safety and overturns numerous state laws. Here's why:

**Cap on Non-Economic Damages:** H.R. 5 would impose an arbitrary ceiling -- \$250,000 as now proposed in the bill -- on the amount a patient injured by medical malpractice can receive for non-economic damages, no matter how devastating the injury. Non-economic damages compensate for intangible but real injuries like infertility, permanent disability, disfigurement, blindness, pain and suffering, loss of a limb or other physical impairment. In other words, caps on non-economic damages hurt those who are suffering the most. Such caps also have a disproportionate effect on women who work inside the home, children, seniors or the poor and other low wage-earners who are more likely to receive a greater percentage of their compensation in the form of non-economic damages if they are injured.

**Repeals the Collateral Source Rule:** The collateral source rule prevents a wrongdoer from reducing its financial responsibility for the injuries it causes by the amount an injured party receives (or could later receive) from outside sources. Payments from outside sources are those unrelated to the wrongdoer, like health or disability insurance, for which the injured party has already paid premiums or taxes. H.R. 5 says that payments received from health insurance, social security or other sources can be used to reduce the wrongdoer's liability.

**Structured Settlements:** H.R. 5 allows a defendant to request that future damages awarded by a judge or jury be made to the injured patient over his or her lifetime. In other words, the injured consumer is prohibited from receiving payments in a lump sum. This provision would increase the hardships of the most seriously injured consumers who are hit soon after an injury with large medical costs and must make adjustments in transportation and housing.

**Contingency Fee Limits :** H.R. 5 limits contingency fees by capping them along a sliding scale so fee percentages decrease as judgments increase. The principal impact is to make it less likely attorneys can afford to risk bringing many medical malpractice cases, particularly the more costly and complex ones, providing practical immunity for many hospitals and physicians, even repeat offenders.

**Abolishes Joint and Several Liability:** This bill would completely eliminate joint and several liability for both economic and non-economic damages. Joint and several liability is a centuries-old doctrine that protects injured consumers if more than one wrongdoer is fully responsible for causing an indivisible injury (i.e., “but for” their misconduct, the victim would not have been injured), but one is insolvent or can not pay. For example, this rule is critical in assault cases, such as when a senior is raped in a nursing home. It allows the victim to obtain full damages against a negligent nursing home if the assailant is indigent. But under this bill, a fully responsible nursing home would be off the hook for paying a significant part of the damages in the event a senior is assaulted.

**Severe Limits on Punitive Damages:** H.R. 5 provides that punitive damages may only be awarded if the plaintiff proves them by an impossibly high standard, and limits punitive damages to two times the amount of economic damages or \$250,000, whichever is greater. Moreover, the bill completely immunizes manufacturers of drugs and devices that are approved by the FDA from punitive damages and extends immunity to other manufacturers as well. Punitive damages are assessed against defendants by judges or juries to punish particularly outrageous, deliberate or harmful misconduct, and to deter the defendant and others from engaging in similar misconduct in the future. Capping or limiting punitive damages will allow hospitals to treat liability as a cost of doing business, weakening their deterrent impact.

**Reduced Statute of Limitations:** The legislation reduces the amount of time an injured patient has to file a lawsuit to one year from the date an injury is discovered or should have been discovered, but not later than three years after the date of injury. This statute of limitations, which is much more restrictive than a majority of state laws, would cut off many meritorious claims, especially those involving diseases with long incubation periods. Thus, a person who contracted HIV through a negligent transfusion but learned of the disease more than five years after the transfusion would be barred from filing a claim.

**Massive interference with states’ rights:** H.R. 5 would dictate, for the first time in U.S. history, broad medical negligence and liability standards to the courts in all 50 states. It would interfere with judgments made by state officials and judges as to what tort remedies should be available, as well as the amount local judges and juries can award. As the Conference of Chief Justices (state court chief justices) put it in April 1995 testimony, “The critical experience of State courts with the long process of interpretation and consistency on major points of ... liability law tells us that Federal legislation is not the answer. Re-inventing tort law must occur by and through State courts and legislatures that are best situated to determine and control the impact of reform within their own communities.”