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## **If You Care About: DISCRIMINATION You Should Care About: MEDICAL MALPRACTICE PROVISIONS IN ACA REPLACEMENT BILLS**

Most Affordable Care Act replacement proposals would deprive Americans harmed by negligent hospitals or incompetent physicians of legal rights guaranteed by state and local governments.

These provisions would not only have a discriminatory impact on minorities, women, low-wage workers and other vulnerable members of society. They would also open the door to potentially massive interference with state laws that help discrimination victims.

### **MEDICAL MALPRACTICE LAWS DISCRIMINATE**

U.S. House Speaker Paul Ryan (R-Wis.) and many congressional leaders support severe caps, or limits, on “non-economic” compensation for injured patients. Such proposals would restrict compensation for someone’s “lost quality of life”<sup>1</sup> as opposed to their “lost wages” (which are economic injuries). Capping non-economic damages is disproportionately unfair to minorities,<sup>2</sup> women<sup>3</sup> and others who may receive lower wages.

- John Conyers (D-Mich.), Ranking Member of the U.S. House Judiciary Committee, noted in 2004, “The restrictions on non-economic damages...will have a severe and disproportionate impact on minorities.”<sup>4</sup>
- Law Professor Lucinda Finley noted in a 2004 study, “[J]uries consistently award women more in noneconomic loss damages than men.... [A]ny cap on noneconomic loss damages will deprive women of a much greater proportion and amount of a jury award than men. Noneconomic loss damage caps therefore amount to a form of discrimination against women and contribute to unequal access to justice or fair compensation for women.”<sup>5</sup>
- The late Senator Edward Kennedy (D-Mass.), former Chairman of the U.S. Senate Labor Committee, said in a 2002 letter to then President George W. Bush, “Caps on non-economic damages discriminate against women, children, minorities, and low income workers. These groups do not receive large economic damages attributable to lost earning capacity. Thus, non-economic damages are particularly important to these vulnerable populations.”<sup>6</sup>

## MEDICAL MALPRACTICE LIMITS OPEN THE DOOR TO ELIMINATION OF RIGHTS IN OTHER AREAS OF LAW

- Medical malpractice laws are a subgroup of a much larger category of “tort” or liability laws – unique to each state. These laws provide rights to seek justice in court not only for those harmed by unsafe practices and products but also for victims of hate crimes, sexual assaults and other types of discriminatory violations.<sup>7</sup>
- It has been a bedrock principle of our democracy that Congress should not interfere with state tort laws. In fact, a number of conservative Tea Party Members of Congress have opposed federal medical malpractice legislation for this very reason.
- Since the 1970s, Big Business has been unsuccessfully trying to crack this barrier and take away state tort rights in three major areas: auto crashes, products liability and medical malpractice.
- The public interest community has pushed back very hard against such attempts for two reasons:
  - The proposals would eliminate important legal rights for everyday Americans.
  - Once Big Business succeeds for the first time in overriding state tort law in one major area, constitutional principles that have blocked Congress from doing this become severely damaged. *This leaves the door wide open for Congress to try to override state tort law in any area.*

For these reasons, it is critical to stop Congress from enacting medical malpractice proposals that weaken or eliminate patients’ legal rights. This fight is winnable. Please contact the Center for Justice & Democracy for more information: [centerjd@centerjd.org](mailto:centerjd@centerjd.org)

## NOTES

<sup>1</sup> Non-economic injuries include permanent disability, mutilation, trauma, loss of a limb, blindness, sexual or reproductive harm and other types of suffering and pain.

<sup>2</sup> See, e.g., Amanda A. Edwards, “Medical Malpractice Non-Economic Damages Caps: Recent Developments,” 43 *Harv. J. Legis.* 213, 219-221 (examining how such caps affect minority populations and explaining how the data tables used to calculate economic damages project lower earnings for nonwhite workers, which in turn results in lower economic damages and more harm from non-economic damage caps). See also, Joanne Doroshow and Amy Widman, “The Racial Implications of Tort Reform” 25 *Wash. U. J.L. & Pol’y* 161 (2007).

<sup>3</sup> Lucinda M. Finley, “The Hidden Victims of Tort Reform: Women, Children, and the Elderly,” 53 *Emory L.J.* 1263 (2004).

<sup>4</sup> Press release from the Office of U.S. Congressman John Conyers, “Conyers says: ‘Tort Reform Movement Has a Massively Disproportionate Impact on Minorities,’” March 11, 2004.

<sup>5</sup> Lucinda M. Finley, “The Hidden Victims of Tort Reform: Women, Children, and the Elderly,” 53 *Emory L.J.* 1263 (2004).

<sup>6</sup> Letter from U.S. Senator Ted Kennedy to President Bush, dated July 2002.

<sup>7</sup> See Center for Justice & Democracy, *Lifesavers 2016: CJ&D’s Guide to Lawsuits that Protect Us All*, <https://centerjd.org/content/lifesavers-2016>