

**Alliance for Justice
Center for Justice & Democracy
Center for Medical Consumers
Consumer Federation of America
Consumer Watchdog
National Consumers League
National Research Center for Women & Families
National Women's Health Network
NCCNHR: The National Consumer Voice for Quality Long-Term Care
Public Citizen
USAction**

November 5, 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Pelosi:

**OPPOSE MEDICAL MALPRACTICE SUBSTITUTES OR AMENDMENTS TO
THE "AFFORDABLE HEALTH CARE FOR AMERICA ACT"**

The undersigned consumer and public interest groups strongly oppose any amendments, substitutes, or Motions to Recommit regarding the House health care bill that would limit the legal right of patients injured by medical malpractice.

Medical malpractice is at epidemic levels in this country. The Institute of Medicine has estimated that up to 98,000 people die every year from medical errors in America's hospitals. Diminishing medical providers' accountability for wrongful acts conflicts with Congress's stated intent to provide affordable and quality health care to Americans. Congress should focus on improving patient safety and reducing deaths and injuries, not insulating negligent providers from accountability and saddling taxpayers with the cost.

We urge you to consider the facts, followed by suggestions for bringing real reform to our medical malpractice system, without punishing the innocent patients and families who are victims of medical malpractice.

The Facts:

- States with the most draconian "tort reform" measures have seen little or no reduction in their health care costs. That isn't surprising. The Congressional Budget Office found that malpractice liability costs account for only .5 percent of health care spending, and even this low figure is an overestimation. Medical malpractice cases also account for only about 4 percent of tort cases.
- Three to seven people die from preventable medical errors for every one who receives compensation for any malpractice, including those resulting in injury or death.

- Doctors in many states have seen dramatic rate increases after “tort reform” measures were approved. Rates were only held down in states with strong state insurance rate regulation.
- States with the most severe “tort reform” have seen insurance rates for medical providers rise and fall at similar levels as other states, according to a recent study by Americans for Insurance Reform, a coalition of nearly 100 consumer and public interest groups that examined the insurance industry’s own data.
- States with the most severe “tort reform” measures have often left patients without any remedy regardless of the severity of their injuries or the degree of negligence that may have occurred. See, for example, the June 1, 2009, *New Yorker* magazine article by Dr. Atul Gawande, “The Cost Conundrum; What a Texas town can teach us about health care.”
- “Tort reform” laws shift the costs away from those who should pay — insurance companies or health care providers who have committed malpractice — onto the taxpayer. We are aware of families with children severely injured by medical malpractice who had to seek government assistance to survive because “tort reform” reduced their compensation, burdening state Medicaid systems funded by federal and state taxpayers.
- Total medical malpractice payouts for injuries and deaths caused by medical negligence in the nation, have recently hovered between \$5 billion and \$6 billion annually, a token amount of the \$2.2 trillion (Kaiser Family Foundation) Americans spent on health care in 2007.

Real Malpractice Reform Should Include:

- A physician’s registry that tracks doctor records in all 50 states. A Public Citizen’s examination of the National Practitioners Data Bank found that 5% of doctors commit 54% of the malpractice. Such a registry would be a transparent way to ensure that incompetent dangerous physicians would be unable to move from state to state — as they do today — and injure more patients or, simply open the National Practitioners Data Bank to the public.
- Enact the federal bill creating a registry of hospital infection rates nationally. Infections are a significant source of morbidity and mortality for nursing home residents and account for up to half of all nursing home resident transfers to hospitals. Infections result in an estimated 150,000 to 200,000 hospital admissions per year at an estimated cost of \$673 million to \$2 billion annually. When a nursing home resident is hospitalized with a primary diagnosis of infection, the death rate can reach as high as 40 percent. Consumers Union’s “Stop Hospital Infections” campaign has successfully helped to pass state laws requiring hospitals to publish their infection rates. When such state laws are enacted, hospital infection rates go down markedly.
- Encourage the implementation of patient safety reforms to reduce preventable medical errors. Public Citizen’s “Back to Basics” report listed simple measures, such as best practices to eliminate patient falls and prevent pressure ulcers, that would save 85,000 lives and \$35 billion a year in health care delivery.

Real Insurance Reform Should Include:

- Repeal of the McCarran-Ferguson Act’s exemption of the health and medical malpractice insurance industry from anti-trust laws. Congress must prohibit insurers from cooperating in collusion and price fixing, behavior that costs doctors and consumers a tremendous amount.

Health care reform cannot be accomplished by taking away the legal rights of patients who are injured through no fault of their own, or reducing the accountability of those who commit wrongdoing. We urge the House to reject any amendments or substitutes that limit patients' legal rights. Thank you for your consideration. (For any questions or comments, please contact Joanne Doroshow at Center for Justice & Democracy (212) 267-2801 or David Arkush at Public Citizen, (202) 454-5130.)

Sincerely,

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