

April 17, 2012

The Honorable Lamar Smith, Chairman
The Honorable John Conyers, Ranking Member
U.S. House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

CONSUMER AND PATIENT SAFETY GROUP OPPOSITION TO H.R. 5

Dear Chairman Smith and Ranking Member Conyers:

The undersigned consumer and public interest groups strongly oppose H.R. 5, the “Protecting Access to Healthcare Act,” which would limit the legal rights of injured patients and families of those killed by negligent health care. H.R. 5 is an outrageously broad proposal that covers not only cases involving medical malpractice, but also cases involving unsafe drugs and nursing home abuse and neglect.

Even if these provisions applied only to doctors and hospitals, the Congressional Budget Office believes they would save no more than 0.5 percent in health care costs, which is likely a significant exaggeration. At the same time, admits CBO, the U.S. death rate could increase by .2 percent, killing another 4,000 people each year. Add to this the pharmaceutical industry liability limitations in H.R. 5, removing a significant incentive for drug companies to act safely, and untold numbers of additional death and injuries should H.R. 5 pass are inevitable, and unacceptable.

Medical malpractice is already at epidemic levels in this country. It has been over a decade since publication of the Institute of Medicine’s seminal study “To Err is Human” finding up to 98,000 deaths in hospitals due to medical errors. Experts agree that there has been no meaningful reduction in medical errors in the United States since then. For example:

- About 1 in 7 hospital Medicare patients suffer serious medical harm, 44 percent of which are preventable. These errors cost Medicare \$4.4 billion a year. (U.S. Department of Health and Human Services, Office of the Inspector General, *Adverse Events in Hospitals: National Incidence Among Medicare Beneficiaries* (November 2010).
- Medical errors occur in one-third of hospital admissions, as much as ten times more common than previously estimated. (David C. Classen et al., “Events In Hospitals May Be Ten Times Greater Than Previously Measured,” *Health Affairs* (April 2011).
- Lost lives and disabilities caused by medical error cost between \$393 billion and \$958 billion in 2006, equivalent to 18-45% of total US health-care spending. (John C. Goodman et al., “The Social Cost Of Adverse Medical Events, And What We Can Do About It,” *Health Affairs* (April 2011)

Congress must focus on improving patient safety and reducing deaths and injuries, not insulating negligent providers from accountability, harming patients and saddling taxpayers with the cost, as H.R. 5 would do.

For example, H.R.5 would establish a permanent across-the-board \$250,000 “cap” on compensation for “non-economic damages” in medical malpractice cases. Caps are unfair and discriminatory. University of Buffalo Law Professor Lucinda Finley has written, “certain

injuries that happen primarily to women are compensated predominantly or almost exclusively through noneconomic loss damages. These injuries include sexual or reproductive harm, pregnancy loss, and sexual assault injuries.” Also, “[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.” Lucinda M. Finley, “The 2004 Randolph W. Thrower Symposium: The Future Of Tort Reform: Reforming The Remedy, Re-Balancing The Scales: Article: The Hidden Victims Of Tort Reform: Women, Children, And The Elderly, Emory Law Journal,” 53 Emory L.J. 1263, Summer, 2004.

Other provisions are just as problematic. The proposed federal statute of limitations, much more restrictive than a majority of state laws, lacks complete logic from a deficit reduction angle since its only impact would be to cut off meritorious claims, forcing patients to turn to the government for care. The bill would not only cap punitive damages, which hold corporations accountable for their most reckless or deliberately harmful acts, but also would completely immunize manufacturers of certain drugs and devices from punitive damages. The bill would repeal joint and several liability even though CBO says this could increase, not lower costs.

Finally, H.R. 5 would overturn traditional state common law and would be an unprecedented interference with the work of state court judges and juries in civil cases. Its one-way preemption of state law provisions that protect patients (there are some exceptions for caps) makes clear that the intent of this legislation is not to make laws uniform in the 50 states. Rather, it is a carefully crafted bill to provide relief and protections for the insurance, medical and drug industries. We urge opposition to H.R. 5.

Thank you for your consideration. For any questions or comments, please contact Joanne Doroshov at Center for Justice & Democracy at New York Law School, (212) 431-2882.

Sincerely,

Alliance for Justice
 Center for Justice & Democracy
 Center for Science in the Public Interest
 Compassion & Choices
 Consumer Action
 Consumer Federation of America
 Consumer Watchdog
 Disability Rights Education and Defense Fund
 James’s Project
 Mothers Against Medical Error
 National Association of Consumer Advocates
 National Consumers League
 National Women’s Health Network
 People for the American Way
 Public Citizen
 Texas Watch
 The Coalition for Patients’ Rights

The Empowered Patient Coalition in San Francisco
The National Council on Independent Living (NCIL)
U.S. PIRG
USAction

cc: Members of Congress