

Alliance for Justice * Consumer Action * Consumer Watchdog * National Women's Health Network * NCCNHR: The National Consumer Voice for Quality Long-Term Care * Public Citizen * USAction

June 25, 2009

To control health care costs, reduce medical errors, don't reduce accountability for liability

Dear Senator:

The Congress has taken up the task of controlling health care costs while providing access to affordable care for all Americans. A few members have introduced amendments that would attempt to lower health care costs by limiting the ability of injured patients and their families to seek compensation from negligent providers and facilities. We urge you to reject all of these amendments. Shielding negligent parties from accountability is no way to cut costs or provide quality care. To the contrary, it is a recipe for increasing the nation's epidemic of preventable errors, at enormous human and financial cost. Instead of limiting liability, the Congress should focus on improving patient safety. This would save not only lives, but also billions of dollars in unnecessary medical costs.

We urge you to REJECT all amendments to health care reform legislation that seek to limit accountability for medical liability. For example, under the Affordable Health Choices Act, Coburn Amendment #88; Enzi Amendment #2; Gregg Amendments #29, 30; Hatch Amendments #1, 5, 6, 8 all seek to restrict injured patients' legal rights.

In a recent speech before the American Medical Association, President Obama noted that medical errors lead to 100,000 lives lost unnecessarily in U.S. hospitals every year. In 1999, the Institute of Medicine estimated that these medical errors cost between \$37.6 billion and \$50 billion each year, between \$17 billion and \$29 billion of which are preventable. In the same study, the Institute of Medicine estimated that medical errors cost the lives of between 44,000 and 98,000 patients each year. At the same time, recoveries for medical malpractice are already extraordinarily limited. Using the most conservative estimate, **four times more people were killed by medical errors in 2008 than the number of patients who recovered compensation for their injuries.**

Moreover, most malpractice compensation is awarded to patients who suffer extremely serious injuries. Since 2005, between 63 percent and 65 percent of all medical malpractice payments were for significant or major permanent injuries, such as quadriplegia or brain damage, which required lifelong care, or death. Enacting further limits on the paltry compensation most receive would result in real cruelty and injustice.

The Congress must also heed the costs of immunizing providers and facilities from liability, both in terms of increased errors and new burdens on taxpayers. First, liability limits would decrease patient safety by removing an effective deterrent for injuries. In a 2006 New England Journal of Medicine article, George J. Annas, J.D., M.P.H., wrote: "[T]he litigation system seems to protect many patients from being injured in the first place. And since prevention before the fact is generally preferable to compensation after the fact, the apparent injury prevention effect must be an important factor in the debate about the future of the malpractice litigation system." Second, liability limits

would shift the burden of paying for medical malpractice injuries from those who are responsible -- negligent doctors or hospitals -- to the government and American taxpayers. Costs of errors should be borne by those responsible, rather than shifted to others. This provides a market-based incentive for improving the quality of care.

Finally, state-law malpractice liability limits have been largely *ineffective*. The measures have failed to lower medical care costs for patients and a number of them were struck down by courts as unconstitutional, including in Ohio and Wisconsin. There is no reason why the Congress should repeat the same mistakes that states have made.

We are grateful that the Congress and the president seek to extend affordable health care to the American public, but now is not the time to reduce accountability for wrongdoing and weaken patient safety. We urge you to reject any amendments to the legislation that will shift costs from poorly performing medical facilities and providers to struggling families. Those who wish to reduce the costs of medical malpractice liability should focus on stemming the epidemic of preventable medical errors.

Sincerely,

Nan Aron
President
Alliance for Justice

Linda Sherry
Director of National Priorities
Consumer Action

Carmen Balber
Washington Director
Consumer Watchdog

Amy Allina
Program Director
National Women's Health Network

Janet Wells
Director of Public Policy
NCCNHR: The National Consumer Voice for Quality Long-Term Care

David Arkush
Director
Public Citizen's Congress Watch

Alan Charney
Program Director
USAction