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Strickland
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ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1326

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MESSAGE FROM THE SENATE

A message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate has passed bills and a Joint Resolution of the following titles in which the concurrence of the House is requested:

S. 302. An act to make improvements in the Foundation for the National Institutes of Health.

S. 447. An act to authorize the conveyance of certain Federal land in the State of New Mexico.

S. 655. An act to amend the Public Health Service Act with respect to the National Foundation for the Centers for Disease Control and Prevention.

S. 1517. An act to permit Women's Business Centers to re-compete for sustainability grants.

S.J. Res. 19. Joint Resolution calling upon the President to issue a proclamation recognizing the 30th anniversary of the Helsinki Final Act.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1295

Mr. OWENS. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H.R. 1295.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

HELP EFFICIENT, ACCESSIBLE, LOW-COST, TIMELY HEALTHCARE (HEALTH) ACT OF 2005

Mr. SMITH of Texas. Mr. Speaker, pursuant to House Resolution 385 and as the designee of the majority leader, I call up the bill (H.R. 5) to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system, and ask for its immediate consideration.

The Clerk read the title of the bill.

The text of H.R. 5 is as follows:

H.R. 5

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2005''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) EFFECT ON FEDERAL SPENDING.—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this Act to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of ''defensive medicine'' and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

SEC. 3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

The time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first. In no event shall the time for commencement of a health care lawsuit exceed 3 years after the date of manifestation of injury unless tolled for any of the following—

(1) upon proof of fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

Actions by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that actions by a minor under the full age of 6 years shall be commenced within 3 years of manifestation of injury or prior to the minor's 8th birthday, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care organization have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

SEC. 4. COMPENSATING PATIENT INJURY.

(a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any health care lawsuit, nothing in this Act shall limit a claimant's recovery of the full amount of the available economic damages, notwithstanding the limitation in subsection (b).

(b) ADDITIONAL NONECONOMIC DAMAGES.—In any health care lawsuit, the amount of noneconomic damages, if available, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same injury.

(c) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—For purposes of applying the limitation in subsection (b), future noneconomic damages shall not be discounted to present value. The jury shall not be informed about the maximum award for noneconomic damages. An award for noneconomic damages in excess of $250,000 shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law. If separate awards are rendered for past and future noneconomic damages and the combined awards exceed $250,000, the future noneconomic damages shall be reduced first.

(d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. Whenever a judgment of liability is rendered as to any party, a separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

SEC. 5. MAXIMIZING PATIENT RECOVERY.

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants. In particular, in any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity. In no event shall the total of all contingent fees for representing all claimants in a health care lawsuit exceed the following limits:

(1) 40 percent of the first $50,000 recovered by the claimant(s).

(2) 33⅓ percent of the next $50,000 recovered by the claimant(s).

(3) 25 percent of the next $500,000 recovered by the claimant(s).

(4) 15 percent of any amount by which the recovery by the claimant(s) is in excess of $600,000.

(b) APPLICABILITY.—The limitations in this section shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution. In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section. The requirement for court supervision in the first two sentences of subsection (a) applies only in civil actions.

SEC. 6. ADDITIONAL HEALTH BENEFITS.

In any health care lawsuit involving injury or wrongful death, any party may introduce evidence of collateral source benefits. If a party elects to introduce such evidence, any opposing party may introduce evidence of any amount paid or contributed or reasonably likely to be paid or contributed in the future by or on behalf of the opposing party to secure the right to such collateral source benefits. No provider of collateral source benefits shall recover any amount against the claimant or receive any lien or credit against the claimant's recovery or be equitably or legally subrogated to the right of the claimant in a health care lawsuit involving injury or wrongful death. This section shall apply to any health care lawsuit that is settled as well as a health care lawsuit that is resolved by a fact finder. This section shall not apply to section 1862(b) (42 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C. 1396a(a)(25)) of the Social Security Act.

SEC. 7. PUNITIVE DAMAGES.

(a) IN GENERAL.—Punitive damages may, if otherwise permitted by applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer. In any health care lawsuit where no judgment for compensatory damages is rendered against such person, no punitive damages may be awarded with respect to the claim in such lawsuit. No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages. At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(1) whether punitive damages are to be awarded and the amount of such award; and

(2) the amount of punitive damages following a determination of punitive liability.

If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages, if awarded, in a health care lawsuit, the trier of fact shall consider only the following—

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages, if awarded, in a health care lawsuit may be as much as $250,000 or as much as two times the amount of economic damages awarded, whichever is greater. The jury shall not be informed of this limitation.

(c) NO PUNITIVE DAMAGES FOR PRODUCTS THAT COMPLY WITH FDA STANDARDS.—

(1) IN GENERAL.—

(A) No punitive damages may be awarded against the manufacturer or distributor of a medical product, or a supplier of any component or raw material of such medical product, based on a claim that such product caused the claimant's harm where—

(i)(I) such medical product was subject to premarket approval, clearance, or licensure by the Food and Drug Administration with respect to the safety of the formulation or performance of the aspect of such medical product which caused the claimant's harm or the adequacy of the packaging or labeling of such medical product; and

(II) such medical product was so approved, cleared, or licensed; or

(ii) such medical product is generally recognized among qualified experts as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable Food and Drug Administration regulations, including without limitation those related to packaging and labeling, unless the Food and Drug Administration has determined that such medical product was not manufactured or distributed in substantial compliance with applicable Food and Drug Administration statutes and regulations.

(B) RULE OF CONSTRUCTION.—Subparagraph (A) may not be construed as establishing the obligation of the Food and Drug Administration to demonstrate affirmatively that a manufacturer, distributor, or supplier referred to in such subparagraph meets any of the conditions described in such subparagraph.

(2) LIABILITY OF HEALTH CARE PROVIDERS.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a medical product approved, licensed, or cleared by the Food and Drug Administration shall not be named as a party to a product liability lawsuit involving such product and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or seller of such product. Nothing in this paragraph prevents a court from consolidating cases involving health care providers and cases involving products liability claims against the manufacturer,

distributor, or product seller of such medical product.

(3) PACKAGING.—In a health care lawsuit for harm which is alleged to relate to the adequacy of the packaging or labeling of a drug which is required to have tamper-resistant packaging under regulations of the Secretary of Health and Human Services (including labeling regulations related to such packaging), the manufacturer or product seller of the drug shall not be held liable for punitive damages unless such packaging or labeling is found by the trier of fact by clear and convincing evidence to be substantially out of compliance with such regulations.

(4) EXCEPTION.—Paragraph (1) shall not apply in any health care lawsuit in which—

(A) a person, before or after premarket approval, clearance, or licensure of such medical product, knowingly misrepresented to or withheld from the Food and Drug Administration information that is required to be submitted under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or section 351 of the Public Health Service Act (42 U.S.C. 262) that is material and is causally related to the harm which the claimant allegedly suffered; or

(B) a person made an illegal payment to an official of the Food and Drug Administration for the purpose of either securing or maintaining approval, clearance, or licensure of such medical product.

SEC. 8. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments. In any health care lawsuit, the court may be guided by the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this Act.

SEC. 9. DEFINITIONS.

In this Act:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term ''alternative dispute resolution system'' or ''ADR'' means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term ''claimant'' means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term ''collateral source benefits'' means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. The term ''compensatory damages'' includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term ''contingent fee'' includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) ECONOMIC DAMAGES.—The term ''economic damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) HEALTH CARE LAWSUIT.—The term ''health care lawsuit'' means any health care liability claim concerning the provision of health care goods or services or any medical product affecting interstate commerce, or any health care liability action concerning the provision of health care goods or services or any medical product affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider, a health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim. Such term does not include a claim or action which is based on criminal liability; which seeks civil fines or penalties paid to Federal, State, or local government; or which is grounded in antitrust.

(8) HEALTH CARE LIABILITY ACTION.—The term ''health care liability action'' means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider, a health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(9) HEALTH CARE LIABILITY CLAIM.—The term ''health care liability claim'' means a demand by any person, whether or not pursuant to ADR, against a health care provider, health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, including, but not limited to, third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services or medical products, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(10) HEALTH CARE ORGANIZATION.—The term ''health care organization'' means any person or entity which is obligated to provide or pay for health benefits under any health plan, including any person or entity acting under a contract or arrangement with a health care organization to provide or administer any health benefit.

(11) HEALTH CARE PROVIDER.—The term ''health care provider'' means any person or entity required by State or Federal laws or regulations to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(12) HEALTH CARE GOODS OR SERVICES.—The term ''health care goods or services'' means any goods or services provided by a health care organization, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, or treatment of any human disease or impairment, or the assessment or care of the health of human beings.

(13) MALICIOUS INTENT TO INJURE.—The term ''malicious intent to injure'' means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) MEDICAL PRODUCT.—The term ''medical product'' means a drug, device, or biological product intended for humans, and the terms ''drug'', ''device'', and ''biological product'' have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321) and section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)), respectively, including any component or raw material used therein, but excluding health care services.

(15) NONECONOMIC DAMAGES.—The term ''noneconomic damages'' means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(16) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider, health care organization, or a manufacturer, distributor, or supplier of a medical product. Punitive damages are neither economic nor noneconomic damages.

(17) RECOVERY.—The term ''recovery'' means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys' office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(18) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other

territory or possession of the United States, or any political subdivision thereof.

SEC. 10. EFFECT ON OTHER LAWS.

(a) VACCINE INJURY.—

(1) To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this Act does not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this Act in conflict with a rule of law of such title XXI shall not apply to such action.

(2) If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this Act or otherwise applicable law (as determined under this Act) will apply to such aspect of such action.

(b) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this Act shall be deemed to affect any defense available to a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this Act preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this Act. The provisions governing health care lawsuits set forth in this Act supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this Act; or

(2) prohibits the introduction of evidence regarding collateral source benefits, or mandates or permits subrogation or a lien on collateral source benefits.

(b) PROTECTION OF STATES' RIGHTS AND OTHER LAWS.—(1) Any issue that is not governed by any provision of law established by or under this Act (including State standards of negligence) shall be governed by otherwise applicable State or Federal law.

(2) This Act shall not preempt or supersede any State or Federal law that imposes greater procedural or substantive protections for health care providers and health care organizations from liability, loss, or damages than those provided by this Act or create a cause of action.

(c) STATE FLEXIBILITY.—No provision of this Act shall be construed to preempt—

(1) any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this Act, notwithstanding section 4(a); or

(2) any defense available to a party in a health care lawsuit under any other provision of State or Federal law.

SEC. 12. APPLICABILITY; EFFECTIVE DATE.

This Act shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of the enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

SEC. 13. SENSE OF CONGRESS.

It is the sense of Congress that a health insurer should be liable for damages for harm caused when it makes a decision as to what care is medically necessary and appropriate.

The SPEAKER pro tempore. Pursuant to House Resolution 385, the Chair at any time may postpone further consideration of the bill until a time designated by the Speaker.

The gentleman from Texas (Mr. SMITH) and the gentleman from Michigan (Mr. CONYERS) each will control 1 hour.

The Chair recognizes the gentleman from Texas (Mr. SMITH).

GENERAL LEAVE

Mr. SMITH of Texas. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 5.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I strongly support the HEALTH Act, which is identical to two other bills that passed the House during the last Congress. The HEALTH Act is modeled on California's Medical Injury Compensation Reform Act, called MICRA, which has resulted in California's medical liability premiums increasing only one-third as much as they have in other States.

MICRA's reforms, which are included in the HEALTH Act, include a $250,000 cap on noneconomic damages; limits on the contingency fees lawyers can charge; a fair-share rule by which damages are allocated in direct proportion to fault; reasonable guidelines, but not caps, on the award of punitive damages; and a safe harbor from punitive damages for products that meet FDA safety requirements.

□ 1330

According to the nonpartisan organization Jury Verdict Research, the median medical liability award has more than doubled in the last 7 years to $1.2 million.

Doctors and other health care providers are being forced to abandon patients and practices, particularly in high-risk specialties such as emergency medicine, brain surgery and obstetrics and gynecology.

Women are particularly hard hit, as are low-income neighborhoods and rural areas. According to a report by the Department of Health and Human Services, ''Unless a State has adopted limitations on noneconomic damages, the cost of these awards for noneconomic damages is paid by all other Americans through higher health care costs, higher health insurance premiums, higher taxes, reduced access to quality care, and threats to quality of care.''

Many doctors are no longer available to treat patients. Mary Rasar's father did not get the medical care he needed following a car accident last summer, because the only trauma center in his area closed for 10 days due to medical liability costs. Her father died from those injuries.

Melinda Sallard, a 22-year-old mother, was forced to deliver her own baby on the side of the road after her physician stopped delivering babies and her hospital's maternity department closed because of rising medical liability costs.

Leanne Dyess' husband Tony sustained head injuries in a car accident and could not find a neurosurgeon to treat him because rising liability costs had forced insurers to drop their coverage. Tony was airlifted to a hospital in another State that still had neurosurgeons, but 6 hours had passed, and it was too late. As a result Tony suffered permanent brain damage.

In my hometown, the CEO of San Antonio's Methodist Children's Hospital has seen his premiums increase 400 percent. He has been sued three times. In one case the only interaction with the person suing was that he stepped in her child's hospital room and asked simply, how is your child doing? Each jury cleared him of any wrongdoing, and the total amount of time all three juries spent deliberating was less than an hour. But the doctor's insurance company spent a great deal of time, effort and money in his defense.

It is no surprise the American College of Emergency Physicians found that large majorities of both rural and urban hospitals had inadequate on-call specialists coverage. And there has been a 40 percent reduction in medical students entering obstetrics and gynecology.

According to the chair of the OB/GYN department at the Yale School of Medicine, ''Within 2 years we will be faced with a very real possibility of having to shut down our high-risk obstetrical practice, a practice that cares for the sickest mothers in the State.''

As for legitimate cases of medical malpractice, nothing in the HEALTH Act prevents juries from awarding very large amounts to victims, including children. The HEALTH Act does not limit in any way an award of economic damages to injured victims. Economic damages include lost wages or home services, medical costs, the cost of pain-reducing drugs, therapy and lifetime rehabilitation care.

In fact, in just the last few years, juries in California have awarded the following damages to medical malpractice victims: An $84 million award to a 5-year-old boy, a $59 million award to a 3-year-old girl, a $50 million award to a 10-year-old boy, a $12 million award to a 30-year-old homemaker, and a $27 million award to a 25-year-old woman. Other examples include damages of $7, $22, $25, $30, and $49 million, all in just the last few years. Awards of these same sizes would be available under the HEALTH Act. Researchers at the Harvard School of Public Health stated

that ''we found no evidence that women or the elderly were disparately impacted by the cap'' on noneconomic damages in California under MICRA.

The HEALTH Act will work. According to the Congressional Budget Office, ''Under the HEALTH Act, premiums from medical malpractice insurance ultimately would be an average of 25 percent to 30 percent below what they would be under current law.''

The American people support the HEALTH Act. The Gallup poll found that 72 percent of those surveyed favor a limit on the amount patients can be awarded for noneconomic damages. The HEALTH Act also respects the judgments of State legislatures because it does not preempt any State law that limits damages, be they higher or lower than the limits provided for in the HEALTH Act.

Finally, this legislation is supported by some 200 organizations, including the American Medical Association, the American Academy of Pediatrics, the American College of Emergency Physicians, the American College of Nurse Practitioners, the American College of Obstetricians and Gynecologists, and the Council of Women's and Infant's Specialty Hospitals.

Mr. Speaker, for the sake of those who need health care, for the sake of health care providers who simply want to practice their professions, please join me and these selfless organizations in supporting the HEALTH Act.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore (Mr. PUTNAM). The Chair understands that the gentleman from Michigan (Mr. CONYERS) will control 40 minutes as the designee of the minority leader, and the gentlewoman from Colorado (Ms. DEGETTE) will control 20 minutes as the designee of the minority leader.

Mr. CONYERS. Yes, sir. That is correct.

(Mr. CONYERS asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Now, the reason that many people might support this bill is that they do not know that inside the bill, if they were asked, are you for legislation that makes it harder to sue drug companies and HMOs, I do not think you would get the same polling results.

Mr. Speaker, I will insert into the RECORD after these remarks letters and reports in opposition to H.R. 5 from the American Bar Association, Public Citizen, and the American Federation of State, County and Municipal Employees and the National Conference of State Legislators.

Mr. Speaker, make no mistake about it. This is a special interest bill before us today. The bill would supersede the law in all States in the Union to cap noneconomic damages, to cap and limit punitive damages, to cap attorneys' fees for poor victims, to shorten the statute of limitations, to eliminate joint and several liability, and to eliminate collateral source.

That is a pretty large menu. But, more amazing, this bill comes before us today without the benefit of a committee hearing, or a committee markup, and under a totally closed rule. How do you like that?

Rather than helping doctors and victims, this measure pads the pockets of insurance companies, health maintenance organizations, and manufacturers and distributors of defective medical products and pharmaceuticals, and it does so at the expense of innocent victims, particularly women, children, the elderly and the poor. We have a bill today for you.

So let us cut the charade and get to the heart of the problem, and the insurance industry is the greatest place to start. This month we found out that the insurance industry has increased premiums by more than 100 percent over the last 5 years, while the claims they have paid out were essentially the same, were flat.

This may have something to do with the fact that the insurance industry, which is exempt from antitrust laws, is not immune from collusion, price fixing, and other anticompetitive problems that they would be subject to if they did not have an antitrust exemption.

It is also clear that a legislative solution, largely focused on limiting victim rights, available under our State tort system will do little other than increase the incidence of medical malpractice, which is already the third leading cause of preventable death in our Nation.

So under the proposal, we here in Congress would be saying to the American people, we do not care if you lose your ability to bear children. We do not care if are you forced to bear excruciating pain for the reminder of your life. We do not care if you are permanently disfigured or crippled. We are going to limit your recovery no matter what.

The proposed new statute of limitations in this bill takes absolutely no account of the fact that many injuries caused by malpractice or faulty drugs take years, sometimes decades, to manifest themselves. Under this proposal a patient who is negligently infected with HIV blood and develops AIDS 6 years later would be forever barred from filing a liability claim.

The so-called periodic plan provisions are really nothing less than a Federal installment plan for the health maintenance organizations. The measure we have here right now would allow insurance companies teetering on the verge of bankruptcy to delay and then completely avoid future financial obligations. And they would have no obligation to pay interest on the amounts that they owe their victims.

And guess who else gets a sweetheart deal under the legislation? The drug companies. The producers of such killer devices like the Dalkon Shield, the Cooper-7 IUD, high-absorbency tampons linked to toxic shock syndrome, and silicone gel implants all would have completely avoided the billions of dollars in damages that they have had to pay had this bill been law.

Do you really want to do this today, my colleagues? It would help insulate Vioxx claims for liability, adding insult to injury to hundreds of thousands of individuals and families who suffered heart attacks or lost their life as a result of this dangerous drug.

I conclude. Nearly 100,000 people die in this country every year from medical malpractice. And at a time when 5 percent of our health care professionals cause 54 percent of all medical malpractice injuries, just a few, a few doctors causing all of this problem, the last thing we need to do is exacerbate this problem while ignoring the true causes of medical malpractice, the crisis that exists in this country today.

My colleagues, I urge you to please do not accept this antipatient, antivictim legislation.

Mr. Speaker, the material I referred to previously is as follows:

NATIONAL CONFERENCE OF STATE LEGISLATURES,
Denver, CO, July 26, 2005.

Re H.R. 5, the Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act of 2005.

Hon. DENNIS HASTERT,
Speaker of the House, House of Representatives, Washington, DC.

Hon. NANCY PELOSI,
Minority Leader, House of Representatives, Washington, DC.

DEAR SPEAKER HASTERT AND REPRESENTATIVE PELOSI: On behalf of the National Conference of State Legislatures, I am writing to express strong, bipartisan opposition to the passage of federal medical malpractice legislation, H.R. 5, the ''Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act of 2005,'' which is scheduled for a vote in the House of Representatives on Wednesday, July 27.

Medical malpractice, product liability and other areas of tort reform are areas of law that have been traditionally and successfully regulated by the states. Since the country's inception, states have addressed the myriad of substantive and regulatory issues regarding licensure, insurance, court procedures, victim compensation, civil liability, medical records and related matters. In the past two decades, all states have explored various aspects of medical malpractice and products liability and chosen various means for remedying identified problems. To date, twenty-nine states have enacted medical malpractice legislation in their 2005 legislative sessions.

NCSL's Medical Malpractice policy explicitly and firmly states that ''American federalism contemplates diversity among the states in establishing rules and respects the ability of the states to act in their own best interests in matters pertaining to civil liability due to negligence.'' That diversity has worked well even under the most trying and challenging circumstances. The adoption of a one-size-fits-all approach to medical malpractice envisioned in H.R. 5 and other related measures would undermine that diversity and disregard factors unique to each particular state.

Federal medical malpractice legislation inappropriately seeks to preempt various areas

of state law. All 50 states have statutes of limitations for medical malpractice suits. All 50 states have rules of civil procedure governing the admissibility of evidence and the use of expert witnesses. More than half of the states have caps on noneconomic damages and limitations on attorney's fees in medical malpractice cases.

This issue was scrutinized again at NCSL's last Fall Forum. Our review included assessing whether circumstances had developed or were so unique that only federal action could provide an adequate and workable remedy. We again examined recent state actions, policy options and experiences. We discussed at length how various proposed or anticipated pieces of federal legislation fared against NCSL's core federalism questions. Those questions included (1) whether preemption is needed to remediate serious conflicts imposing severe burdens on national economic activity; (2) whether preemption is needed to achieve a national objective; and (3) whether the states are unable to correct the problem. The resounding bipartisan conclusion was that federal legislation is unnecessary.

NCSL's opposition extends to any bill or amendment that directly or indirectly preempts any state law governing the awarding of damages by mandatory, uniform amounts or the awarding of attorney's fees. Our opposition also extends to any provision affecting the drafting of pleadings, the introduction of evidence and statutes of limitations. Furthermore, NCSL opposes any federal legislation that would undermine the capacity of aggrieved parties to seek full and fair redress in state courts for physical harm done to them due to the negligence of others.

Thank you for your consideration of our concerns. For additional information, please contact Susan Parnas Frederick or Trina Caudle in NCSL's Washington, D.C. office.

Respectfully,

Senator MICHAEL BALBONI,
New York Senate, Chair,
NCSL Law & Criminal Justice Committee.

PUBLIC CITIZEN
Washington, DC, July 25, 2005.

Re please oppose H.R. 5—''HEALTH Act of 2005.''

DEAR REPRESENTATIVE: H.R. 5, a bill dealing with civil liability for medical malpractice, would shield doctors, HMOs, hospitals, nursing homes, drug makers, and medical device manufacturers from legal and financial responsibility for harms inflicted by their misconduct. At the same time, it would punish victims of medical negligence by making it more difficult for them to recover fair compensation for their injuries. We strongly oppose this bill and urge you to vote against it.

We are enclosing a detailed fact sheet evaluating the major provisions of this misguided legislation, whose more egregious features include:

An arbitrary, non-adjustable $250,000 cap on non-economic damages—the lowest limit imposed by any state that has adopted caps since they first appeared 30 years ago—regardless of the severity of injury, number of malfeasors, or number of defendants involved.

Insulation from liability for nursing homes, HMOs, drug companies, and medical device manufacturers, and protection from punitive damages for products that are FDA approved or generally recognized as safe and effective.

Federalized standards for medical malpractice liability that preempt existing state laws in an arena that is traditionally the purview of state legislatures and courts.

The fact sheet is accompanied by our analysis of medical malpractice judgments over the ''crisis'' period 2000 to 2004, showing that total payments to plaintiffs for malpractice judgments have dropped 37.5 percent, when adjusted for inflation, over the past five years. This demonstrates—contrary to what proponents of denying legal rights to victims contend—that lawsuits are not the engine driving skyrocketing malpractice insurance premiums.

For the reasons stated above, and more fully described in the enclosures, we urge you to protect consumers by voting no on H.R. 5.

Sincerely,

JOAN CLAYBROOK,
President.
FRANK CLEMENTE,
Director, Congress Watch.

AMERICAN BAR ASSOCIATION,
Washington, DC, July 21, 2005.

DEAR REPRESENTATIVE: We understand that in the near future the House is expected to consider H.R. 534, legislation to preempt substantial portions of the state medical liability laws. On behalf of the American Bar Association, I urge you to vote against passage of H.R. 534. The ABA opposes H.R. 534 because it would interfere with the traditional state regulation of medical liability laws and restrict the rights of injured patients to be compensated for their injuries.

For over 200 years, the authority to promulgate medical liability laws has rested with the states. This system, which allows each state autonomy to regulate the resolution of medical liability actions within its borders, is a hallmark of our American justice system. Because of the role they have played, the states are the repositories of experience and expertise in these matters. If enacted, H.R. 534 would pre-empt the rights of the states to continue to administer the medical liability laws.

Currently, states have the opportunity to enact and amend their tort laws, and the system functions well. Congress should not substitute its judgment for the systems that have thoughtfully evolved in each state over time. To do so would limit the ability of a patient who has been injured by medical malpractice to receive the compensation he or she deserves.

The ABA is especially concerned about the provisions in H.R. 534 that would place a cap on pain and suffering awards in states that have no such cap. The ABA opposes caps on pain and suffering awards which ultimately harms those who have been most severely injured. Instead, the courts should make greater use of their powers to set aside verdicts involving pain and suffering awards that are disproportionate to community expectations.

Medical professional liability expenditures account for less than two percent of national health care expenditures. Provisions contained in H.R. 534 to cap non-economic damages would not eliminate the less than two percent of health care costs attributable to medical professional liability since very few people are the subject of such caps. Any savings in the cost of health care would be a small fraction of the less than two percent figure.

There is no question that malpractice premiums have risen. The question is why. There is no evidence that the legal system has caused the spike in rates. And there is no evidence that caps will be effective in reversing the trend. In fact, not even data provided by the AMA in June 2004 supports the idea that placing caps on damages can avert a medical malpractice crisis in a particular state, or that states that fail to enact caps are certain to have a crisis. At that time, eight states that were listed by the AMA as ''in crisis'' (Florida, Massachusetts, Mississippi, Missouri, Nevada, Ohio, Texas, and West Virginia) had already enacted caps on non-economic damage awards. Fourteen other states that had such caps were, according to the AMA, ''showing problem signs,'' and just six of the states that had enacted caps were considered by the AMA to not be ''in crisis'' or ''showing problem signs.'' This follows a June 2003 report by Weiss Ratings, Inc., which found that caps on non-economic damages have failed to prevent sharp increases in medical malpractice insurance premiums, even though insurers enjoyed a slowdown in their payouts.

A July 2003 General Accounting Office study of the causes of malpractice insurance increases found that, while malpractice awards have contributed to increased premiums, ''a lack of comprehensive data at the national and state levels on insurers' medical malpractice claims and the associated losses prevented us from fully analyzing the composition and causes of those losses.'' In fact, relevant studies have since been released that analyze and challenge the alleged link between the tort liability system and malpractice premiums. Two notable studies suggest that the issue is much more complex.

One such study, in Texas, found no evidence to support a link between rising malpractice premiums in Texas and the frequency of claims and size of payouts, despite Texas voters having passed a constitutional amendment in 2003 that sharply restricted non-economic damages in medical malpractice lawsuits. The Texas study was developed by researchers at three major universities. An examination of the comprehensive database of closed malpractice claims maintained by the Texas Department of Insurance found that the number of paid malpractice claims (adjusted for population growth) was roughly constant between 1991 and 2002, the frequency of such claims actually declined, the frequency of individual jury awards in malpractice cases declined, and the percentage of claimant verdicts showed no upward trend.

Similarly, a study by the Kaiser Family Foundation showed that capping damages in medical malpractice cases does not reduce doctors' exposure to malpractice claims. The Kaiser Family Foundation report on medical malpractice was released on May 27, 2005. The report provides trend data for malpractice claims. It shows that the total dollars in physician medical malpractice claim payments remained relatively constant during the period from 1991 to 2003 (13,687 in 1991, compared with 15,287 in 2003). The average number of malpractice claims per physician declined relatively steadily over the period.

The American Bar Association analyzed the Kaiser Family Foundation report's new state malpractice data (available at http://www.statehealthfacts.org/r/malpractice.cfm) on the number of paid claims per 1,000 physicians in each state in 2003, the latest year for which data is available. The chart attached as Appendix ''A'' lists the number of claims per 1,000 active, non-federal physicians and shows whether the state had caps on non-economic or total damage caps in 2003. This data shows the number of paid claims per 1,000 active non-federal physicians is not related to whether a state has caps on damages or not. For example, the average claims for 1,000 physicians ranged from a high of 30.5 in Indiana, which had damage caps in 2003, to a low of 5 in Alabama, which did not have caps on non-economic or total damage caps in 2003.

It is obvious that those affected by caps on damages are the patients who have been most severely injured by the negligence of others. No one has stated that their pain and

suffering injuries are not real or severe. These patients should not be told that, due to an arbitrary limit, they will be deprived of the compensation they need to carry on. Yet H.R. 534, if enacted, would result in the most seriously injured persons who are most in need of recompense receiving less than adequate compensation.

On July 14, 2005, the Wisconsin Supreme Court, in a quite lengthy and well-thought-out opinion, found caps in malpractice cases to be unconstitutional. Ferdon v. Wisconsin Patients Compensation Fund, et al., Case No. 2003AP988. As part of its analysis of the issues, the Court noted that the cap put in place ($350,000) was apparently based on the assumption that the cap would help to limit the increasing cost and possible diminishing availability of health care, although the immediate objective was apparently to ensure the availability of sufficient liability insurance at a reasonable cost. Slip op. at 45. The Court found no rational relationship between ''the classification of victims in the $350,000 cap on non-economic damages'' and the equally desirous objective of compensating victims fairly, both those who suffer non-economic damages above and below the cap. Slip op. at p. 50. The Court found that the cap is ''unreasonable and unnecessary because it is not rationally related to the legislative objective of lowering medical malpractice insurance premiums'' and it creates an undue hardship on those whose non-economic damages exceed the cap and is thus arbitrary. Slip op. at pp. 49, 53. The Court came to its conclusion after reviewing an analysis of studies done within the state by the Wisconsin Commissioner of Insurance and of studies outside the state. Slip op. at pp. 59–66.

We urge you to vote no on H.R. 534.

Sincerely,

MILES J. ZAREMSKI,
Chair, ABA Standing Committee on Medical Professional Liability.

MEDICAL MALPRACTICE—IS MAG MUTUAL GOUGING ITS DOCTORS?

Georgia's largest medical malpractice writer took in nearly triple what it paid out.

This gain is in addition to the $17,312,654 gain made by investing its doctors' money.

Insurance reform—not tort reform—is needed to reduce medical malpractice premiums.

Source: taken directly from the company's annual statement for the year ending December 31, 2004. All data is from the Five Year Historical Data Page: information on Net Paid Losses is line 61, Net Premiums Written is line 12, and Net Investment Gain is line 14. Dollar figure for investment gain represents total investment multiplied by percentage of premiums written of total for the state. Statement available at: http:naic.org/cis. MAG Mutual Insurance Company is the largest insurer in Georgia with 42.3% of the market (AM Best).

Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield 6½ minutes to the gentleman from Georgia (Mr. GINGREY) the primary author of the bill itself.

Mr. GINGREY. Mr. Speaker, I thank the gentleman from Texas (Mr. SMITH) for yielding me the time.

With all due respect to the distinguished ranking member, let me say that in response to his comments, this is a special interest bill. That is right. It is a special interest bill. It is a special interest bill for the American consumer of health care, for our patients. That is where the special interest is; not, Mr. Speaker, the insurance industry, not drug companies or manufacturers of medical devices.

The insurance industry, of course, offers a broad range of products. It could be health insurance. It could be automobile insurance. It could be homeowners insurance. It could be an umbrella policy for general liability. And, yes, of course there is a product line called medical liability insurance.

But let me tell you what is happening to the insurance industry in regard to that piece of their business. In my home State of Georgia, 3 years ago we had 20 companies that offered that line of business. Today we have one. We have gone from 20 to 1, and that is a mutual company.

□ 1345

If these insurance companies were making out like bandits, as the other side of the aisle and the opposition to this commonsense bill are suggesting, then they would not be quitting the business in droves. They would be continuing to stay in the business and raising those premiums and making these tremendous profits.

I do not know, Mr. Speaker, what is happening with the industry of insurance in regard to other product lines. The gentleman may be right on that. But in regard to this line of business, I can tell you they are losing money even when they have good returns on their investments, as did Mag Mutual in Georgia several years ago. In fact, the return on their very conservative investments, they are very restricted by the insurance commissioner in that very conservative portfolio of investments, returned them $7 million; but they still are losing money because of these outrageous claims and the expense of defending so many frivolous lawsuits.

In regard, Mr. Speaker, to the drug companies and the manufacturers of medical devices that the distinguished ranking member mentioned, this bill would only relieve them of punitive damages, that is all, punitive damages, if it is shown that they did deliberately market a drug or a device that they knew was harmful to a patient and they deliberately withheld that information from the FDA. It does not relieve them of liability for being named in a lawsuit. It is only the punitive damages.

If they are guilty of something like that, of withholding information deliberately, we went through this with the tobacco industry in regard to lung cancer, the punitive damages can be in the hundreds of millions and, maybe if it is a big Fortune 500 company, billions of dollars.

So this is a distraction from the real problem. And the real problem, Mr. Speaker, is that we have an unlevel playing field. That is all it is. This bill, H.R. 5, the HEALTH Act of 2005, is not going to take away anybody's right to sue if they have been injured and to seek economic damages and payments for medical care for the rest of their lives.

The gentleman from Texas explained to us that many of these cases in California, a State that since 1979 has had a cap on noneconomic so-called ''pain and suffering'' at $250,000, these cases that he just talked about, $10 million, $20 million, $30 million worth of economic awards, people are not being denied access to that care, Mr. Speaker. This is only to balance the playing field so that we do not have this situation in this country where we are supposed to have the greatest health care in the world, and yet our specialists are dropping out. They are not delivering babies. They are not getting involved in high-risk pregnancies. They are not manning emergency rooms. They are not doing newer surgery.

Because of all the defensive practice of medicine, every specialist practices in two areas: his or her specialty and also the specialty of defensive medicine, and it is driving up the cost of health care and people cannot afford to get health insurance. That is all we are talking about here, Mr. Speaker, of leveling the playing field. It is not taking away anybody's right to sue. It is not denigrating or bashing the legal profession.

Those attorneys who specialize in personal injury, most of them do a great job representing their clients well. My brother is an attorney. My daughter is an attorney. We are not here to bash the legal profession. But we just want to ask them to give us an opportunity to level this playing field to make it fair for everyone. And so this idea that the other side suggests that we are taking away anybody's rights is absolutely not true, Mr. Speaker.

Let me say some of the things that this bill does do besides limiting noneconomic to $250,000. What it does, Mr. Speaker, is something called ''collateral source disclosure.'' Current law did not allow a jury to know that a plaintiff in a malpractice case has health insurance or has a disability policy. So when they are calculating all of these economic losses and loss of wages, it is not known by the jury that maybe that disability policy gives them 80 percent of their earnings or their income for their whole life or that they have health insurance.

The other thing, and I will conclude on this, Mr. Speaker, the other things this bill does is it stops this issue of joint and several liability where, when multiple defendants are named, the person, the doctor who has the deepest pockets, who may have had very little to do, if anything to do, maybe just walked down the corridor on a Saturday and said hello to the patient, but they happened to have the most insurance and the deepest pockets so they pay all of the claims.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the gentlewoman from New York (Mrs. KELLY), a subcommittee Chair of the Committee on Financial Services.

Mrs. KELLY. Mr. Speaker, I rise today in support of H.R. 5. Listen to why. For many years, the world has come to New York for medical care. But between 1998 and 2002, 70 percent of New York's neurosurgeons, 60 percent of the OB-GYNs in New York, 60 percent of New York's orthopedic surgeons, and 60 percent of the general surgeons in New York were sued.

Mr. Speaker, it is impossible that all of these physicians were bad doctors. We can all agree that there are some physicians that may be better than others, but it would be difficult to come to the consensus that more than half of the physicians in several vital practice areas have performed this poorly.

This is a problem. In New York, the average jury award increased from $1.7 million in 1994 to $6 million in 1999, which was an increase of 350 percent. New York physicians are now paying 34 to 50 percent more in 2005 for the same insurance coverage they had in 2002. This is in part due to an across-the-board average rate increase of 7 percent for the 2004–2005 policy year. In 2001, six of the top eight medical malpractice awards in the United States came from New York courts. In 2002, 7 of the top 10 jury verdicts in medical negligence cases were from New York courts. And in 2003, it was four of the top six.

The cost is not just to the doctors. It is a cost we all ultimately share. There are steps this Congress can take in solving the problem. The HEALTH Act is a step that is both reasonable and fair. It is reasonable because it calls for a cap on unquantifiable damages. State laws that otherwise cap damages at specific amounts, even at higher amounts than those provided in the HEALTH Act, would remain in effect. The act is fair when it allows for the full recovery of economic damages. In other words, when damages can be quantified, they are unlimited in the HEALTH Act.

The HEALTH Act is going to help solve the national crisis we are seeing in medical malpractice. Without this legislation, doctors will not just leave the area where they practice; they will leave the profession. I urge support of the HEALTH Act.

Today, I rise in support of H.R. 5—The HEALTH Act of 2005.

Between 1998 and 2002, the largest insurer of physicians in New York state had: 70 percent of its neurosurgeons sued, 60 percent of OB–GYNs were sued, 60 percent of orthopedic surgeons were sued, and 60 percent of general surgeons were sued.

Mr. Speaker, it is impossible that all of these physicians are bad doctors.

We can all agree that there are some physicians who may be better than others—but it would be difficult to come to the consensus that more than 50 percent of physicians in several vital practice areas have performed this poorly.

There is a problem.

Just in New York, the average jury award increased from $1.7 million in 1994 to $6 million in 1999—an increase of 350 percent.

New York physicians are now paying 34–50 percent more in 2005 for the same insurance coverage they had in 2002. This is in part due to an across the board average increase of 7 percent rate increase for the 2004–05 policy year.

In 2001, 6 of the top 8 medical malpractice awards came from New York courts.

In 2002, 7 of the top 10 jury verdicts in medical negligence cases were from New York courts. And in 2003, it was 4 of the top 6.

But, there are also steps that this Congress can take towards solving this problem.

We have learned today that the HEALTH Act is a step that is both reasonable and fair.

It's reasonable because it calls for a cap only on unquantifiable damages. State laws that otherwise cap damages at specific amounts, even at higher amounts than those provided in the HEALTH Act, would remain in effect under the HEALTH Act.

The Act is fair where it allows for full recovery of economic damages. In other words, when damages can be quantified, they are unlimited under the HEALTH Act.

The HEALTH Act will help solve the national crisis that we are seeing in medical malpractice liability insurance.

Without this legislation doctors will not just leave the area where they practice, they will leave the profession. Patients, who are the real victims in this crisis, will be left to suffer and die because there is no one to provide the care.

As a member of the Medical Malpractice Crisis Task Force, I ask my colleagues to recognize that there is a problem, and this legislation is one great step in the direction towards solving that problem.

Please support the HEALTH Act of 2005.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would just let the gentlewoman from New York (Mrs. KELLY) and the gentleman from Georgia (Mr. GINGREY) know about the General Accounting Office report that found there is no evidence that caps on damages have reduced losses or helped consumers. They found, instead, that the contention that premiums are rising because there is a surge in jury awards is a myth and that while premiums have increased claims payments of insurance companies have remained essentially flat.

Mr. Speaker, I yield 3 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE), a member of the Committee on the Judiciary.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the distinguished ranking member, and I thank him for his continued leadership on this issue.

It looks as if this is deja vu. We have been at this table for a number of years, and I am delighted that the gentleman from Georgia (Mr. GINGREY) cleared it up. When you have a daughter that is a lawyer, I know you have a great affection for lawyers. And I appreciate the fact that he recognizes that as physicians care for the sick, lawyers have to keep the doors of justice open. For that reason, if anyone gets up on the floor of the House and cites the number of lawsuits, 60 percent of the doctors being sued, that has nothing to do with those cases that prevailed.

Most Americans understand the distinction between frivolous lawsuits and so does the court system. But, really, what this bill is premised on is absolutely false, and Americans should know that because I have heard from so many with so many tragic incidents, amputated legs, individuals at hospitals who have died not because of what they went into the hospital for but because they caught an infection in the hospital.

But as it relates to insurance and low rates, let me cite a study that is the prevailing trend in America. A new study by the former insurance commissioner of Missouri, Jay Angoff, shows that insurance companies are gouging doctors. The study shows that insurance premiums are skyrocketing, while payouts have remained flat or in some cases even decreased. There is no evidence that we are making a dent with this medical malpractice oppressive legislation—oppressive legislation, in insurance rates.

In particular, it is a shame that when you have a tragedy in your family, someone who lost their life because of negligence, and there are three defendants, the general trend is that you go against the defendant with the deepest pockets. That defendant who is well-situated will go against the others who contributed to that terrible tragedy.

Now, this bill locks the door, closes out the bus driver, the teacher, the nurse's aid, the oil refinery worker, absolutely closes them out. It also denies children who are innocent, under 18, enhanced economic damages. That was my amendment, to take away that cap of 250,000, to take away that cap of 250,000 on noneconomic damages because we do not know long range with all these tables about what someone will be needing the rest of their life after they have been maimed, after they have been disabled, or after they have died and what their family will need.

This is a tragic day because first of all this bill came to the floor with no committee work, no rules work of sorts, all amendments died; and we have failed. Herman Cole of Connecticut we have failed, whose wife slipped into a coma when in a procedure for a tubal ligation. Her blood pressure dropped dangerously and damagingly low and the doctor and anesthesiologist ignored the warning signs. What is he supposed to do? What is he supposed to do about his wife, Sadie, who is now in a vegetative state?

This is a bad bill. I hope my colleagues will have enough courage to vote for those who have been injured and vote against special interest.

Mr. Speaker, I rise in opposition to H.R. 5, the "Medical Malpractice Bill." Not only is the overall bill bad, but the process in which the majority followed was flawed as well. This bill came straight to the floor and bypassed both committees of jurisdiction. This begs the question, "what are the proponents of the bill so

afraid of that they need to rush to the floor. Both the House Judiciary and Energy and Commerce Committees have been bypassed and this should not have been done on such an important piece of legislation. Given the new information that is available about the insurance industry gouging doctors, shouldn't the committees at least have had the opportunity to review the new information?

Turning to the bill itself, it should be noted that this bill applies across the board to all cases, not just frivolous cases. It applies no matter how much merit a case has, or the extent of the misconduct of the hospital, doctor or drug company. The bill applies regardless of the severity of the injury. Those most hurt by the bill are the most catastrophically injured. In addition, it undermines our constitutional right to trial by jury. The bill limits the power and authority of jurors to decide cases based on the facts presented to them. Washington politicians should not be making these decisions—juries should.

This legislation also reduces the accountability of hospitals, nursing homes, HMOs and drug companies. This will hurt patient safety. Patient safety must come first. We should be cracking down on the small number of doctors responsible for most of the malpractice. This will reduce both incidents of malpractice and lawsuits. Doctors and hospitals must be required to tell their patients or the patients' families when they know they have made a medical error, rather than allowing them to keep their mistakes secret.

This bill completely ignores the insurance industry's major role in the high price of medical malpractice insurance premiums. We must protect the legal system and make it accessible for everyone seeking justice, accountability and adequate compensation for devastating injuries or death.

In discussing the flaws of this bill, I would be remiss if I did not take a moment to mention some of the families who have survived medical malpractice.

Kim and Ryan Bliss of Florida, whose 8½-month-old daughter died when the doctor inserted an adult IV in her jugular and caused an air bubble to go directly into her bloodstream.

Herman Cole of Connecticut, whose wife slipped into a coma when, during a procedure for tubal ligation, her blood pressure dropped dangerously and damagingly low and the doctor and anesthesiologist ignored the warning signs. Herman's wife Sadie has been in a vegetative state ever since.

Diane Meyer of Nevada, who was diagnosed with kidney stones and was sent home to pass them, despite the fact that one was too large and was poisoning her body from within. Doctors later discovered this but failed to call Diane, who then slipped into a coma and later had to have both legs amputated below the knee.

Mark Unger of Oregon, whose mother was diagnosed with Burkitt's lymphoma in early 2001 and was injected with 1000 times more methotrexate than the appropriate dosage by a doctor who did not follow protocol. Mark's mother passed away in April 2001.

John McCormack of Massachusetts, whose 13-month-old daughter died while awaiting surgery to repair a malfunctioning shunt in her skull, while the attending physician slept through repeated pages because his beeper was set to vibrate and didn't wake him, leaving two neurosurgery residents in charge of her care.

Deborah Gillham of Maryland, who suffered injury when, during a routine laparoscopic procedure to look for a cyst on her left ovary, her physician punctured her colon.

Before closing, let me take a moment to speak on two amendments I would have offered had the rule not been so restrictive. My first amendment would have eliminated one of the many egregious provisions in the bill. In essence, it would eliminate the one-size-fits-all limit on awards for non-economic loss (i.e. pain and suffering damages) of $250,000. Typically, such damages exceed $250,000 only in cases involving catastrophic injuries such as deafness, blindness, loss of limb or organ, paraplegia, severe brain damage or loss of reproductive capacity. Limiting patients' rights to sue for medical injuries would have virtually no impact on the affordability of malpractice coverage. States with little or no tort law restrictions experience the same insurance rates as states that have enacted tort restrictions.

My second amendment also focused on the $250,000 cap for non-economic loss (i.e. pain and suffering damages). This amendment would have carved out an exception for plaintiffs or a person(s) representing a minor. In summary, the $250,000 cap for non-economic loss (i.e. and suffering damages) would not apply with respect to an injury to an individual who is under 18 years of age. Minors are more vulnerable in regards to injuries they suffer and the consequences of those injuries. Furthermore, the impacts of an injury suffered by a minor due to malpractice will be felt for a much longer time period than for an adult. This is especially true of children who suffer injuries at birth due to malpractice. These children will more likely have to suffer the consequences of these injuries for the rest of their lives.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. GREEN), a member of Committee on the Judiciary and an expert on this subject.

Mr. GREEN of Wisconsin. Mr. Speaker, 10 years ago, like so many States, Wisconsin was facing a medical liability crisis, not just because medical liability premiums were soaring, not just because insurance carriers were discontinuing the sale of medical liability insurance, but because too many physicians felt forced to leave their practice, leave their specialty, or leave the State for a more affordable State.

But 10 years ago in Wisconsin, we figured out a reasonable answer. I led the fight to create a new medical liability system where injured parties receive every single dollar of economic damages to which they are entitled. But where there is a modest cap on noneconomic damages, things like pain and suffering, loss of society, loss of companionship, you know what? It worked.

We hear a lot about studies here. We know as a fact in Wisconsin it worked. In a short period of time, Wisconsin became one of only six States not to have a medical liability crisis. As a result, as the State medical society reported, physicians, especially those in high-risk specialties, actually moved into our State from States like Ohio and Pennsylvania and Florida and Illinois. It worked.

But, sadly, Mr. Speaker, my State recently lost its way. Even though by any reasonable measure our reforms work, the Wisconsin courts struck them down. We can only hope that Wisconsin enacts a new medical liability reform act. But until then, we should pass the HEALTH Act. It will not only help Wisconsin doctors and patients but those in every State facing a medical liability crisis.

This bill is State-friendly. It does not preempt State reforms. If a State like Wisconsin has a cap on noneconomic damages, whether that cap is higher or lower, that cap will take effect. More important, it is doctor-friendly. It is patient-friendly. It will help us get a handle on at least a small portion of our health care costs. It will encourage doctors to continue to practice in vital specialties, and it will attack defensive medicine. I urge support for the HEALTH Act.

□ 1400

Mr. CONYERS. Mr. Speaker, I am pleased to yield 3½ minutes to the gentleman from Virginia (Mr. SCOTT), a distinguished member of the Committee on Judiciary.

Mr. SCOTT of Virginia. Mr. Speaker, I thank the gentleman for yielding me this time.

One of the problems we are going to have during this debate is the fact we are here under a closed rule. We will not have the ability to highlight or fix the shortcomings of the bill, so we will go back and forth on sound bites. We have already heard that this has been described as a proconsumer bill, notwithstanding the fact that I am not aware of any recognized consumer group that is supporting it.

Mr. Speaker, we say we have lost doctors because of the malpractice crisis, but we did not say anything about the reimbursement rates for some specialties, who are not getting paid as much, nor is there a suggestion that tort reform has actually produced more doctors. Because we have the same list of ineffectual initiatives that we have had in other tort reform bills, reducing victims' rights without doing anything with malpractice rates, we will try to discuss the provisions of the bill.

First, the rule rejected the alternative offered by the gentleman from Michigan (Mr. CONYERS) and the gentleman from Michigan (Mr. DINGELL) that would have actually reduced malpractice costs and helped underserved areas without going overboard in helping and relieving from liability the HMOs and pharmaceutical companies, which means that the doctors will have to pay more of the responsibility for malpractice. We cannot consider that.

But let us come to the specifics. This legislation preempts State law. The National Conference of State Legislators has already considered this bill, and they have rejected it. Their opinion, the National Conference of State

Legislators, have suggested this bill will make matters worse.

We have caps on damages, not on damages for wages and things like that, but for elderly, for children, for those who are without lost wages, they will be hurt. Incredibly, the cap on damages has not been shown to do anything about malpractice premiums. Those States with caps are paying the same malpractice premiums as those without caps.

We have heard about this fair share provision that says everybody just pays their fair share or more. Mr. Speaker, what we are talking about here is a group with insurance, and which insurance company will pay. Some States have dealt with this and said if a doctor is at least 60 percent responsible, he can be held fully responsible, but for others, maybe you can have a fair share. This says everybody involved. In other words, you have to go after each and every physician, with a separate case against each and every one for every 1 or 2 percent responsibility they have. We have had the problem of having to sue so many doctors. Well, this requires you to sue each and every doctor.

We have heard about the collateral source rule; that if you have insurance, and listen up small businesses, if you are providing health care for your employees, and you have an employee who gets into a malpractice-induced coma, and somebody has to pay it, and your employee has gotten a recovery from the malpractice insurance, if the small business is paying the responsibility, the physician, the guilty party, will get credit for all of your health insurance, and you are going to have to continue to pay under that health insurance.

We limit attorneys' fees in this legislation, which will do nothing to reduce malpractice premiums. We have different statutes of limitations, which will confuse people, and lawyers will miss the filing deadlines because of all this confusion.

We need insurance reform which will reduce premiums, not just attack victims. We need worthwhile legislation that will reduce the premiums. This will not do it. We need to defeat the bill.

Mr. SMITH of Texas. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, opponents of reform claim that the current crisis is driven by a small number of so-called bad doctors. But as Yale Medicine Professor Dr. Robert Auerbach has explained, ''The American Trial Lawyers Association has perpetrated myths on the American public, including the myth that a very small proportion of all physicians are responsible for the majority of claims. This is a sort of statistical magic, because, unfortunately, a small proportion of the physicians in high-risk specialties, such as obstetrics and gynecology and neurosurgery, are responsible for a disproportionate number of the claims.''

Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. BURTON), former chairman of the Committee on Government Reform.

Mr. BURTON of Indiana. Mr. Speaker, I thank the gentleman for yielding me this time.

First of all, I am for medical malpractice reform. I think it is extremely important we address this issue. However, I have a real problem with this bill. In section 7, item (c), under punitive damages, it in effect will protect the pharmaceutical industry against class action lawsuits by parents who have had their children damaged by mercury in vaccines that causes neurological problems, such as autism.

We had hearings on this for about 6 years, and we had scientists from all over the world, and the mercury in vaccines is a contributing factor to autism and other neurological disorders in children. It is in adult vaccines as well.

Now, I will not go into specifics of the language in here, but according to attorneys I have talked to in the last couple of days, it protects the pharmaceutical companies against class action lawsuits. I would not have a problem with that if there was another avenue for these parents to go to get money.

We created the Vaccine Injury Compensation Fund to take care of that. It was supposed to be nonadversarial. Unfortunately, parents have gotten nothing out of the Vaccine Injury Compensation Fund, even though there is $3 billion there. So there is only one avenue they have, and this legislation, the way I read it, blocks that.

The gentleman from Florida (Mr. WELDON) has worked with me on this, and I think he shares some of the same concerns that I have, and he is welcome to say a word or two if he wants to, but what I want to ask of the manager of the bill, would the gentleman work with me to try to clean this up so that that problem does not exist anymore; so they at least have an avenue to deal with this?

Mr. SMITH of Texas. Mr. Speaker, will the gentleman yield?

Mr. BURTON of Indiana. I yield to the gentleman from Texas.

Mr. SMITH of Texas. Mr. Speaker, the gentleman and I have spoken about this before. I happen to think that the problem lies with current law and not with this particular piece of legislation. But in any case, I share the gentleman's concerns and will work with him to address those concerns as this bill progresses to conference committee.

Mr. BURTON of Indiana. Mr. Speaker, I thank the gentleman for his assurances.

Mr. WELDON of Florida. Mr. Speaker, will the gentleman yield?

Mr. BURTON of Indiana. I yield to the gentleman from Florida.

Mr. WELDON of Florida. Mr. Speaker, I appreciate the gentleman's yielding to me, and let me just add to what the gentleman was saying. There is a lot of active research on this, and the research is not conclusive, so we do not need to act right now.

Mr. BURTON of Indiana. Mr. Speaker, I thank my colleague.

Mr. Speaker, I wish to submit for the RECORD a Dear Colleague letter which I sent to Members regarding this legislation:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, July 27, 2005.

THE VACCINE LIABILITY WAIVER IN THE MEDICAL MALPRACTICE LEGISLATION WILL HURT AUTISTIC CHILDREN AND THEIR FAMILIES

DEAR COLLEAGUE: As we debate medical malpractice this week, I want to bring to your attention a provision in the bill that would waive vaccine manufacturer liability. Section 7(c) of the legislation states that no punitive damages may be awarded against a manufacturer or distributor of a medical product based on a claim that the product caused harm, unless the company violated FDA regulations. Essentially, this means as long as the vaccine goes through the regular FDA approval process, the company is shielded from liability.

In the 1980's, roughly 1 in 10,000 American children were diagnosed with some kind of autism spectrum disorder. Today, that number has risen to 1 in 166 with the number rising alarmingly as children have been required to get more and more shots containing the mercury-based preservative thimerosal During my tenure as Chairman of the House Committee on Government Reform, and as Chairman of the Subcommittee on Human Rights and Wellness, I chaired numerous hearings examining the alarming increase in autism in this country over the last several decades. We also conducted a four-year long investigation into the facts and theories surrounding the connection between mercury in vaccines (thimerosal) and autism and other childhood and adult neurodevelopment disorders, such as Alzheimer's. Credible scientific evidence points to a connection between thimerosal, autism and other neurodevelopmental disorders.

Many of the families of thimerosal's victims did not know about the National Vaccine Injury Compensation Program—the no-fault compensation system that provided for quick and fair recovery for those who experience injuries related to a vaccination which Congress established in 1986—and were unable to file claims within the 3 year Statute of Limitations. Thousands of families were left out in the cold, unable to get into the program. They are out there with nothing. Their houses are being sold, they are going bankrupt, they are spending all their money and leading desperate lives trying to help their kids, and they cannot do it. Therefore, the only recourse they had was to file a class action lawsuit.

As the number of thimerosal injured children grew, concerns over the potential financial impact of these class action lawsuits, and the growing scientific research demonstrating a connection between thimerosal and autism, and the subsequent effect on the pharmaceutical industry's bottom line prompted supporters of the Pharmaceutical industry to slip sections 1714 through 1717 into the Homeland Security Act of 2002 effectively killing all thimerosal class action lawsuits. In the 11th hour without any debate, without anybody knowing about it until it was too late, these lawsuits were stopped in their tracks.

Fortunately, the language was ultimately removed after being discovered by several deeply concerned Members of both the House and Senate. Section 7(c) of the Help Efficient, Accessible, Low-cost, Timely

Healthcare (HEALTH) Act of 2005 (H.R. 5) is arguably a thinly veiled attempt to resurrect the ill-conceived Homeland Security Act provisions of 2002, and although Section 10 of the bill exempts vaccine cases before the National Vaccine Injury Compensation Program, if a vaccine claimant exercises his or her right to opt-out of VICA and bring a lawsuit in state or Federal court or has no recourse but to file a lawsuit because of the Statute of Limitations, Section 7(c) of H.R. 5 will fully apply to limit that civil claimant's rights.

Congress should strike this provision from the medical malpractice legislation. We serve the interests of the American people, not the pharmaceutical industry.

Sincerely,

DAN BURTON,
Member of Congress.

Mr. CONYERS. Mr. Speaker, I am pleased now to yield 3 minutes to the gentleman from New York (Mr. NADLER), a distinguished member of the Committee on the Judiciary.

Mr. NADLER. Mr. Speaker, the Republicans have demonstrated that they either do not have a plan to fix the problem of the uninsured, or they simply do not care. Instead, they drag out the same tired giveaways to insurance companies year after year while trampling on the rights of consumers and patients.

This bill is a perfect example. It does nothing to address the real causes of rising malpractice rates, but instead protects insurance companies from their own poor business practices. It protects the pharmaceutical companies. It protects the manufacturers of medical devices. It protects everyone except the victims of medical malpractice.

We are told the bill is necessary to drive down insurance rates because juries are awarding too much money to plaintiffs. But the fact is lawsuits account for less than 2 percent of health care costs, as they always have, according to CBO. The average jury award has hardly increased at all in the last decade. In the last year, claims payments have decreased, gone down, by 9 percent, according to HHS, yet insurance premiums continue to rise.

So where is the crisis? Not in huge runaway juries and not in exorbitant awards. Yet we have here a spectacular assault on the rights of consumers and patients. A cap on noneconomic damages of $250,000 might have been reasonable in 1975 when it was first imposed in California, but today, and with increasing inflation, it is worth less and less.

When we considered this bill in committee last year, I offered amendments to raise the cap to $1.5 million, or at least to index it to inflation so it does not get inflated down to worthlessness. Party line vote: Cannot do that.

But the biggest weakness of this bill is that it will not work. Anyone who thinks insurance rates will go down as a result of this bill is being sold a bill of goods. This bill merely hopes the insurance executives will, out of the goodness of their hearts, reduce the rates they charge doctors. But there is no mechanism to guarantee this. Instead, the bill will simply lead to higher bottom lines for the insurance companies and protect the careless insurance companies and the careless manufacturers.

Every attempt by Democrats to mandate that savings be passed along to doctors in the form of lower rates was voted down by the Republicans. Mr. Speaker, we should not be misled by this bill's supporters. Do not believe for a second that insurance rates will go down as a result of this bill. This bill should be seen for what it is: a gift from the Republican majority to the big insurance companies at the cost of patients' rights, and deluding the doctors and the health care practitioners who are being led down the garden path.

If it were meant to help them, why do the Republicans refuse to put into this bill a provision that mandates that the savings that this bill will supposedly accomplish, at least some of those savings, are passed along to doctors in the form of lower malpractice rates? It will not happen.

The true thing we should do is to crack down on the 1 or 2 percent of doctors who cause 90 percent of the insurance claims who should not be practicing medicine, and better regulate the insurance companies. That is what we should do to solve this problem. Instead, we have this feel-good bill that will injure already injured patients and will do nothing for the doctors.

Mr. SMITH of Texas. Mr. Speaker, I yield 30 seconds to the gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. Mr. Speaker, the last two commentators in opposition to this bill talked about the biggest problem with this bill being the lack of consumer protection.

I am going to tell my colleagues that the biggest consumer protection in this bill is limitation of contingency lawyer fees. When a person is injured severely, they ought to walk out of that courtroom at the end of the day with the preponderance, the largest portion, of that judgment in their pocket and not in the pocket of the lawyers. And that is consumer protection at its very best.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. KELLER), a valued member of the Committee on the Judiciary.

Mr. KELLER. Mr. Speaker, I thank the gentleman for yielding me this time.

I support common-sense medical liability reform because it will increase patients' access to lifesaving health care, and it will save taxpayers over $30 billion a year in unnecessary defensive medical tests.

Let me give a real-life example. The Orlando Regional Medical Center is a large hospital located in the heart of my district in Orlando, Florida. It is home to the only Level I Trauma Center in central Florida which specializes in treating patients with severe brain and spine injuries.

Unfortunately, this important trauma center is in danger of closing because we only have a handful of neurosurgeons left in Orlando, and they cannot afford to pay the medical liability insurance premiums of over $250,000 a year. As a result of this liability crisis, this top-rated trauma center had no choice but to turn away over 1,000 patients last year.

Now, what happens when neurosurgeons are not available? We do not have to guess. I personally met with Mrs. Leanne Dyess, who testified before the Committee on the Judiciary. Her husband, Tony Dyess, suffered a very serious head injury in a car accident. The family had excellent medical insurance. What they did not have a was a neurosurgeon. All the neurosurgeons in her area had left town because they could not afford the liability insurance. As a result, it took 6 hours to transport Mr. Dyess to a different location, but it was too late. He needed to be treated within the first hour. Mr. Dyess is now permanently brain damaged. He is unable to communicate, work, or to provide for his family.

Mr. Speaker, some opponents of this legislation say it is not Congress' problem, let us just leave it up to the States. Well, it is our problem, because the U.S. Department of Health and Human Services estimates that this legislation will save taxpayers over $30 billion a year by avoiding unnecessary medical tests which are ordered by doctors under Medicare and Medicaid because of defensive medicine.

It does not have to be that way. Neurosurgeons in California, where they have a $250,000 cap, pay an average of only $59,000 a year in liability insurance, not the $250,000 they pay in Orlando, Florida. Let us bring common sense back to our health care system and give patients access to trauma centers and neurosurgeons.

Mr. Speaker, I urge my colleagues to vote yes.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. WEINER), a valuable member of the Committee on the Judiciary.

REQUEST TO AMEND H.R. 5

Mr. WEINER. Mr. Speaker, I move by unanimous request that we amend H.R. 5 to include a cap on premium increases for the duration of the bill.

The SPEAKER pro tempore (Mr. LATHAM). The Chair cannot entertain that request at this time.

PARLIAMENTARY INQUIRIES

Mr. WEINER. Mr. Speaker, parliamentary inquiry. I am making a unanimous consent request.

The SPEAKER pro tempore. Would the gentleman restate his request?

Mr. WEINER. Certainly. My unanimous consent request is that H.R. 5 be amended by unanimous consent, the consent here of both the majority and the minority, that premium increases, health insurance premium increases, be limited to zero for the duration of the period of this bill.

The SPEAKER pro tempore. The Chair will have to see the gentleman's amendment to see if it meets the Speaker's guidelines for recognition.

Mr. FRANK of Massachusetts. Parliamentary inquiry, Mr. Speaker.

The SPEAKER pro tempore. The gentleman will state his inquiry.

Mr. FRANK of Massachusetts. Mr. Speaker, I would ask to what guidelines the gentleman refers. I know there have been guidelines about bringing a bill up at all, but I am not aware of any guidelines that govern the deliberations of a bill once it has been brought forward. Could the Speaker enlighten us as to what guidelines he is discussing?

I am not aware of guidelines that deal with the bill once it is before us. I understand they have dealt with whether or not you consider the bill.

□ 1415

The SPEAKER pro tempore (Mr. LATHAM). It would be inappropriate for the chair to entertain a unanimous consent request for the consideration of a nongermane amendment absent conformity with the Speaker's guidelines.

Mr. FRANK of Massachusetts. Mr. Speaker, further parliamentary inquiry. Would someone point to the rule of the House? First, Mr. Speaker, I must say ''inappropriate'' does not seem to me to be a parliamentary term. Something is either in order or it is out of order. Appropriateness may deal with etiquette, it may deal with how well Members are dressed and how nice they look, but I understood under parliamentary procedure you are either in order or not in order. Would someone refer to me the section of our rules, Jefferson's Manual, which talks about appropriateness?

The SPEAKER pro tempore. If the gentleman would approach the Chair, the Chair will gladly point out the rule.

Mr. FRANK of Massachusetts. Mr. Speaker, why would I have to approach the Chair? This is a public forum. I believe this notion of appropriateness is a gloss on the rules that does not exist. Can we not have a citation to the rule of appropriateness?

The SPEAKER pro tempore. The guidelines are carried in section 956 of the House Rules and Manual.

Mr. FRANK of Massachusetts. Mr. Speaker, further parliamentary inquiry. We are told that these guidelines supersede the rules, during the consideration of a bill that unanimous consent is not in order? I had not previously heard that. Further, I understood they dealt with whether or not Members were recognized. Once recognized, as the gentleman from New York was, I am not aware of any restriction on what the gentleman can do as long as it is within the rules. Those guidelines dealt with recognition, as I understood it.

The SPEAKER pro tempore. Recognition for unanimous consent requests is at the discretion of the Chair following the guidelines followed by several successive Speakers.

Mr. WEINER. Mr. Speaker, further parliamentary inquiry. Is the Chair ruling a unanimous consent request which expresses the unanimous desire of the House of Representatives, is the Chair refusing that to be put to the body?

The SPEAKER pro tempore. The Chair will reiterate that conferral of recognition for a unanimous consent request is at the discretion of the Chair according to the Speaker's guidelines.

Mr. FRANK of Massachusetts. Mr. Speaker, further parliamentary inquiry. Does that mean any unanimous consent request to amend a bill is out of order unless it meets what standard? Could the Chair enlighten us as to how one would become in order?

The SPEAKER pro tempore. A unanimous consent request for the consideration of a nongermane amendment would have to have received clearance by the majority and minority floor and committee leaderships. The Chair has not seen the gentleman's amendment and is unaware of such clearance.

Mr. WEINER. Mr. Speaker, further parliamentary inquiry. Is the concern that it is not in proper form? There has not been a point of order that it is not germane.

The SPEAKER pro tempore. It is a matter of recognition.

Mr. WEINER. Mr. Speaker, I have been recognized, so that is not the issue. Is the issue the form of the unanimous consent request?

The SPEAKER pro tempore. If the gentleman would submit his amendment, the Chair would examine it.

Mr. WEINER. Mr. Speaker, if I can be further heard on the unanimous consent request, and I believe the paperwork is on the way, it is a very simple matter. The sponsor of the legislation says he wants to do what is right for consumers. Over and over we have heard the connection between the legislation and reducing premiums. All I am saying is, if we all agree upon that, let us include the language herein.

The SPEAKER pro tempore. Is the gentleman making a parliamentary inquiry?

Mr. WEINER. No, I want to be heard on my unanimous consent, and I was recognized.

The SPEAKER pro tempore. The Chair has not recognized the gentleman from New York (Mr. WEINER) on his unanimous consent request. The gentleman is, however, recognized for the time yielded to him.

Mr. WEINER. Mr. Speaker, I still have a unanimous consent that is, I believe, in the hands of the Parliamentarian now.

Mr. Speaker, I withdraw my unanimous consent request.

The SPEAKER pro tempore. The gentleman from New York (Mr. WEINER) withdraws his unanimous consent request.

The gentleman from New York (Mr. WEINER) is recognized for 3 minutes.

Mr. WEINER. Mr. Speaker, I think all of the assembled Parliamentarians, staffers, the histrionics of the other side, the apoplexy over the idea that perhaps we might actually reduce premiums is fairly instructive to this debate.

We had no hearings on this. We had no chance to mark it up. We had no chance to include a reduction in premiums.

The gentleman from Georgia said this is a pro-consumer thing. If you really wanted it to be pro-consumer, you would reduce premiums. I would ask any Member on the other side of the aisle who supports this bill to simply say, We do not really care about reducing premiums.

Mr. Speaker, who we are fighting for in this bill is the insurance industry; they are getting protected. The HMOs, they are getting protected. The pharmaceutical companies, that is who is being protected by H.R. 5. But, frankly, do not deceive the American public by what this bill will do.

Insurance prices will not go down. Do Members know how we know this? First of all, the industry themselves have said in public that they have no intention of reducing premiums if this legislation is passed. We can look at other States that have caps. Find me one where insurance premiums went down. Look at California, ask them whether their premiums have gone down.

Frankly, the only way we know for sure that premiums will go down is to cap the premiums, but you will not do that. Not only will you not do that; you will do everything possible to avoid even considering it. That is why committee was bypassed.

And do not also say that doctors are going to face fewer claims as a result of this legislation. They are already seeing fewer claims since they did in 2001. There were 25 per 1,000 physicians in 2001. There are 19 per 1,000 physicians in 2003. If we had a hearing in committee, we might find out what it is this year. You cannot say that, and you also cannot say this: you cannot say the amount being paid out in claims against physicians has reduced in States where there are caps.

You want us to be a Nation where there are caps. Let us look at the States where the caps are in place. The lowest number of claims per 1,000 physicians is in a State that does not have a cap, and the highest are among the States that do have the caps. What this issue is really all about, it is about who you all are fighting for and who we are fighting for.

You are fighting to take away the right of a jury. Your citizens, your constituents who apparently are brilliant enough to elect you, but not smart enough to solve a case that deals with medical malpractice, you are taking the right of a family who wants to take on a megapharmaceutical company or a mega-HMO, and the only way they can bring that suit is to make sure

they get enough money out of that company that they learn the lesson and they do not do it again.

Mr. Speaker, there is some irony here. You control the legislature, you control the executive, you control the judiciary, and still you do not trust any of those people to make the decisions. Only you know how much each and every one of these cases will yield.

Mr. Speaker, I have an alternative idea: get rid of the bad doctors, get rid of the bad lawyers, get rid of the bad judges, and get rid of this bad bill.

Mr. CONYERS. Mr. Speaker, I yield to the gentleman from Massachusetts (Mr. FRANK) for a unanimous consent request.

REQUEST TO OFFER AMENDMENT

Mr. FRANK of Massachusetts. Mr. Speaker, I ask unanimous consent to offer an amendment which is in writing at the desk and is germane.

The SPEAKER pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Mr. Frank moves to strike on page 11 lines 10 through 25 and page 12.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

Mr. SMITH of Texas. Mr. Speaker, I object to the unanimous consent request.

The SPEAKER pro tempore. Objection is heard.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Speaker, the amendment I sought to offer which was kept out by an objection from the bill's manager would have dealt with the section referred to by the gentleman from Indiana. I also, like the gentleman from Indiana, am prepared to vote for, as I have in the past, some restrictions on medical malpractice.

But what we have in this bill which has not gotten a lot of attention, and the gentleman from Indiana pointed it out, is a total exemption from punitive damages for drug manufacturers who get an FDA approval even though we have seen flaws in the FDA approval process.

What the majority has now made clear, they are insisting that this be taken in whole. The gentleman from Indiana made a good point, an objection to this amendment, and I share his objection. What I do not share is his faith that this is going to be taken care of.

The gentleman from Indiana, my good friend, was uncharacteristically mellow today in accepting an assurance that this will be looked at. I agree it will be looked at. It will be held up to the light. It will be turned upside down, and it will be looked at and looked at and looked at until it is signed into law, and then people will still be able to look at it as the law and those drug companies will have that exemption.

So what I offer today, and one might have thought under democratic procedures this would have been allowed, was simply to vote on that. I was, in the spirit of bipartisanship, acting on the suggestion of the gentleman from Indiana. Forget about everything said about medical malpractice; the amendment I sought to offer and was blocked from offering by that objection, as we were by the Committee on Rules' heavy-handedness, simply would have allowed this body to decide whether as part of a medical malpractice bill you would give an exemption from punitive damages to drug companies. That is not medical malpractice. That is not related to the core of this bill. The majority will not even allow this to be discussed.

I think it is wrong to give that kind of exemption certainly without a lot more consideration, but what is even more wrong is this further abuse of power. The majority simply will not allow this House, like the gentleman from Indiana, elected representatives of the people, to decide on whether or not we give an exemption to the drug manufacturers.

They take medical malpractice, a sympathetic issue, and use it to cloak immunity for the drug manufacturers in part, and then arrogantly refuse to allow the House to vote on it.

Mr. Speaker, I will say what I have said before. We are working with the people of Iraq and we are trying to get them to implement democracy. To the extent anyone from Iraq is watching the proceedings here, I would say to them, Please do not try this at home. Please do not, in the Iraqi Assembly, show the contempt and the disregard and the arrogance for minority rights and democratic procedures, and maybe majority rights. I should amend this. They are not afraid of minority rights; they are afraid if we had an open and honest vote on this that a majority would decide not to let the drug companies carry out under that darkness.

Mr. SMITH of Texas. Mr. Speaker, I yield myself 10 seconds.

Mr. Speaker, I want to say I appreciate the gentleman from Massachusetts (Mr. FRANK), who just spoke, voting for this legislation in the last Congress.

Mr. Speaker, I yield 2 minutes to the gentlewoman from Pennsylvania (Ms. HART), a former member of the Committee on the Judiciary and now a member of the Committee on Ways and Means.

Ms. HART. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of the HEALTH Act. It is called the HEALTH Act for a very good reason. It is going to help a number of people who now are finding it very difficult to have access to health care.

We have considered this bill twice in the last Congress, I believe once in the first Congress when I was here, and objecting to this as unfamiliar to Members is simply disingenuous. This issue is so well known, not only to Members, but to the general public, that it scores as one of the most important issues when asked nationwide what we need to address.

The other side of the aisle suggested we deal with bad doctors, bad lawyers, and bad judges. Well, bad doctors, bad lawyers, and bad judges are regulated by the States. The problem is that medical malpractice reform should have been dealt with by the States, but my State of Pennsylvania has not handled the problem. Many States have not acted to deal with this problem and avert further crisis.

Patients needing care face a real crisis in access to care. The wait is too long, the cost is too high. Physicians are quitting because of the high cost of medical malpractice insurance. From 2003 to 2004, Pennsylvania doctors faced double-digit medical malpractice insurance increases. The reason: out-of-control lawsuits.

□ 1430

According to the National Medical Practitioners Database, payouts in my State of Pennsylvania have risen from $187 million in 1991 to nearly $500 million in 2003. These excessive lawsuits have gotten so out of control, as I mentioned earlier, that many doctors have quit the practice of medicine. That means patients do not have physicians to even see.

Last year I met with a dozen doctors from my district. Of the dozen, nearly all of them raised their hand when I asked them if they had children. One doctor said his wife refuses to allow her kids to study medicine. We need to address this issue, and we need to address it today.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. FRANK of Massachusetts. Mr. Speaker, will the gentleman yield?

Mr. DELAHUNT. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Speaker, the gentleman from Texas is right. I did vote for this bill last year, because I thought it was about medical malpractice and did not read it carefully. In fact, what happened was I made the mistake last year that the gentleman from Indiana might make this year. I believed that they would honestly talk about medical malpractice, and it did not occur to me they would try to sneak into this bill something that gave partial immunity to the drug manufacturers.

So I admit that I did not read it thoroughly, but I will not when the gentleman is managing bills make that mistake again.

Mr. DELAHUNT. Mr. Speaker, I had a revelation during the course of the exchange about capping premiums. What I found particularly fascinating was that my good friend from Georgia, our own Dr. Phil, is an advocate for wage control. In other words, cap those fees as long as, I guess, it is lawyers. Maybe not for CEOs, but at least we know that he is a proponent of wage controls for lawyers.

But when it comes to price control, it seems that the majority has a problem. So you are in favor of capping wages, but not in favor of capping prices, because really that is what it comes down to. I guess it is a new tradition within the Republican Party.

In any event, for all the reasons that others have suggested, I think not only does this qualify as a bad bill because it is not going to accomplish the goal of lowering premiums, but I think, and I would suggest, it is a cruel bill, because this cap on so-called noneconomic damages impacts the most vulnerable among us, mothers who stay at home and particularly children, because they have no economic damages. They do not have such economic damages as the loss of potential earnings. So apart from their medical bills, all of their losses are noneconomic, like a lifelong physical impairment, or maybe a mental disability, or disfigurement. This bill will deny them the possibility of a life that at least has a modicum of respect and dignity in compensation for their loss, a loss which, by the way, they had no involvement in other than being the victim.

Mr. SMITH of Texas. Mr. Speaker, I yield 1½ minutes to the gentlewoman from Tennessee (Mrs. BLACKBURN), a member of the Committee on Energy and Commerce and a former member of the Committee on the Judiciary.

Mrs. BLACKBURN. Mr. Speaker, they are asking what are we for and what is this bill all about? I will tell you what we are for, what this majority is for, and what this bill is about. It is about preserving access to health care in our local communities, lots of communities, like my Seventh District of Tennessee. It is not about sitting here and saying, oh, we think all it is going to take to address health care is a big, fat Federal Government. It is about access to health care in our local communities.

Americans know that our health care costs are soaring. They also know that trial lawyers many times view our hospitals and our health care providers as a limitless ATM.

That is the reason I cosponsored this legislation. My constituents have had enough. They have grown ill and fatigued with the stories that are out there, with seeing their local doctors run out of town, with seeing practices close up, and with knowing that they have access to less and less available health care. We know that only one in seven OB-GYNs now deliver babies for fear of being sued, and the national medical liability rate has risen almost 500 percent since 1976.

This is an issue that affects our families. It affects women. It affects children. It affects our rural communities. This bill is a way to assist in preserving health care for our local communities.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. EMANUEL), who has followed this subject ever since he has come to Congress.

Mr. EMANUEL. Mr. Speaker, I speak as both the son of a doctor and the son of a nurse. I introduced the Vioxx amendment that would prohibit this special liability protection for the pharmaceutical companies. Many Americans across the country are watching the Vioxx trial in Texas where the Ernst family has lost their loved one, a marathon runner, a personal trainer, who died a premature death because he took Merck's Vioxx medication, and the FDA was not provided with all the information that should have warned of the dangers from that. According to the FDA's doctor, approximately 55,000 premature deaths occurred because of Vioxx. That is the trial the American people are watching.

And then they tune in here to this Congress. What is this Congress trying to do? They are trying to protect Merck and the other pharmaceutical companies in a way that no other industry would get that type of protection from any liability. This Congress would intervene in that civil trial down in Texas where the Ernst family is trying to get their proper redress from the premature death of a marathon runner who had a heart attack because the information was withheld.

The irony of this whole situation is just last year, this Congress, bipartisan, said the FDA did not have the proper resources to regulate these medications. And now you want to hide behind the FDA's Good Housekeeping seal to give protection to an industry in a way that no other industry in America gets.

Last year this Congress gave the pharmaceutical industry $132 billion in additional profits through the prescription drug benefit. Now you want to give them liability protection in a way that no other industry gets. You are like the gift that keeps on giving. There is a gift ban that is on in this Congress, and at some point the pharmaceutical industry has got to be held accountable just like everybody else.

The Ernst family lost a loved one. According to the FDA, about 55,000 other deaths also have occurred. Let us have a debate about medical malpractice. Don't muck it up with your political goals of trying to protect the pharmaceutical industry and other families from the proper redress of the courts.

Mr. SMITH of Texas. Mr. Speaker, I yield myself 20 seconds.

Mr. Speaker, regarding Vioxx, some have alleged the company knowingly misrepresented or withheld information from the FDA. If so, they would be denied the protections in the bill because the bill specifically in section 7 says and excludes any instances in which a person, before or after premarket approval, clearance, or licensure of such medical product, knowingly misrepresented to or withheld from the FDA information that is required to be submitted.

If we look at the language of the bill, we can see that what the gentleman said is not relevant.

Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. DENT).

Mr. DENT. Mr. Speaker, prior to coming to the U.S. Congress, I served 14 years in my State general assembly. I spent a lot of time on this issue, dealing with issues like caps on noneconomic damages, collateral sources, periodic payments, joint and several liability modifications and venue shopping. I just heard some statements from the other side, well-intentioned, but, I must respectfully say, misguided, that simply mandating a premium reduction will not solve this problem. What will happen is what happened in my State.

In 1975, a State-administered medical liability program was created because no one wanted to write insurance in the Commonwealth of Pennsylvania in 1975. We were in a crisis. That did not solve the problem. That State-administered program is broke. My general assembly has appropriated hundreds of millions of dollars to pay doctors' medical liability premiums and hospitals' premiums. That is what will happen if you mandate that premium reduction. It sounds good, but it does not fix it.

The Governor of my State, Ed Rendell, a Democrat, I talked to his insurance commissioner a couple of years ago. I said, if this is an insurance problem, let's look at the numbers. For every dollar paid at that time in medical liability premiums, there was $1.27 in losses incurred; $1 in, $1.27 out. That is an insurance problem. No one wants to write insurance. So if you mandate a premium reduction or hold it harmless, the State is going to have to set up a program, and they are going to have to find the money, and they are going to turn to the taxpayers. That is what is happening. We are in crisis.

This legislation we are dealing with helps deal with this issue because providing for caps on noneconomic damages, Mr. Speaker, will help restore some level of predictability and stability to the insurance marketplace. You need to have people wanting to write insurance in these States. Competition will help you actually drive down costs. I know that some might find that unbelievable, but it will work. It has to work.

I rise to speak in favor of H.R. 5, the Health Act of 2005.

This bill addresses one of the central issues in health care today: the way in which unpredictable, out-of-control legal judgments are driving up health care costs. This bill sets caps on punitive and non-economic damages that result from malpractice litigation. This is important because, as the Congressional Budget Office has noted, under this act, medical liability premiums would be an average of 25 to 30 percent below what they would be under current law.

High medical liability premiums are creating serious doctor recruitment and retention problems in my State, especially in so-called "high

risk'' disciplines such as neurosurgery, orthopedics, emergency medicine, I and obstetrics. In my district, the crisis created in part by outrageous malpractice judgments is best exemplified by the experience of St. Luke's Hospital.

St. Luke's has been recognized nationally 17 times for clinical excellence. Despite this accomplishment, St. Luke's became the target of a frivolous, outrageous lawsuit in the fall of 2000. As a direct result, St. Luke's professional medical liability costs increased more than $4 million in just 2 years.

As a result of medical liability issues, Pennsylvania hospitals face challenges retaining neurosurgeons, without whom trauma centers cannot operate. In fact, a few years ago, another regional hospital serving my district—Easton Hospital—lost all of its neurosurgeons to other States. And Lehigh Valley Hospital, an extraordinary three-hospital network and the largest employer in my district, experienced a fivefold increase in their liability costs over the past few years.

Nothing about this bill prevents a litigant from seeking his or her day in court. In California, which was the model for the current health act, plaintiffs with legitimate claims still enjoy large recoveries. The Government Accountability Office, GAO, has determined that California has controlled medical liability insurance premiums much better than has my home State, Pennsylvania. In fact, in Pennsylvania the medical liability crisis is so acute that the legislature has appropriated hundreds of millions of dollars to assist physicians and hospitals with rapidly rising medical liability premiums. That's like placing a Band-Aid on a gaping wound. Structural reform is needed; taxpayers bailouts—Band Aids, if you will—don't solve the underlying problem.

For all these reasons, I believe that congressional intervention is essential in the form of support for the Health Act of 2005.

Mr. CONYERS. Mr. Speaker, I yield 2½ minutes to the gentleman from Florida (Mr. WEXLER).

Mr. WEXLER. Mr. Speaker, the gentleman from New York (Mr. WEINER) smoked out the truth about this bill a couple of minutes ago when he simply asked that the bill include a provision that would require a flat medical malpractice premium rate. He smoked out the truth, and what we now know is that this bill is not about providing access to health care. It is not about solving a health care crisis. What it is about is protecting the insurance industry.

In fact, a study by the insurance commissioner of Missouri found that while malpractice premiums for doctors doubled from 2000 to 2004, malpractice claims during the same period increased less than 6 percent. Insurers themselves admit that capping medical malpractice payments will not reduce premiums. In fact, States that have caps have higher premiums than States without caps in every medical field, including internists, surgeons and OB–GYNs.

The proponents of this bill claim that large payouts are driving up the cost of medical malpractice insurance. Nothing could be further from the truth. In fact, the opposite is occurring in Florida where the average amount insurers are paying for claims has gone down 14 percent since 1991. At the same time, however, premiums charged by insurers have increased 43 percent. In particular, overall claim payouts for Florida's largest medical insurer, FPIC, dropped 22 percent in the last 4 years. Outrageously, remarkably, this same insurer saw a 154 percent increase in profits for the first quarter in 2004.

This legislation needs to be seen for what it is. It is not about helping doctors. It is not about helping patients. The only goal of this legislation is to ensure even higher profits for insurance companies while not doing a blasted thing to help the sick people in America, to help the people that provide the medical services to our people. This bill will not do one iota to improve health care in this country. The gentleman from New York smoked it out just right.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. BURGESS).

Mr. BURGESS. I thank the gentleman for yielding me this time to speak on this important issue today.

Mr. Speaker, we, of course, passed this bill some 2 years ago last March. Down in Texas we passed a bill 2 years ago this September and a constitutional amendment that would essentially provide the same type of cap on noneconomic damages that we are discussing here today in H.R. 5.

It has been said before that the States are great laboratories for the Nation. If that is the case, let us examine what has happened in Texas in the 2 years since the cap has been passed. When I ran for Congress in the year 2002, we started the year 2002 with 17 insurers in the State of Texas. By the time I took this office at the start of 2003, we were down to two insurers. It is pretty hard to get competitive rates when you have driven 15 insurers out of the market. Since the passage of the Proposition 12 in September of 2003, which allowed a cap on noneconomic damages, we have had 12 insurers come back to the State, which has provided competitive rates, and Texas Medical Liability Trust, my old insurer of record before I left medical practice, immediately dropped its rates 12 percent after the passage of Proposition 12 and then dropped its rates another 5 percent for a total of 17 percent in the first year since Proposition 12 was passed.

Most importantly, Mr. Speaker, an unintended consequence of the passage of Proposition 12 in Texas was what has happened in private, not-for-profit hospitals.

□ 1445

The Cristus Health Care System in south Texas, a self-insured hospital system, realized a $12 million savings from the first 9 months after that proposition was passed, money that was put back into nurses' salaries, capital expansion, the very things we want our hospitals to spend money on if they were not having to pay it for noneconomic damages.

And, finally, I just cannot let pass the statement about price controls. Physicians have lived under price controls, certainly all of my professional career, for the last 25 years. We have managed, sometimes poorly. But what happens when we have price controls is we end up with lines, and one of the biggest problems we have right now is that doctors are dropping out of practice, and we do not have the practitioners there to provide care for the patients.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentlewoman from Nevada (Ms. BERKLEY).

Ms. BERKLEY. Mr. Speaker, I thank the gentleman from Michigan (Mr. CONYERS) for yielding me this very precious time.

Mr. Speaker, I am a doctor's wife. There is nobody in this body that wants medical malpractice reform more than I. My husband's medical malpractice has gone up exponentially every single year for absolutely no reason, and if I thought for a minute that this legislation would cure that problem and provide relief for the doctors of this country, I would be all over this legislation.

Unfortunately, this piece of legislation will not do what the Republican side of the aisle says it will. And if the Republican leadership really wanted to provide relief for the doctors, we would have legislation on the floor that the bipartisan Congress could vote on and support and pass and put before the President for signature.

This is a bill not to help the doctors. This bill contains and limits claims against negligent hospitals, drug companies, medical device manufacturers, nursing homes, HMOs, and insurance companies. This bill is not for doctors. This bill is a gift to the insurance companies. There is no provision, there is not one line, one sentence in a 26-page bill, that would ensure that the savings that was realized by the insurance companies would be passed on to the doctors. The doctors will continue to suffer while the insurance companies will get happier and richer.

There is a medical crisis in this country. There is a crisis in access to health care. This is not the legislation that is going to cure that. And for those people who talk lovingly and glowingly of the insurance companies and the marketplace and competition will lower the cost for the doctors, let us have another thought about that. Since when, since when, can the doctors put their faith in the insurance companies when it is the insurance companies that are messing up the doctors? I do not like to see the doctors being used by the insurance companies to do the insurance companies' dirty work.

Let us get a reality check here. Let us not pass this dog of a piece of legislation. Let us work together and pass legislation that is truly going to provide medical malpractice reform and

lower premiums for the doctors. They need it, and they deserve it.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the gentlewoman from North Carolina (Ms. FOXX).

Ms. FOXX. Mr. Speaker, I thank the gentleman from Texas for yielding me this time.

I rise because this outstanding bill we are voting on today is so important to my constituency. Skyrocketing insurance premiums have been diminishing our Nation's health care delivery system for far too long. Women have been affected severely as OB/GYN doctors have stopped delivering babies because financially it does not make sense for them to practice in that area. The physicians who bring life into this world are too often forced to reject high-risk patients out of fear of future litigation. Trial lawyers continue to harass America's doctors. Physicians continue to face the burden of skyrocketing insurance premiums.

As a mother and grandmother, I know this is not acceptable. The HEALTH Act of 2005 will provide the means to take action and thwart the efforts of greedy trial lawyers. In turn, this will help Americans, specifically women, obtain better access to the health care they need and deserve. More doctors will stay in business, creating more treatment options, less expensive care, and better access to health services for all Americans.

Health care dollars should be spent on patients in the hospital, not on lawyers in a courtroom. This bill will direct more health care dollars to treating and curing patients, which is what our health care system should be about.

I urge my colleagues to join me in supporting this bill, and I urge our Senators to drastically improve America's health care system by passing this bill as soon as possible.

Mr. CONYERS. Mr. Speaker, I yield 2½ minutes to the gentlewoman from California (Ms. LINDA T. SÁNCHEZ), who serves with distinction on the Committee on the Judiciary.

Ms. LINDA T. SÁNCHEZ of California. Mr. Speaker, I thank the gentleman from Michigan (Mr. CONYERS) for yielding me this time.

Mr. Speaker, I rise in strong opposition to this unconscionable medical malpractice liability bill. This bill will do nothing to reduce the skyrocketing health care costs in this country. All it will do is deprive people who are already sick and injured of justice.

Mr. Speaker, it is undeniable that most Americans do not have access to affordable health care and that many specialists and trauma centers are closing their doors. But instead of addressing our health care crisis head on, my Republican colleagues have come up with H.R. 5.

H.R. 5 is as deplorable as it is ineffective. Trying to stabilize medical malpractice insurance rates by capping legitimate victims' damages is akin to trying to put out a forest fire with a squirt gun. I know that H.R. 5 will not magically keep medical malpractice insurance rates down and keep doctors in business because the bill is modeled after California's Medical Injury Compensation Reform Act, better known as MICRA.

My Republican colleagues love to sing the praises of MICRA. But guess what? MICRA did not work. MICRA's caps on pain and suffering damages have not reduced insurance rates for doctors in my State. MICRA was signed into law in 1975, but medical malpractice insurance rates did not stabilize until years after MICRA was passed. In fact, between 1975 and 1993, California's health care costs rose 343 percent, nearly twice the rate of inflation and 9 percent higher than the national average each year.

When California's insurance rates stabilized, it was because the State passed legislation to directly deal with the insurance problem. They passed an insurance reform bill known as Proposition 103.

It is a shame that the Republican leadership of the House is further victimizing victims instead of getting at the root of the real problem. Where is the Republican leadership on the real health care issues that Americans care about? Where is a Republican House bill to provide health care for every working family? Where is a Republican House bill to encourage more students to go into medicine and nursing and for practicing doctors to keep their doors open? Where is a Republican House bill that deals directly with medical malpractice insurance rates?

My Republican colleagues have not offered bills that will help reform our health care system. Legislation like that would have prevented the forest fire before it even began. Instead, House Republicans cap legitimate victims' damage awards. H.R. 5, without insurance and health care reform, is meaningless. H.R. 5 simply reinjures the legitimate victims of medical malpractice, and we should vote ''no'' on H.R. 5.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the gentlewoman from Washington (Miss MCMORRIS).

Miss MCMORRIS. Mr. Speaker, I thank the gentleman for yielding me this time.

I also rise in support of H.R. 5, which will bring needed medical liability reform to health care providers in Washington State.

As I travel around eastern Washington, I hear from desperate doctors and health care providers that these lawsuits are increasing costs to patients and driving doctors out of business. It is not unusual to hear that doctors are being forced to drop their insurance or stop delivering babies, or younger doctors are quitting to practice overseas. This is at a time when we have a health care personnel shortage. This has happened in areas within my district, such as Odessa, Republic, and Davenport, where we have no OB/GYNs, and pregnant women must travel over an hour now for care. Additionally, it is becoming impossible to recruit and retain specialists, such as neurosurgeons and cardiologists, when 30 to 50 percent experience lawsuits annually. Emergency care is in no better shape with over 30 percent of trauma surgeons being sued each year. This is unacceptable for 21st century health care.

Skyrocketing medical liability insurance costs for doctors and health care providers has caused the American Medical Association to declare that Washington State is in a medical liability crisis. In the past 10 years, the average jury findings in my State have increased 68 percent. As well, the number of million-dollar settlements has risen almost ten times.

This is an important bill that limits excessive lawsuits, but also ensures that those who are truly harmed are going to get their day in court. Over the past few years, had this law been enacted, Washington would have saved an estimated $53 million. HHS estimates that by setting reasonable guidelines for these noneconomic damage awards, we will save between $70 billion and $126 billion in national health care costs annually.

H.R. 5 will bring common-sense reform to outrageous liability rates and will protect patients' access to quality and affordable health care.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Speaker, I thank the gentleman for yielding me this time.

All the public should know on this bill is that no Democrats were allowed to make any amendments to this bill. They were not allowed to debate this bill. Even the great gentleman from Michigan (Mr. CONYERS) of the Committee on the Judiciary, no amendments allowed. None. No thought required by half of the Congress. And do the Members want to know why? Because this bill is really the pluperfect payback of the Republican Party to the insurance industry. This bill will victimize patients in the courtroom after they have already been victimized in the operating room. That is what it is all about.

The premise of the bill is this, and it is not a bad premise: If they are willing to lower the amount of money that somebody can receive for the pain and suffering that they have had inflicted upon them by some medical operation, then, in turn, there will be a lowering of the premiums that doctors have to pay. That is kind of the trade-off that the Republicans have. Lower return for the patients for their pain and suffering, but we also get, as a result, lower premiums for the doctors.

But 2 years ago when I made the amendment in the Committee on Energy and Commerce that would have said that all of the savings from the pain and suffering of patients would

then go to lowering of premiums for doctors, every Republican voted against that because the insurance industry does not want the money to go to lower premiums for doctors. And then this year when I wanted to make an amendment in the Committee on Energy and Commerce that would have said the same thing, lower premiums, I was not allowed to make the amendment. Out here on the House floor, I was not allowed to make the amendment.

So it is not about lowering the premiums for physicians with the money that is ''saved'' from the money that would have gone to someone whose family had been harmed because they might have lost their sight, their limbs, their ability to bear children, their ability to fully function in society. All of those savings for the insurance industry, they are very real. But the lowering of medical malpractice fees is only illusory.

And, secondly, the bill will protect the pharmaceutical industry from liability as long as the drugs that harm patients are FDA-approved. The FDA approval is designed to protect patients from harmful drugs, but it should not waive a company's responsibility for drugs they put on the market. With all of the recent reports about how FDA approved drugs that harmed people, from Vioxx to Bextra to Accutane to Paxil, now is not the time to limit patients' access to the courts, but that is what the pharmaceutical industry and the insurance industry is going to get on the House floor today.

Vote ''no'' on this bill.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. LUNGREN), a member of the Committee on the Judiciary and former attorney general of California.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I thank the gentleman for yielding me this time.

I would like to just make some comments on some of the suggestions that have been made that MICRA does not work in California and refer only to those parts of this bill that are patterned after MICRA.

Prior to the time that I came to Congress for the first tour, I did medical malpractice cases in California, primarily on the defense side for doctors and hospitals, but I also handled some plaintiffs' cases. In fact, I think I had one of the first successful lawsuits against an HMO in the entire country.

MICRA came into California at a time when we had a crisis, when we had a medical crisis of doctors leaving the State of California or stopping their practice.

□ 1500

It was particularly acute in some specialties, but it was across the board. The evidence is there. The history is there. I can tell you it was there; I saw it.

In 1975, the legislature, in response to that problem, passed MICRA. That is what this is patterned after. It had a $250,000 limitation on pain and suffering. It had these other recommended changes with respect to recovery. It has not stopped successful lawsuits against doctors who have, in fact, committed malpractice.

But what it has done is it has taken a part of the process that basically abused the process out. And what it has done is stabilize what was otherwise a tremendous spiral in the medical malpractice premiums that doctors saw.

Now, some have suggested that is not the case in California. What I can tell my colleagues is it stopped the exit of doctors from the State of California. It stopped the exit of specialists from practice in the State of California. And while it did not diminish entirely the increases, it stopped the trajectory of increases. As a result, it did provide a very serious partial solution to the problem that we found in California.

That is the model. To the extent this bill is modeled after MICRA, that is the model we are talking about.

So if people want to talk about pilot projects, we have a 20-plus-year pilot project in the State of California. Ask the medical community whether or not it has been effective. Ask the patients who now have availability to the services of doctors who otherwise they would not have had we not done something in the State of California.

So for those who are wondering whether or not this will work, at least that part of the bill that is patterned after MICRA will. We have now had a 20-plus-year pilot project, and it has proven to be successful.

Mr. CONYERS. Mr. Speaker, I would like my colleague to know that this bill is based on the California program MICRA, and premiums for medical malpractice insurance grew more quickly between 1991 and 2000 than the national averages. Just remember that.

Mr. Speaker, I yield 45 seconds to the gentlewoman from California (Ms. SOLIS).

Ms. SOLIS. Mr. Speaker, I rise in opposition to H.R. 5. It is an ill-conceived, ill-crafted bill that does nothing to help drive costs down. Studies have shown that this is not the way to go. In fact, insurance companies are the ones that are gaming us right now.

In California, malpractice rates have actually come down because we have enacted tough legislation, as was mentioned earlier. We need to do more to provide for, I would say, a level playing field so that the insurance companies do not walk away taking advantage of our consumers.

Mr. CONYERS. Mr. Speaker, I yield the remainder of my time to the gentlewoman from South Dakota (Ms. HERSETH).

Ms. HERSETH. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I also rise today in strong opposition to H.R. 5. As many of my colleagues have pointed out, there are various troublesome aspects of this bill, including the recent study that demonstrated clearly the rising cost of insurance premiums, while the claims have remained steady in terms of the ultimate litigation outcomes of those claims that have been filed. So we should not be passing any legislation that is not more comprehensive to hold insurance companies accountable as well.

But H.R. 5 is also troublesome because of its blatant disregard for States' rights. In South Dakota's 2004 legislative session, a bill modeled on H.R. 5 was defeated in committee on a unanimous bipartisan vote. I think this sends a strong signal that H.R. 5 does not provide the type of comprehensive solution to medical malpractice insurance premiums that States are looking for and will stifle innovation in the States that has been important to the health care industry.

Mr. SMITH of Texas. Mr. Speaker, I yield myself 20 seconds.

Mr. Speaker, I just want to reply very quickly to the point that was made, and that is that this bill does not violate any States' rights. Section 7(a), it very clearly says that if any State has any cap of any amount, be it higher or lower than the caps in the bill, then that State's cap will prevail.

So this recognizes States' rights. It is friendly to States' rights.

Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. CHABOT), a member of the Committee on the Judiciary and also chairman of the Subcommittee on Constitutional Law.

(Mr. CHABOT asked and was given permission to revise and extend his remarks.)

Mr. CHABOT. Mr. Speaker, I thank the gentleman for his leadership on this bill. I rise in strong support of the bill, and I would urge my colleagues to support it.

The costs of the tort system continue to take their toll on the Nation's economy. Medical professional liability insurance rates have skyrocketed, causing major insurers to drop coverage or raise premiums to unaffordable levels. We have heard case after case where this last occurred nationwide. In fact, in my home State of Ohio, it has been designated as a ''crisis State'' by the American Medical Association.

According to some estimates, premiums are now rising in Ohio anywhere from 10 percent to 40 percent, with many doctors involved in specialty practices such as obstetrics seeing their premiums rise by 100 percent, 100 percent or, in some cases, even more. Obviously, this has a negative impact on both patients and doctors, causing higher costs and forcing many doctors to close their practices.

The HEALTH Act, this act that we are debating here this afternoon, addresses this crisis by eliminating frivolous lawsuits and making health care more accessible and more affordable. We have been talking about doing that for years. This is a bill where we can actually do something about making health more affordable.

The HEALTH Act has enjoyed strong support in the House of Representatives in past Congresses, and I strongly urge my colleagues on both sides of the aisle to support this commonsense legislation if they are serious about bringing the high cost of health care in this country down to affordable levels.

Ms. DEGETTE. Mr. Speaker, I yield myself 5½ minutes.

Mr. Speaker, the American health care system is in crisis, in part, because of skyrocketing medical malpractice insurance rates. This crisis, however, is not the result of frivolous lawsuits, but of insurance industry practices.

The so-called solution that we are debating today, carving out enormous new liability exemptions for health insurers, pharmaceutical companies, medical device manufacturers, and nursing homes would not lower doctors' malpractice insurance rates by one dollar. Too many doctors are struggling to keep their practices afloat under the burden of enormous insurance premiums but, instead of helping them, what we are doing today is penalizing the severely injured patients and the families of those who die a result of medical negligence without providing any relief to the doctors from high malpractice insurance rates.

A new study, and we have been talking about it today, by the Kaiser Family Foundation, found that since 2001, there has been a 25 percent decrease in the average number of medical malpractice claims per physician.

Now, if medical malpractice claims have decreased, why do insurance premiums continue to increase? We have been talking today about MICRA, the California insurance program. Now, it is true, the State capped medical malpractice payments in 1975; but despite this, as we just heard from the gentleman from Michigan (Mr. CONYERS), malpractice premiums rose 450 percent over the next 13 years. Only after 1988, when California also implemented insurance reform, did the rates go down. But, today, instead of insurance reform, we are focusing entirely on capping damages.

Now, even the spokesman for the American Insurance Association, Dennis Kelly, said these words. He said, ''We have not promised price reductions with tort reform.''

So I want to ask my colleagues, why are we doing this bill today? What is the real reason for this bill? If the malpractice insurance companies are not going to reduce insurance premiums for these beleaguered doctors, why are we passing this bill? And what is the cause of the increasing insurance rates?

Some suggest that rate hikes are due to insurer investment losses. Others point to old-fashioned price gouging. This year, for example, the Washington State insurance commissioner ordered insurers to refund more than $1 million in premiums to physicians because rate hikes were unjustifiable. But I tried to do an amendment, I did it in committee last time when we heard it, and I tried to submit it to the Committee on Rules: let us do a study. Let us figure out why these rates are high and why Dennis Kelly says they are not going to go down.

The Republican majority refused to even allow a study of malpractice insurance rates and why they are so high. That is what this bill is really about. Because billion-dollar insurance companies have Federal antitrust exemptions, they are allowed to legally fix prices, and this has helped the industry gain a record $25 billion in annual profits.

Now, there is one thing we can agree on across the aisle: Congress must stop this price-gouging of physicians. But granting blanket liability protection to negligent nursing homes, to pharmaceutical companies, and insurance companies, without addressing insurance billing practices, does nothing to solve the problem for these doctors. And what is worse, the immunity for these other industries will be broader than any State tort reform law. It will do nothing to help the doctors; and in the end, it will serve to severely limit the rights of many millions of Americans.

It undermines our health care system to penalize victims of medical negligence in the name of relieving doctors' burdensome malpractice premiums when, actually, nothing is being done to reduce those premiums. Unfortunately, I think this is as a result of an aversion of some in Washington to what I would call fact-based policymaking.

Now, there is a solution. We could work across the aisle to reduce medical malpractice insurance rates, and we could do this by passing bipartisan insurance reform. This would get to the root of the crisis by reducing artificially inflated insurance rates for doctors and not punishing injured patients.

One further note. I hear all day that States are having a terrible problem: doctors cannot get insurance, OB/GYNs are leaving. If this is a State problem, I say to my colleagues, if States are having these issues, I want to know why we are trying to address it at a Federal level. This is not traditionally a Federal issue. The States can do it.

One further note. Anyone reading this bill would know, for the gentlewoman from South Dakota's (Ms. HERSETH) State and every other State, this bill would supersede any other rate or caps they might have with the Federal law. That is wrong. I think we should abide by States' rights and defeat this bill.

Mr. SMITH of Texas. Mr. Speaker, I yield myself 1½ minutes.

Mr. Speaker, what was just said was actually contradicted by the Government Accountability Office. The GAO found that rising litigation awards are responsible for skyrocketing medical professional liability premiums. The report stated that ''GAO found that losses on medical malpractice claims, which make up the largest part of the insurers' costs, appear to be the primary driver of rate increases.''

The GAO found that insurers are not to blame for skyrocketing medical professional liability premiums. The GAO report states that insurer ''profits are not increasing, indicating that insurers are not charging and profiting from excessively high premium rates.''

Mr. Speaker, I also want to say that the opponents of this legislation are forgetting, I hope not ignoring, a study by the Harvard Medical Practice. What this study found is that over half, over half of the filed medical professional liability claims they studied were brought by plaintiffs who suffered either no injuries at all or, if they did, such injuries were not caused by their health care providers, but rather by the underlying disease itself.

Mr. Speaker, I yield 4 minutes to the gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I would like to take my time, I hope sufficient time, to refute some of these statements that have been made in opposition. I want to start with the gentlewoman from Colorado who just spoke. It is absolutely wrong about the issue of Federal law superseding State law in cases where the State has already addressed the issue.

□ 1515

Let us say the issue of caps, my State of Georgia passed a law this year, and the caps there are $350,000. That would be applicable State law would apply. It is only when States have not addressed the issue when the Federal law would speak.

I want to also address something the gentlewoman said in regard to this bill being nothing. I have heard this not just from her, but from number of other speakers on the other side in opposition, talking about that this is nothing but a protection for the insurance industry, and it is another bailout of protection for the pharmaceutical industry, and they are relieved of all liability, which is absolutely untrue, Mr. Speaker.

In fact, last night when we were talking about the rule, the gentleman from Arkansas, a registered pharmacist, opposed the rule and the bill basically for the same reason. I would like to remind him. I hope the gentleman is listening to the discussion this afternoon. But this would protect a pharmacist who prescribes a drug, a legally FDA-approved drug, that the pharmacist had no idea that there might be a problem or an adverse reaction. This is what this bill does. That would protect the pharmacist from punitive damages in a case like that, where there was no deliberate intent to harm the patient.

So it is very important that all of our colleagues understand the truth

here. The gentleman from Illinois kept talking about the Vioxx case, and the marathon runner. Well, if Vioxx and the company that makes that drug is guilty of withholding pertinent information that they had in clinical trials, and they knew that it was a harmful drug that they put out there on the market and exposed patients to that drug, then they are going to pay one heck of a price for that, yes, in punitive damages.

So they are not relieved from that under this bill. It is only when they did everything right and they were approved by the FDA that they would have any relief from punitive damages.

There are plenty of great athletes, Mr. Speaker. I remember an All-American basketball player from St. Joseph's University 10 or 15 years ago that dropped dead on the basketball court. He was not taking Vioxx. But we will see how that case turns out.

The issue was brought up, Mr. Speaker, about young children who are injured, and they do not have a job or profession, so they need this pain and suffering compensation that can be infinity, hundreds of millions of dollars, rather than a cap at 250-, when the truth is the triers of fact, Mr. Speaker, the jury, can determine the life span, the expected life span of that child and what their earnings would be over the course of that lifetime. The same thing in regard to a stay-at-home mom who was a professional maybe, an attorney possibly, before she decided to become a mother and a homemaker. Those earnings would be calculated as well.

Finally, Mr. Speaker, a little while earlier a speaker in opposition, the gentleman from New York, he made this statement: It comes down to the issue of who we are fighting for. I am really not sure who the gentleman in the opposition is fighting for. I suspect that I know who they are fighting for. Does ATLA sound familiar to you, my colleagues?

But I am going to tell you who we are fighting for. We are fighting for the patient. We are fighting for their right to have the ability to access needed specialists in health care, and they are not going to be there if we do not level this playing field.

Ms. DEGETTE. Mr. Speaker, I yield 2½ minutes to the gentlewoman from California (Mrs. CAPPS).

Mrs. CAPPS. Mr. Speaker, I thank the gentlewoman for yielding time to me.

Mr. Speaker, no one disputes that rising medical malpractice premiums are a major, major problem. Unfortunately this bill before us will do nothing to solve that problem. It would limit consumers' ability to hold negligent doctors, profit-driven HMOs, insurance companies, and prescription drug companies accountable.

The claim is made that excessive or frivolous lawsuits are the cause of rising premiums. The problem is that lawsuits affected by the bill are by definition not frivolous.

Where large damages are awarded, it is a jury that has found that the patient has been severely harmed, and, in fact, over the last 5 years, malpractice insurance payments to patients have actually gone down, and that while premiums continue to go up. Now, something is wrong with that ratio.

There is no evidence that capping the damages to an injured person because of malpractice is the way to solve this problem. It will not lower premiums. It will not even stabilize them. All this bill will do is to make very sure that as the malpractice insurers collect outrageous premiums, they will be able to continue to pay out even less to the patients who have actually been harmed. This will penalize innocent victims of medical negligence.

Furthermore, the bill goes far beyond lawsuits against doctors. It would also protect drug companies and HMOs from lawsuits filed by people injured because of their policies.

In 3 years of considering this issue, the majority has not presented a shred of evidence that drug companies need these protections. They are making billions of dollars in profits. If this bill becomes law, the ability of injured patients to hold negligent drug companies accountable would be dramatically limited. We have all seen the recent stories about Cox-2 inhibitors, other medications. So many have tragic outcomes. They highlight the fact that drugs may harm patients. Those studies expose how dangerous this bill can be. We should be helping doctors with malpractice insurance premiums. But this bill is not going to help doctors, and it will hurt patients.

Mr. Speaker, I urge my colleagues to vote against this bill. Let us look for real solutions to rising medical malpractice premiums.

Mr. SMITH of Texas. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, I thought my colleagues might be interested in some quotes. One quote is from a former Democratic Senator, and the other quote is from a liberal Washington Post columnist. I would like to read those now.

Former Democratic Senator George McGovern has written that ''legal fear drives doctors to prescribe medicines and order tests, even invasive procedures that they feel are necessary. Reputable studies estimate that this defensive medicine squanders $50 billion a year, enough to provide medical care to millions of uninsured Americans.''

Mr. Speaker, this is from a prominent liberal commentator, Michael Kinsley. He wrote in the Washington Post, ''Limits on malpractice lawsuits are a good idea that Democrats are wrong and possibly foolish to oppose. Republicans are right about malpractice reform.''

Mr. Speaker, also we have a number of polls showing that the American people support the HEALTH Act. Between two-thirds and three-quarters of the American people support exactly what we are trying to do. Just this week a poll conducted by Harris Interactive showed that 74 percent of those surveyed support reasonable limits on the award of noneconomic damages and limiting payments to personal injury attorneys.

A poll by the Harvard School of Public Health found the following: ''More than 6 in 10, 63 percent, say they would favor legislation that would limit the amount of money that can be awarded as damages for pain and suffering to someone suing a doctor for malpractice.''

The same poll found that 69 percent of the people surveyed say a law limiting pain and suffering awards would help either a lot or some in reducing the overall cost of health care.

Finally, the results of a recent Gallup poll show that the American public strongly supports the HEALTH Act. The survey asked whether those surveyed would favor or oppose a limit on the amount patients can be awarded for their emotional pain and suffering. Mr. Speaker, 72 percent were in favor. That means three-quarters of the American people favor this HEALTH Act.

Mr. Speaker, I reserve the balance of my time.

Ms. DEGETTE. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan (Mr. STUPAK).

(Mr. STUPAK asked and was given permission to revise and extend his remarks.)

Mr. STUPAK. Mr. Speaker, I rise today in strong opposition of H.R. 5. Despite its name, this bill is a poor attempt to make health care more efficient, accessible, affordable or timely.

It is not even a serious attempt to lower malpractice insurance costs. I agree that Congress needs to comprehensively address medical malpractice issues. I understand and sympathize with doctors facing rising premiums. But this bill is not the answer.

Malpractice premiums are rising as costs in all segments of health care are rising. And doctors, according to this USA Today article, still pay less for malpractice insurance than they do for their rent. And as the headline says here, ''Hype outpaces facts in medical malpractice debates.''

I am opposed to this legislation for many reasons. First, it has never been brought to the floor with any consideration by the Energy and Commerce Committee or the Judiciary Committee. No hearings were ever held. And there were no opportunities to amend this bill, to include provisions that might actually help solve the problem of premium increases.

The majority believes that the answer to lower medical malpractice premiums is to institute an arbitrary $250,000 cap on noneconomic damages in malpractice suits. However, large jury awards are not the cause of the problem. Only 1.3 percent of all claims result in a winning verdict. But the noneconomic caps hurt the children and the low-income wage-earners the most.

Do we really want to create a capped system where the makers of Vioxx, Accutane, Celebrex and any other drug are suddenly off the hook because of a weak FDA, and the only thing to keep them remotely honest is the trial system?

In addition, this legislation undermines the foundation of our court system, trial by jury of our peers. If we trust juries to determine whether a person is guilty or innocent and should die in a death penalty case, surely we can trust juries to determine compensation for victims in medical malpractice. The fact is that juries are cautious, and patients only prevail in one of every five cases that ever go to trial.

Let me tell you what the bill fails to do. It fails to address the real driver of medical malpractice insurance costs, the insurance industry itself.

The insurance industry investments tanked in the beginning of this decade because of a weak stock market, and now the industry is squeezing health care providers in an effort to protect their bottom line. Why are we not looking at the insurance industry, including the fact health insurers continue to be exempt from antitrust legislation?

In addition, the bill does not address the rising health insurance costs. The Congressional Budget Office, our own CBO, found that even large reductions in medical malpractice costs will have little effect on health care costs.

Finally, the bill does nothing to address the two root causes of medical lawsuits, medical errors and bad actors in the health care system. It is a tragedy that medical errors account for almost 100,000 patient deaths each year, but Congress has done very little to address this issue.

The bill also does nothing to address the fact that 5 percent of all doctors are responsible for 54 percent of the malpractice claims paid. Why do we allow health care providers to practice if they have a long record of errors?

Mr. Speaker, I urge my colleagues to reject this legislation.

Mr. SMITH of Texas. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania (Mr. DENT).

Mr. DENT. Mr. Speaker, as I mentioned a little earlier today, we talked about the insurance industry and its role in this issue. But let us be very clear. We need the structural reforms contained in the HEALTH Act, H.R. 5, in order to continue to provide access to quality care for our constituents and patients of the United States.

We also need to incent insurance companies to write policies in our States, which they will not do indefinitely in this current environment. And I remember a few years ago when people said, when the crisis was acute in Pennsylvania, they said the problem is the insurance companies invested money foolishly in the stock market. Well, a lot of people lost money in the stock market a few years ago. At that time the insurance companies in my State had about 8 to 10 percent of their money in equities. Most of it was in investment-grade bonds, which did rather well. But that really was not the cause of the problem.

But let me tell you about the city of Philadelphia. In my State, many people want to get their cases heard in a Philadelphia courtroom. Why? Because the juries pay more. According to Jury Verdict Research, at that time the average jury verdict award in Philadelphia was over a million dollars, and the average everywhere else in the State was under a half million. No wonder people wanted to go to Philadelphia.

In fact, President Bush even cited Philadelphia in a speech he made in Scranton, Pennsylvania, where trauma centers were closing down. What the President said there is that in the city of Philadelphia, there were more jury awards, more dollars sent out by Philadelphia juries than in the entire State of California, a State of 35 million people, and Philadelphia a city of 1.5 million people.

How is that? The system is broken. I am in the Lehigh Valley of Pennsylvania, 60 miles north of Philadelphia. One hospital, St. Luke's, was hit with a $100 million jury verdict in a Philadelphia courtroom. In a Philadelphia courtroom. It was an outrageous decision. It was settled for something less than that, I will tell you that right now. But it was an outrageous situation, could have bankrupted a major institution that has been nationally recognized on many occasions for clinical excellence. That is one of my problems.

We have also heard, too, that this is not a Federal problem. Does the word Medicare mean anything to anyone around here? Medicare will save billions of dollars over 10 years if we enact the reforms contained in this legislation.

Furthermore, in many States again like mine in Pennsylvania, to amend the constitution to permit caps on noneconomic damages literally is a 4- to 5-year process.

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But we cannot wait 4 to 5 years to solve this problem. That is why we need the HEALTH Act now. We can do it much more quickly. It is absolutely critical. A Band-Aid will not stop the bleeding. Structural reforms are required.

As I mentioned a little earlier today, in my State, taxpayers, particularly cigarette smokers, that is who is paying the bill for doctors' premiums and hospitals' medical liability premiums, that is who is paying the bill because no one wants to write insurance, and the State-administered fund is broke. They will have to find hundreds of millions of dollars more come January 1 to fix this problem.

The point is, structural reform is needed. Taxpayer bail-outs and Band-Aids will not fix the problem. I commend the gentleman from Georgia (Mr. GINGREY) for his leadership on this issue. A former colleague, Jim Greenwood, I thank for his leadership in the last session; and I thank the gentleman from California (Mr. COX) as well. I want to thank them for their leadership. I urge passage of H.R. 5.

The SPEAKER pro tempore (Mr. SHAW). The gentleman from Texas (Mr. SMITH) has 11½ minutes remaining. The gentlewoman from Colorado (Ms. DEGETTE) has 9 minutes remaining.

Ms. DEGETTE. Mr. Speaker, I yield 2 minutes to the gentlewoman from Ohio (Mrs. JONES).

(Mrs. JONES of Ohio asked and was given permission to revise and extend her remarks.)

Mrs. JONES of Ohio. Mr. Speaker, I thank the gentlewoman for yielding time. I rise today not only as a lawmaker but also as a former judge who tried many malpractice cases in Cuyahoga County, Ohio, to voice my disapproval of H.R. 5, the medical malpractice legislation that irresponsibly limits what might be rightfully owed to an injured plaintiff.

My previous experiences have taught me to respect the independence of our court and the jury system. Our judicial system must remain uninhibited in order to be effective. In direct contradiction to this fundamental democratic principle, H.R. 5 limits the capacity of a jury to deliver a fair verdict by capping the amount of noneconomic damages at $250,000. I say that the facts of each case should be able to control.

Thomas Jefferson once stated: ''I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its Constitution.'' By handcuffing the jury, this Congress would be trampling on this democratic principle.

Let me say that we can sit here on the floor of this House and talk about a number, $250,000. But it does not reach to a courtroom where we have an injured plaintiff who has the ability to put evidence on in the courtroom to say to the jury and to the judge that these are the facts of our case that deserve to have the law applied to it and have the jury render a verdict.

It would be unfair in my mind as we look at the drug company advertisements. It used to be that the doctor would recommend the drug to the patient. Anymore, you turn on the TV and the TV is telling the patients, Get that purple pill; it will make a difference in your life.

Why should we allow drug companies who spend millions of dollars to entice parties into getting a particular drug without knowing any information to be let loose or let go for these reasons.

I say vote against H.R. 5, the medical malpractice legislation, because it is not what we need to help our plaintiffs.

Mr. SMITH of Texas. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, let me share with my colleagues the result of three studies,

and let me emphasize that these studies are not about hypothetical situations. They are not theoretical studies. They are studies of the actual experiences of States that have enacted reforms similar to the ones we have in this bill that we are talking about today.

According to the U.S. Department of Health and Human Services, States with reasonable legal reforms including caps on noneconomic damages enjoy access to more physicians per capita: ''We found that States with caps on noneconomic damages experienced about 12 percent more physicians per capita than the States without such a cap. Moreover, we found that States with relatively high caps were less likely to experience an increase in physician supply than States with lower caps.''

Mr. Speaker, also, research shows that California reforms, which the HEALTH Act is based on, have not resulted in unfair awards to deserving victims. A recent comprehensive study of California's MICRA reforms by the Rand Institute concluded that under MICRA, ''awards generally remained quite large despite the imposition of the cap, and California's reforms have not resulted in any disparate impact on women or the elderly.''

Mr. Speaker, in another study, researchers at the Harvard School of Public Health stated that ''we found no evidence that women or the elderly were disparately impacted by the cap by noneconomic damages in California under MICRA.''

Mr. Speaker, I reserve the balance of my time.

Ms. DEGETTE. Mr. Speaker, how much time remains?

The SPEAKER pro tempore. The gentleman from Texas (Mr. SMITH) has 10 minutes remaining. The gentlewoman from Colorado (Ms. DEGETTE) has 7 minutes remaining.

Mr. SMITH of Texas. Mr. Speaker, I yield 4 minutes to the gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I think it is important that we make sure that all our colleagues are clear on some of the issues that have been discussed here today. I know there has been some hyperbole maybe on both sides of the issue, and I want to be very clear.

This bill protects our patients, first and foremost, and gives them an opportunity to have access to affordable health care and to the specialist that they need and when they need them. It also helps our physicians, our doctors be able to stay in practice when they have an opportunity to have a stable medical malpractice insurance premium that they have to pay.

Yes, there is no question, Mr. Speaker, that section 7 in regard to punitive damages, that is applicable to our doctors as well as to companies that make medical equipment. It also is applicable to drug companies that provide us with life-saving drugs if they have done so in a fashion that is not negligent and not deliberately intended to harm a patient.

Here is an example, Mr. Speaker: things like time released infusion, chemotherapy, treating cancer patients, insulin pumps for diabetics, titanium hip replacements, artificial heart valves. If the makers of these life-saving devices were subject to punitive damages every time something through no fault of their own went wrong, we would be in the situation that we were in a year and a half ago in regard to the flu vaccine. Nobody wants to get involved in that business for the fear of a lawsuit. And with the government setting prices on flu vaccines, the profit margin to begin with was very limited.

So this section 7 is a very important provision in this bill, Mr. Speaker. So again, I want my colleagues on both sides of the aisle to understand that this is not a bad provision. This is a good provision.

Mr. Speaker, also one of the speakers in opposition, well, actually several of the speakers in opposition, said that this bill has been brought to us, we have had no hearings, we have had no opportunity, we have had no voice. It is not true, Mr. Speaker.

This is the fourth time in 3 years that this exact same bill, H.R. 5, has been dealt with on the floor of this House. It is the exact same bill.

I joined this body in 2003. We dealt with it in 2003. We dealt with it in 2004, and here we are with the exact same bill. Section 7 was in the bill, the section in regard to punitive damages. Nothing has changed. In fact, in the Committee on Energy and Commerce this February, a hearing was held on medical liability and some 15 witnesses were at that hearing, Mr. Speaker. So it is untrue to suggest that we have not had hearings and they have not had an opportunity. They know this bill.

It is a good bill. We have passed it three times. We are going to, in a few minutes, pass it for a fourth time; and, hopefully, the other body will do the same thing so we can get this to the President for his signature and level this playing field once and for all.

Ms. DEGETTE. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. INSLEE).

(Mr. INSLEE asked and was given permission to revise and extend his remarks.)

Mr. INSLEE. Mr. Speaker, there are better ways to solve this problem than to strip Americans of the right to trial by jury. Fundamentally, this bill takes the right of trial by jury of your peers away from Americans and gives that authority to politicians who have never heard any of the evidence.

Take this case about a 4-year-old girl I know from Yakima, Washington, named Nichole. Several years ago, she went in with a urinary tract problem. The doctors put in a foley catheter. When you do that, there is a balloon they put in your bladder that is inflated to hold the catheter. This was traumatic to this 4-year-old girl. When they went to deflate the catheter, it would not deflate. So they tried to deflate it by sticking a steel wire up through her urethra to try to puncture the balloon so they could pull the catheter out. They tried it many times. This was traumatic to this young girl. It did not work.

So they finally had to inject a solvent up her urethra to dissolve the rubber and it dissolved the rubber and it also dissolved part of her bladder and severely burned her bladder because of the malfunction of a negligently designed and manufactured foley catheter.

Now, who is better to make a decision for that 4-year-old girl about what is justice? Teachers, truck drivers, insurance salesmen sitting in a jury who have heard the evidence and who have looked at Nichole and understand the future dysfunction she may have and the trauma she had, or 435 politicians who are clueless about that specific case?

Where is the wisdom from the Creator that these politicians are vested in to tell us what Nichole went through? Nobody knows except maybe someone who was at that trial.

This is moving authority from jurors, citizens, the people who are sitting up in the gallery right here and taking it away from you and putting it in the pockets, first of Members of Congress, through the lobbyists for the drug companies and the medical companies. And by the way you, know what happened because of Nichole's case? That company cleaned up its act, and it started a new quality-control mechanism so that we will not have future Nicholes, because we had a medical negligence system that protected the Nicholes of this world.

There is a problem. This is not the best way to solve it. Respect America, democracy, and our jurors.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Members are to refrain from referring to persons in the gallery.

Mr. SMITH of Texas. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, I just want to remind my colleague who just spoke that our separation of powers provides that all aspects of the government are limited to some extent. If juries or judges give outrageous awards, like any other exercise of government power, they should be subject to reasonable checks and balances.

Mr. Speaker, I also want to remind my colleagues that unnecessary and frivolous litigation is threatening the viability of the life-saving drug industry. To encourage the development of life-saving drugs, the HEALTH Act contains a safe harbor from punitive damages from a defendant whose drugs or medical product comply with rigorous rules or regulations. The provision is manifestly fair.

Why should a drug manufacturer be found guilty of malicious conduct when

all they did was sell a product approved as safe under the comprehensive regulations of the FDA? Claims for unlimited economic damages and reasonable noneconomic damages could still go forward under the HEALTH Act. The safe harbor does not apply if relevant information was misrepresented or withheld from the FDA.

Eight States have, in fact, provided an FDA regulatory compliance defense against damages just like this bill. Those States are Arizona, Colorado, Illinois, New Jersey, North Dakota, Ohio, Oregon, and Utah. Opposing this bill jeopardizes those State laws. And the Members who are from those States might want to remember that.

Mr. Speaker, the evidence is overwhelming. Without legal reform, patients will continue to go without needed doctors: women will continue to deliver babies on the side of the road because the nearest OB/GYN is hundreds of miles away; parents will continue to be forced to watch as their child with brain injury suffers because lawsuits forced the nearest neurosurgeon to stop practicing.

Mr. Speaker, we need to pass this legislation.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. The gentleman from Texas (Mr. SMITH) has 3½ minutes remaining and has the right to close. The gentlewoman from Colorado (Ms. DEGETTE) has 5 minutes remaining.

□ 1545

Ms. DEGETTE. Mr. Speaker, I yield for the purpose of making a unanimous consent request to the gentleman from Rhode Island (Mr. KENNEDY).

(Mr. KENNEDY of Rhode Island asked and was given permission to revise and extend his remarks.)

Mr. KENNEDY of Rhode Island. Mr. Speaker, I rise to ask why we are not doing more to ensure fewer mistakes are made in the first place.

Mr. Speaker, nobody disputes that malpractice premiums are heavily impacting many physicians. I think very few of us would dispute that there are frivolous claims filed. All of the justifications for this bill about losing physicians in high-risk practices are real concerns.

So why is it that we are spending this time debating a bill that won't address this problem? Repeatedly dramatizing the problem doesn't make this bill a solution. This bill does nothing to prevent frivolous lawsuits. It doesn't rein in the bad actors, in penalizes those who are the most grievously injured.

Experience shows that the link between awards or settlements and premiums is tenuous at best. An exhaustive study published this month showed that premiums have gone up 120 percent over the last 5 years while claims were flat. The GAO has found no evidence that caps on damages hold premiums down.

But even if this bill could work—it would not, Mr. Speaker, but even if it could—we are completely missing the real issue.

We are fighting about how or how not to compensate the victims of mistakes and hold negligent providers accountable. Shouldn't we be talking instead about how to ensure fewer mistakes in the first place?

We are talking about closing the barn door but the horse is already galloping across the field.

Mr. Speaker, Sorrel King can teach us all a lesson. Several years ago, her 18-month-old daughter Josie suffered severe burns and was rushed to the ICU at Johns Hopkins Hospital.

She got the world-class care you would expect and they saved her life. She was going home in just a few days. And then communications were botched, orders were lost, and Josie was administered a drug she was not supposed to get, over Sorrel's objection. And even then, further warning signs were missed.

Josie King wound up dying of dehydration in one of our Nation's finest hospitals. Johns Hopkins settled with Sorrel and her family. And—here is where we can learn something—Sorrel turned around and gave the money back to Hopkins to create a new patient safety program.

Mr. Speaker, like Sorrel, we need to spend less effort apportioning blame and more effort making our system safer and better. Hundreds of thousands of our constituents die in hospitals every year not in spite of the care they get, but because of it. These are mostly systems problems, not the result of individual negligence.

Last year I introduced the Josie King Act to begin transforming health care delivery so that the system itself is driving better quality at lower costs. It laid out a roadmap to bringing health care into the information age and promoted the development of uniform quality metrics so that providers, the public, and purchasers have a clearer picture of which providers get the best outcomes for patients.

Now we are finally beginning to see attention to these priorities, which, unlike the current debate, have bipartisan support. We won't reach agreement about capping damages to patients who are hurt, but we can agree that the system should hurt fewer people.

We can pass strong health IT legislation this year, like the bill Mr. MURPHY from Pennsylvania and I introduced or the one that was reported out of committee in the other body.

We can pass legislation this year to begin linking reimbursements to outcomes and quality. I know we have strong leadership on both sides of the aisle, in several committees and in the House leadership, for both of those things.

Until we begin aligning incentives in health care so that providers who go the extra mile to make their patients better or, even better, keep them healthy—people are going to keep getting hurt.

Until we begin aligning incentives in health care so that the tools of the information age can help make care more accurate and more efficient.

Mr. Speaker, I agree with my friends on other side that physicians need lower malpractice rates. I also believe that the best way to get fewer lawsuits is to get fewer mistakes. Let's keep our eyes on the ball and make our health care system better, safer, and more efficient and make everyone better off.

Ms. DEGETTE. Mr. Speaker, I am honored to yield 1 minute to the gentlewoman from California (Ms. PELOSI), the distinguished minority leader.

Ms. PELOSI. Mr. Speaker, I thank the gentlewoman from Colorado (Ms. DEGETTE) for yielding me this time and for her leadership on issues that relate to the health and well-being of the American people.

I also want to salute the two distinguished ranking members, first the gentleman from Michigan (Mr. CONYERS) of the Committee on the Judiciary for his leadership on this important legislation; and I especially want to acknowledge the gentleman from Michigan (Mr. DINGELL), who this year celebrates his 50th anniversary in Congress, and every day of those 50 years he has worked to improve access to quality health care for all Americans. But particularly on this 40th anniversary of Medicare and Medicaid, it is worth noting the contributions of the gentleman from Michigan in providing health care security for millions of Americans and for upholding the fundamental principle that Democrats believe in: Health care is a right, not a privilege.

Mr. Speaker, I rise in strong opposition to the Republican medical malpractice bill. Let me begin with this simple fact: Under President Bush, 5.2 million more Americans have joined the ranks of the uninsured. Today, 45 million Americans have no health insurance. The bill before us does not, nor does any other Republican bill during this so-called Health Week, provide health insurance to one single American.

This bill is not about solving the urgent health insurance crisis that affects millions of American families, nor is it about improving our health care system, containing costs, or even lowering medical malpractice insurance premiums. Instead, the Republican medical malpractice bill, first and foremost, is a windfall to the big drug companies at the expense of Americans who have been injured or killed by harmful and unsafe drugs. Once again, protecting the big drug companies is at the top of the Republican agenda.

The Republicans have attempted to hide the true purpose and the real reason for this bill. It contains a special liability waiver for drug companies for the types of injuries caused by drugs. Under this Republican bill, when Americans are injured, or even killed, by drugs that have been negligently marketed, they will not be able to obtain justice and hold drug companies wholly accountable.

The Republican leadership, beholden to the pharmaceutical companies, refused to allow amendments that would strike this unjust provision. As with the Medicare prescription drug bill, where Republicans prohibited the government from negotiating for low prices for seniors, and forbade Americans from purchasing lower-priced drugs from Canada, this is yet another example of the Republicans being the handmaidens of the pharmaceutical industry.

The Republican medical malpractice bill is an extreme bill that is an injustice to consumers, and it unconscionably rewards irresponsible drug companies. If we are to remain a Nation that seeks justice for all, the special liability waiver for drug companies must be removed. Unfortunately, the Republicans refused to permit the consideration of the Emanuel-Berry amendment to remove this unjust and reprehensible provision.

Apart from pandering to drug companies, this bill utterly fails to achieve its stated purpose. It will not lower medical malpractice insurance premiums, nor does it address the real cause. The real cause of high malpractice premiums is not the payouts for malpractice claims. Former Missouri State Insurance Commissioner Jay Angoff issued a recent study showing the amount collected in premiums by major medical malpractice insurers has doubled. The amount received in premiums has doubled, while the claims paid out have remained flat, resulting in excessive profits and excessive reserve surpluses.

The Angoff study found that insurance companies are charging far more for malpractice insurance than actual payments or estimated future payments warrant. This finding is also supported by numerous studies that document that in States that have enacted caps or damage awards, they have not seen their premiums for malpractice insurance lowered.

Rather than addressing insurance companies' refusal to lower rates, the Republican bill instead interferes with the rights of injured Americans to be compensated for their injuries and have their claims heard by a jury of their peers. If enacted, the cap on damages would severely harm women, children, and the elderly who have been injured. Unfortunately, the Republican leadership did not allow the Democratic substitutes by the gentleman from Michigan (Mr. CONYERS) and the gentleman from Michigan (Mr. DINGELL) to be offered.

The Democratic substitute supports sensible approaches that permit only valid claims to go forward. More significantly, the Democratic substitute addresses real causes for premium increases and offers real solutions for the doctors. It repeals the antitrust exemption for insurance companies. It provides targeted assistance to help physicians stay in crisis areas.

We all respect the magnificent contribution that doctors provide to our society. It is not only a profession, it is a vocation, and we literally could not live without them. So it is with great respect for them that I say they deserve better than this bill, which purports to help them.

President Harry Truman said it so well: ''The Democratic party stands for the people. The Republican party stands, and always has stood, for special interests.'' That was true almost 60 years ago when he said it, and it is certainly true today. Let us uphold the public interest. Let us stand up to the big drug and insurance companies, and let us oppose this unjust bill.

Mr. SMITH of Texas. Mr. Speaker, I reserve the balance of my time, as we are prepared to close on this side.

Ms. DEGETTE. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, the gentleman from Texas says that this bill does not preempt State law. In fact, the bill includes a sweeping preemption of State law which is designed to override State laws that protect consumers and patients while keeping in place State laws that favor doctors, hospitals, nursing homes, HMOs, pharmaceuticals and medical device manufacturers, and other health care defendants.

In fact, the only laws that this bill does not supersede are the ones that protect those groups, and that is at the great risk to patients.

Mr. Speaker, I yield the balance of my time to the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Speaker, there are a number of very important reasons to oppose this bill, but I want to focus on one of the most egregious parts of the legislation that has nothing to do with medical malpractice. Under this legislation, if a drug or medical device manufacturer sells a dangerous product that causes harm to a consumer, so long as that product received FDA approval prior to being marketed, a court would be prohibited from awarding punitive damages against that manufacturer. This marks a dramatic change in current law by transforming FDA product approval into a shield against liability.

Time and again we have seen that the FDA approval process cannot or does not guarantee the safety of drugs and other medical products. Every day our concerns increase about the adequacy of the FDA's postmarket safety programs. And we have seen numerous instances in which despite receiving FDA approval, drugs and medical devices, have been pulled from the market because of the emergence of severe dangers associated with their use.

Mr. Speaker, we have not given the FDA the tools or the ability to approve a drug so that all the things that would happen after that approval will not occur, such as the failure of the company that manufactures it to make sure they follow their own safety standards; or that new risks that are not known at the time of the approval will never arise.

We have to rely on the civil justice system as an additional layer of protection for American citizens. In court, consumers harmed by dangerous medical products are given the opportunity to hold the pharmaceutical companies accountable for their wrongdoing. Confronted with the looming threat of liability, pharmaceutical and medical device companies have every incentive to ensure that their products are safe before they are marketed, and that they continue to be safe once on the market.

We have seen mounting evidence that drug and device companies can withhold key data from physicians, fail to conduct needed safety studies, and carry out misleading advertisement campaigns even when they know of the risks of their products. Yet instead of safeguarding an individual's right to hold a drug and device company accountable for this kind of conduct, this legislation offers sweeping protection for those companies.

A company might mislead doctors about the safety of its drug and continue to aggressively promote the use of a dangerous drug in spite of studies raising questions as to its safety. Under this legislation, such company would have a shield from liability for punitive damages for this behavior. This is an issue that should be decided on the evidence and in court.

If we fail to preserve the right of Americans to hold manufacturers of dangerous medical products accountable, we will fail to uphold our responsibility to American consumers to protect against unsafe products and medical devices.

Mr. Speaker, I urge opposition to the legislation.

Mr. SMITH of Texas. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, first let me say to my colleagues who are not usually concerned about States rights that if they will look at section 11 of the bill, they will find the bill respects the right of any State to set a cap of any amount, be it higher or lower, than the caps in the bill itself.

Mr. Speaker, the HEALTH Act is the only proven legislative solution to the current medical liability insurance crisis. According to the Congressional Budget Office, under this bill, ''Premiums for medical malpractice insurance ultimately would be an average of 25 percent to 30 percent below what they would be under current law.''

H.R. 5 allows unlimited awards of economic damages. These include past and future medical expenses, lost or past and future earnings, the cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities. Deserving victims can be awarded tens of millions of dollars in damages, as we have already seen in the States that have similar reforms to those contained in this bill.

Mr. Speaker, the Harvard Medical Practice Study found that over half of the filed medical professional liability claims they studied were brought by plaintiffs who suffered either no injuries at all or, if they did, such injuries were not caused by the health care providers, but rather by the underlying disease.

H.R. 5 is modeled on California's legal reforms. Those reforms have resulted in California's medical liability premiums increasing at a rate that is only one-third the rate of those of other States.

Mr. Speaker, we need to act, and we need to act now. The nonpartisan Annals of Medicine predicts that the current doctor shortage could get worse, and we could lose 20 percent of needed doctors in the coming years. Let us protect patients everywhere. Let us pass the HEALTH Act.

Mr. AL GREEN of Texas. Mr. Speaker, I want to express my concern regarding the passage of H.R. 5, the Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2005 also known as the medical malpractice bill. Although some believe that ''reforming'' medical malpractice litigation will ultimately serve as a solution for skyrocketing healthcare premiums, it is my belief that this legislation is both misguided and harmful to the American people.

One of the most contentious provisions within H.R. 5 is a $250,000 cap on awards for non-economic damages. Placing such a cap allows corporations the opportunity to build into their bottom line a certain amount of liability. Currently, we have a judicial system that creates a fine balance between free corporate enterprise viability and consumer protection. The medical malpractice bill will disrupt this equilibrium in the name of reducing ''frivolous'' lawsuits without taking into account the implications for those making legitimate claims. This bill has the potential to reduce the incentive for corporations to remedy defective products,and instead may allow those entities to easily assume the loss incurred by ultimately accounting for the cost liability, a sum inevitably less than their sometimes lucrative profits.

I respect the efforts of all of my colleagues to address the concerns of their constituencies. However, I would be remiss in that duty if I did not oppose legislation that erodes consumer protection and the ability of the courts to determine appropriate punitive measures for negligent defendants.

Mr. ABERCROMBIE. Mr. Speaker, I rise today to support efforts to address the medical malpractice problem we have in this country today. There can be no doubt that doctors are paying excruciatingly high premiums and as a result, patients,and our medical system are suffering. However, I do not believe that H.R. 5 will do anything to solve this problem. As many of my colleagues have pointed out, this legislation will only lower expenses for the insurance industry and limit compensation for those victims who need it the most.

Later in this Congress, I will be introducing legislation to offer an alternative to the idea of caps on compensation. Instead of limiting victim awards, my proposal is to limit the involvement of the insurance industry in the medical malpractice system. Physicians will no longer have to worry about the cost of their medical malpractice insurance. The practice of defensive medicine and its toll on our medical system would be eliminated.

In addition, my proposal will ensure that the small number of doctors who are responsible for a large number of malpractice suits, will be critically examined. According to the National Practitioner Data Bank, 11% of physicians are responsible for half of all malpractice payments made between September 1, 1990 and December 31, 2003.

Yesterday, the House of Representatives passed S. 544, an important first step in addressing one of the root causes to the situation we face today. The Patient Safety and Quality Improvement Act will create a voluntary reporting system for errors and ''near misses.'' This information can then be analyzed so that better medical practices can be established.

Mr. Speaker, it is time to address the other root causes of rising medical malpractice premiums. Caps are an old and ineffective solution. My proposal will be a substantive and constructive reform for the entire system. I urge my colleagues to keep an open mind in trying to solve the medical malpractice problems we face today.

Mr. HONDA. Mr. Speaker, for the fourth time in the 5 years I have been a member of the United States Congress, I will be opposing a flawed Republican bill which would limit damage awards to patients injured by medical malpractice. While Republicans claim their measure would reduce insurance costs for doctors by discouraging frivolous lawsuits—which they blame for driving up insurance premiums and reducing access to health care for patients—the Republicans legislation completely ignores the rate-setting process followed by the insurance industry. Furthermore, a 2002 study by the Congressional Budget Office found that the effect of even a very large reduction in malpractice costs would have a small effect on individual health care premiums.

This bill broadly defines ''medical malpractice action'' to protect HMOs, insurance companies, nursing homes and drug and device manufactures for a broad range of liabilities, including suits by physicians against those companies. Furthermore, the bill caps non-economic awards for pain and suffering of $250,000, and punitive damages at $250,000 or twice economic damages, whichever is greater.

All this measure really does is place legal obstacles on patients injured by wrongful conduct. Under this bill, individuals face time limits that would require an injured person to file health care lawsuits no later than three years after the date of the injury or one year after discovering the alleged malpractice, whichever occurs first. In addition, there are limits to attorney contingency fees, which would potentially force inured persons, faced with medical bills and lost wages, to finance lawsuits they otherwise cannot afford.

Support of tort reform say large million-dollar damage awards in medical liability suits are the reason that the cost of malpractice premium insurance are so high. I believe premium increases represent only one part of the problem facing many doctors throughout the nation and these increases are not necessary linked to damage awards. Even some insurance industry insiders say that recent increases in malpractice premiums have nothing to do with lawsuits or jury awards, and that tort reform will not reduce premiums. Rather, increases have been driven by the insurance underwriting cycle and insurance companies' bad investments.

Mr. Speaker, rather than truly deal with a crisis faced by medical doctors, this bill is simply crafted to benefit the insurance industry at the expense of victims of medical malpractice. Instead of fruitless passing this flawed bill for the 4th time in less than five years, we should be working hard to provide health care to the 45 million Americans who are uninsured today.

Mr. BOUSTANY. Mr. Speaker, I rise in support of H.R. 5, the HEALTH Act of 2005.

The medical liability crisis have been growing over the last decade and is rapidly developing into a patient access crisis as well.

Frivolous lawsuits are overwhelming our legal system and wasting billions of dollars each year.

In 2004, more than 70 percent of medical liability claims did not result in payments to plaintiffs and only 1.1 percent of claims resulted in a plaintiff's verdict.

In cases where the defendant prevailed at trial, the average defense costs were $87,720 illustrating the high cost of unfounded claims.

Frivolous lawsuits further drive up costs by encouraging physicians to practice defensive medicine ordering additional tests that are not necessary to provide quality care. Physicians are also less likely to try new and innovative medical treatments.

The resulting increase in medical malpractice premiums are threatening access to quality care by forcing physicians to move their practices, retire early, and limit services. The situation is particularly critical for ob-gyns. From 2003 to 2004, increases in rates for ob-gyns were as high at 66.9%. Illinois premiums rose from $138,031 to $230,428.

H.R. 5, the HEALTH Act, will increase patient access to health care services and provide improvised medical care by reducing the excessive burden the liability system place on the health care delivery system. This bill: Ensures that patients receive adequate compensation while limiting non-economic damages to $250,000. Sets a statute of limitations of three years after the date of manifestation of injury or one year after the claimant discovers the injury to ensure timely resolution; allows the introduction of collateral source benefits and the amount paid to secure such benefits as evidence; authorizes the award of punitive damages only where: (1) it is proven by clear and convincing evidence that a person acted with malicious intent to injure the claimant or deliberately failed to avoid unnecessary injury the claimant was substantially certain to suffer, and (2) compensatory damages are awarded. Prescribed qualifications for expert witnesses.

States including Louisiana and California that have instituted their own liability reforms that include caps on non-economic damages have shown proven success and as a result, these states are not facing a medical liability crisis.

I urge my colleagues to support the HEALTH Act and ensure patient access to quality medical care.

Ms. LEE. Mr. Speaker, I rise today in opposition to H.R. 5.

Proponents of this legislation make numerous false claims.

They claim that ''tort reform'' will magically reduce doctors' skyrocketing malpractice premiums.

But the truth is that even a spokesman for the American Insurance Association couldn't promise price reductions with tort reform.

Supporters also claim that capping non-economic damages will make malpractice insurance more affordable for doctors.

But the truth is that the example set by my home state of California's MICRA law proves this isn't the case. Enacted in 1975, it wasn't until after 1988, when California passed insurance reform under Proposition 103 that malpractice insurance rates began to stabilize.

Proponents even claim that this bill will protect patients' rights.

But the truth is that H.R. 5 would strip away the rights of patients, especially women, seniors, children, and lower income families.

But Mr. Speaker, let's give credit where credit is due. This bill does protect someone:

It protects HMOs, the insurance industry and the pharmaceutical companies.

Mr. Speaker, instead of false claims and gifts to HMOs, we need a bill like the Conyers-Dingell substitute that was not made in order.

Unlike H.R. 5, the Conyers-Dingell bill is balanced and would eliminate frivolous lawsuits, increase competition, and reduce costs, without sacrificing crucial protections.

Let's be real, Mr. Speaker. This bill is yet another example that shows where Republican priorities lie—with their contributors—HMOs and insurance companies.

Patients and people deserve more.

I urge my colleagues to reject the false claims and vote ''no'' on H.R. 5.

Mr. BLUMENAUER. Mr. Speaker, there are two ways of dealing with the medical malpractice problem. One is to take the approach that the House Republican leadership has chosen for years; a narrowly drawn proposal that appeases their partisan supporters but doesn't solve the problem. As I said last year, the rationale was weak and there was little evidence it would succeed. Instead, it may do more harm to the health care community and doctors. Most important, because it is so narrow and partisan, it's very unlikely to become law. Pushing a political solution is the approach that has been tried repeatedly and is what Oregon voters rejected again at the polls last year.

The other approach is to work cooperatively, bringing people to the table to make progress. This is what appears to be happening in Oregon in the aftermath of the last defeat. In Oregon, doctors, hospitals, and other healthcare professionals are working with consumer advocates, trial lawyers, and people from government to fashion a solution that is acceptable; to make progress building on cooperation and trust.

Between the two approaches it's clear that the narrow, partisan, and unbalanced approach is not only questionable on its merits, but is a political dead end. I see no reason to change my longstanding opposition to both the narrow solution and to the approach that created it. Given the nature of the crisis of healthcare in the United States, the problems will only get worse; politicizing them will only put off the day when real progress is achieved.

Mr. HOLT. Mr. Speaker, I rise in opposition to H.R. 5. This legislation will not reduce medical liability premiums, and it unfairly and arbitrarily discriminates against those most severely injured by medical errors.

I have consistently heard from physicians in Central New Jersey that the rising cost of medical malpractice insurance represents a growing crisis. The rising premiums have compelled many physicians to leave the state or leave medicine altogether. My wife is a general practice physician, so I fully appreciate the gravity of the situation facing many doctors. The rising cost of insurance poses obvious dangers for access to care, particularly for populations most in need.

Unfortunately, the Republican leadership has brought to the floor a bill that does not reduce premiums for physicians and imposes an arbitrary cap on damages for the most severely injured victims of malpractice or negligence.

Capping non-economic damages at $250,000 for patients who have won a medical malpractice tort will not result in lower insurance premiums for physicians. Just listen to what the insurance industry itself has said. ''We have not promised price reductions with tort reform,'' said Dennis Kelly, an American Insurance Association spokesman in the Chicago Tribune. In fact, over the past few years, payouts for medical malpractice cases have remained flat while premiums have continued to rise, in some cases doubling.

Because of insurance companies overcharging doctors for insurance, the fifteen largest insurers have accumulated a surplus that is double what they actually need to pay claims. We should be debating how to most effectively rebate this surplus to the doctors, rather than looking for ways to reward them for the squeeze that they are executing on our healthcare system. The insurance industry is gouging medical doctors and is trying to use patients as a scapegoat.

Imposing a cap on damages inherently affects the patients most severely injured by malpractice or negligence. Setting the cap at $250,000 is an insult to all those who have had their lives permanently changed by medical errors. The figure is lifted directly from the 1975 California MICRA law. Adjusted for inflation, this amount would be close to $1 million in 2005 dollars. $250,000 does not come close to compensating for loss of life or permanent disability or disfigurement.

I am disappointed that, for the third time in three years, the Rules Committee has eliminated any opportunity to amend the legislation. I am particularly disappointed that the Rules Committee disallowed substitute legislation by Ranking Members JOHN CONYERS and JOHN DINGELL. Their bill would weed out frivolous lawsuits, require insurance companies to pass savings on to health care providers, and provide targeted assistance to the physicians and communities who need it the most. That Congress is not permitted even to consider this legislation as an alternative demonstrates that the bill we have before us cannot survive on its own merits.

As liability insurance premiums continue to rise for physicians across the country, the Republican leadership continues to prescribe the same tired and ineffective legislation. For good reason, this bill has not survived the legislative process for the past three years, yet we are once again debating whether to enrich insurance companies at the expense of victims of medical malpractice and negligence.

We need a comprehensive, fair, and effective approach to lowering insurance premiums for physicians. The legislation we have before us is none of the above. I encourage my colleagues to oppose H.R. 5.

Ms. DELAURO. Mr. Speaker, we can all agree on one thing—the skyrocketing cost of malpractice insurance impacts every doctor and, indeed, every American. But contrary to what this majority has repeated time and again, the reason for these soaring costs has nothing to do with frivolous lawsuits.

Indeed, a new report by the Center for Justice and Democracy found that in the last 4 years, the 15 largest malpractice insurers increased premiums by 120 percent—more than doubling premiums. And what about all those frivolous lawsuits supposedly driving those costs? The same report found that claims during that same period rose by just 5.7 percent. In my State of Connecticut, the contrast between claims and rates is even starker, with premiums for our 3 largest malpractice insurers shooting up 213 percent over the last 4 years while claims have increased only 1.6 percent.

So, let's call this situation what it is, Mr. Speaker—insurance companies gouging doctors. To inflate their own profits, insurance companies are putting doctors at risk, destabilizing our health care industry and driving up costs for everyone.

And what is this majority's response? Granting authority to State insurance commissioners to order refunds for doctors when excessive rates are imposed? Requiring insurance companies to get approval before rate increases? Demanding that States set standards for actuaries to calculate rates?

No. Their response: ''blame the patients.'' Limit damages. Drive a wedge between the parties being hurt the most by rising malpractice costs—doctors and patients. At all costs, it seems they are saying, do not hold the insurance industry's feet to the fire on this issue.

Mr. Speaker, this debate ought to be about helping doctors—about doing something meaningful to ensure they can afford to continue practicing medicine. Instead, this bill would insulate insurance companies from having to follow any kind of responsible guidelines regarding how malpractice insurance rates are set. And, as such, this bill will do nothing to actually drive those rates down—an admission the insurance industry itself has acknowledged.

None of this is to say that we do not need to crack down on frivolous lawsuits—indeed, last year I voted to penalize lawyers who file frivolous suits with a tough ''3 strikes and you're out'' rule. And today, Democrats wanted to offer a substitute, which would have taken a comprehensive approach to the malpractice insurance crisis. Our bill would have prevented frivolous lawsuits but also required insurance companies to pass some of their savings on to health care providers, as well as providing assistance to the physicians and communities who need it the most.

We had also hoped to strike a provision of this bill that would have protected manufacturers such as the makers of Vioxx from liability. But again, Republicans prevented that amendment from coming to the floor today for consideration. And little wonder—I would not want to justify why Republicans were protecting the makers of a drug found to be responsible for thousands of deaths either.

Mr. Speaker, in the face of premium increases that are 20 times faster than malpractice claims increases—frivolous or otherwise—this legislation is irresponsible, plain and simple. I urge my colleagues to do right by doctors and families by opposing this bill. Let's come back and pass a bill that will actually address the malpractice insurance crisis.

Mrs. BIGGERT. Mr. Speaker, I rise today in strong support of H.R. 5, the HEALTH Act.

Will County, Illinois, part of which I represent, no longer has any practicing neurosurgeons. A recent survey found that 11 percent of OB/GYNs no longer practice obstetrics in my home State of Illinois. And more than half of OB/GYNs in the State are considering dropping their obstetrics practice entirely in the next 2 years due to medical liability concerns.

Women and children are the first to suffer in a crisis like this. As a mother and a grandmother, I don't want to see pregnant women driving to another State because they can't

find an OB/GYN in their own area. I don't want to see injured children transported miles away from their homes because there are no pediatric neurosurgeons left to treat head injuries. And I don't want to see health insurance premiums climb so high that employers can no longer afford to provide benefits to their workers. We need reform and we need it now.

Mr. ETHERIDGE. Mr. Speaker, I rise today in opposition to H.R. 5, the Republican medical malpractice bill, and the process by which it is being debated in this House.

Today, the House will vote on H.R. 5, a bill to impose caps on damages that may be awarded for medical malpractice, defective products, and other health related wrongdoings. Like many Members of this House, I am concerned about the rising cost of medical malpractice insurance and its impact on physicians and their patients, but H.R 5 is the wrong medicine for this national problem.

I oppose H.R. 5 because it will not reduce medical malpractice premiums. What's more, it protects manufacturers of faulty pharmaceutical devices and medical equipment from product liability actions, and overturns North Carolina State law. H.R. 5 also limits the ability of injured persons to bring suits against pharmaceutical companies, HMOs, and nursing homes, thus setting a dangerous precedent allowing these entities to escape the law in even the most severe cases of neglect and abuse. Finally, H.R. 5 undermines North Carolina's patient protection statutes, which are some of the strongest in the Nation.

My colleagues, Mr. DINGELL and Mr. CONYERS, have drafted an alternative amendment to H.R 5. This alternative will help courts weed out frivolous lawsuits without restricting the rights of legitimate claims, repeal the Federal anti-trust exemption for medical malpractice insurance companies, thereby increasing competition and lowering premiums, and provide targeted assistance directly to physicians, hospitals, and communities in medical malpractice crisis areas. Finally, the alternative establishes an independent advisory commission to examine and recommend long-term solutions to this important issue. Unfortunately the Republican Leadership has denied Representatives DINGELL and CONYERS the opportunity to offer this alternative.

Mr. Speaker, the issue of medical malpractice insurance is an important one. H.R. 5 will without a doubt harm America's patients. I urge all of my colleagues to vote against H.R. 5 and to support the motion to recommit the bill.

Mr. UDALL of Colorado. Mr. Speaker, I'm reluctantly voting against H.R. 5, which would limit medical malpractice awards.

I am not opposed to considering legislation that would do something to respond to real problems. But I do not think this bill merits that description.

In fact, I think the vote today has more to do with politics than with policy—and if I had any doubts on that point, they ended when the Republican leadership refused to permit any amendments at all to be considered. Stifling debate is not the way to develop good policy.

As in the past, the bill's supporters argue that unless the tort laws are changed, doctors will not be able to afford malpractice insurance and so will give up providing medical care. And, again, opponents say the bill would do nothing to affect insurance rates.

I think we're beating a dead horse. Both sides have dug in and aren't willing to compromise. In the meantime, we aren't doing anything to reform our medical liability system and we aren't doing anything to make health care more affordable and accessible for Americans.

Our system is inherently adversarial and we've continued this finger-pointing game and done nothing to improve patient safety and health care access, which is what we're really talking about here.

I think we need a system that is non-punitive and encourages openness and improvement so that doctors can report medical errors without fear of being sued. This will help us understand medical errors and improve procedures and patient safety. Fewer medical errors will result in fewer medical malpractice suits, which in turn will help keep malpractice insurance rates and health care premiums down.

That's why I have supported legislation to create a voluntary medical error reporting system under which patient safety organizations, on a confidential basis, would receive information on reported errors for analysis. They would then be expected to develop and disseminate evidence-based information to help providers implement changes in practice patterns that help to prevent future medical errors.

In addition to that, I think we should explore ideas like alternate dispute resolution, no-fault systems, and medical courts.

I also want to make it clear that I am not opposed in principle to capping damages. That has been done in Colorado and some other states, and I think there is evidence indicating that it can help keep health care costs down and keeps doctors accessible. However, I think this bill's low and arbitrary limits on damages will hurt those at the bottom of the income scale the most. Also, I don't think we should be shielding large and powerful HMOs and drug companies from liability. So, I cannot support the bill as it stands.

Mr. Speaker, ultimately this issue is about health care access and patient safety. If we aren't going to compromise, I hope we'd start thinking outside the box on how to end the logjam. I offer these ideas as a way to get there, because we aren't going to get there from where we are today.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I rise today in opposition to H.R. 5, the Medical Malpractice bill.

H.R. 5 may have been conceived with good intentions, but it is a bad bill. It is a particularly bad bill for low income Americans.

If a patient is injured by a caregiver due to medical malpractice, and that patient sues, it should be up to a judge or a jury—not the U.S. Congress, to decide how much compensation should be awarded.

Injured patients who don't get their fair compensation will suffer. They will suffer in two ways. First of all, it's hard to put a blanket price on damages resulting in life or limb.

Secondly, if the compensation is not sufficient, what will happen to the disabled patient when the money runs out? Who, then, will pay for their long-term care, or for the children of someone permanently disabled or even killed?

I'll tell you who will pay for them: the American taxpayer. Those children and disabled people will enroll in federal programs to help them exist day by day. American taxpayers pay for those programs.

Mr. Speaker, this bill won't do anything to lower the cost of health care.

This legislation is good intentions that will have bad consequences. I ask my colleagues to consider very carefully who will end up paying at the end of the day.

The American taxpayers—you and I, not the care providers at fault—will end up paying for the damages incurred from medical malpractice.

Mr. GENE GREEN of Texas. Mr. Speaker, I rise in opposition to H.R. 5, legislation to limit non-economic damages that victims may seek when injured by medical malpractice. My primary objection to this bill stems from the Congress imposing its will on the states regarding an issue that rests squarely within State jurisdiction.

The states are responsible for licensing medical professionals and for regulating the insurance industry. In fact, the states have had jurisdiction over medical malpractice for more than 200 years, and it should continue to be that way. This legislation would unnecessarily preempt the laws of states that have taken measures to address this issue. At least 30 states have enacted laws with regard to non-economic damages, so it is unconscionable that anyone would argue that the medical malpractice issue is trapped in a regulatory vacuum.

In 2003, the State of Texas saw a need for action on medical malpractice and enacted a cap on non-economic damages. Having served in the Texas State Legislature, I know first-hand that state legislatures are best positioned to determine whether and how to address the medical malpractice situation in their individual states. The State of Virginia enacted a different cap that best balances the needs of consumers, physicians and health care institutions in that particular state. The situation is different in each state, and a Washington-knows-best approach ignores the hard work and tough decisions that individual states have made.

On a substantive level, I oppose this legislation based on two provisions with significant flaws. First, the bill includes a firm $250,000 cap on non-economic damages without providing for inflation adjustment in future years. While that figure mirrors California's MICRA law, it is important to recognize that California's cap has not been adjusted for inflation in approximately 30 years. Further, California's law was crafted during a time when a $250,000 cap would have sufficed for all but the most egregious jury awards—which, I might add, the judge has the discretion to overturn. That is certainly not the case in the 21st century, and I object to the Congress placing a price on pain and suffering. A cap on non-economic damages would create a one-size-fits-all figure for each and every case of medical malpractice. Members of Congress do not hear the details of each medical malpractice case. Members of juries do, which is why they are best equipped to determine the appropriate non-economic damages based on the facts of each case.

This legislation also contains a dangerous provision that would provide drug companies and device manufacturers with an affirmative defense against punitive damages as long as their products had FDA approval. This provision presupposes that FDA approval is an airtight process whose integrity need not—and legally cannot—be questioned. Considering

the FDA's recent track record with regard to Vioxx and other pharmaceuticals that have been removed from the pharmacy shelves, it is clear that the integrity of the FDA approval process has been compromised. Until some serious reforms are implemented at the FDA, the FDA stamp of approval should not provide any company with an affirmative defense against punitive damages. Such a provision would only provide drug and device manufacturers with even less of an incentive to report known adverse events before their products go to market and ensure that their products are as safe as possible. Given these concerns, I would urge my colleagues to oppose this bill and leave this issue to the states, which have clear jurisdiction, as well as the ability and willingness to handle this delicate issue.

Mr. WELDON of Florida. Mr. Speaker, I rise to express my strong support of H.R. 5 and my interest in seeing that one significant concern is addressed, should this bill move through the Senate.

As a practicing physician I know how important this bill is to ensuring that Americans have access to good medical care. For too long too many limited resources have been misdirected away from patient care and have instead been spent to unnecessary malpractice awards and the practice of defensive medicine. Defensive medicine offers little in terms of better patient outcomes, but it adds billions of dollars to the cost of medical care. I know this not only because studies show this is the case, but I used to practice defensive medicine every day.

This bill makes sure that there is fair treatment for those individuals who do suffer serious adverse medical outcomes, while ensuring that our legal system is not overwhelmed with frivolous lawsuits.

A serious concern I have with the bill, and an issue I have raised with the chairman and others, is how it treats liability reform for manufacturers of drugs and vaccines. With respect to pharmaceuticals we are often unable to recognize all adverse reactions until we have post-marketing information. This post-marketing safety data, such as in cases like Vioxx, is provided to FDA on a voluntary basis by the manufacturers. I agree with the intent of the bill which is to ensure that Americans have greater access to potentially live saving pharmaceuticals. However, it is equally important that we fully examine the implications of such provisions on safety and the willingness of manufacturers to come forward with adverse information.

I am also concerned that H.R. 5 offers significant liability protection for vaccine manufacturers, while failing to fix the broken vaccine injury compensation program (VICP). It is critically important that these two not be separated. The VICP is very broken and it would be wrong to cut off access to the courts without addressing the serious deficiencies that exist in the compensation program today. As it operates today, the VICP has essentially imported the tort system into the program. That was not how the program was designed to operate. If both the liability problem and the VICP deficiencies are not fixed fairly, then our nation's immunization program will suffer serious problems and parents could increasingly reject childhood immunizations for their children.

Mr. DINGELL. Mr. Speaker, I rise in strong opposition to H.R. 5. The Republican leaders of this House have denied us our right to offer an alternative to the over-broad and ill-conceived legislation that is before us today and have bypassed both committees of jurisdiction. Why are they so afraid?

Are they afraid we will demonstrate that their bill will create excessive litigation as opposed to reducing it? H.R. 5 is ambiguously drafted, leaving its readers to surmise what its provisions could possibly mean. Federal and State courts would take years trying to sort it all out.

Are they afraid we will discuss how their legislation shields HMOs, insurance companies, and drug manufacturers from all sorts of skullduggery? The proponents of this legislation offer no evidence that these privileged industries need additional protections, yet H.R. 5 grants them a special status under the law that is unprecedented.

Are they afraid we will show how this unprecedented immunity bath for their favorite industries will hurt the rights of injured patients? There is a human cost to this legislation that we must not forget.

Are they afraid we will tell how H.R. 5 would hurt women, seniors, and low-income families by limiting non-economic damages to $250,000? Because a large part of economic damages is an individual's income, such a system would place a higher value on the lives of CEO's. My friends, every human life is worth more than $250,000.

Unfortunately, my Republican colleagues are quite determined to move quickly and harshly. Their legislation reaches well beyond malpractice and offers no guarantees of assistance to providers and communities. Physicians and patients are asked to cross their fingers and hope that some of the benefits given to large corporations will trickle down to them. And women, seniors, and low-income families are left to pay the human cost of these corporate benefits. It is wrong.

But the rising cost of malpractice insurance is a real problem—requiring careful, balanced, and targeted legislation. Regrettably my colleagues will not have the opportunity to vote for the balanced package that my friend from Michigan, Mr. CONYERS, and I have crafted. Perhaps their greatest fear is that you would prefer a bill that truly helps physicians, hospitals and nurses, while protecting the rights of patients and doctors over HMOs. I urge you to support the motion to recommit and oppose final passage of H.R. 5.

Mr. STARK. Mr. Speaker, we have been told that weapons of mass destruction required an invasion of Iraq, that ketchup is a vegetable, and that global warming is a vast, left-wing conspiracy. Now, the great minds of the Republican Party want us to believe that lawyers are to blame for skyrocketing medical malpractice insurance premiums.

Respected insurance, health care, and legal experts all show that insurance companies, with their record surpluses, are to blame for rising premiums. Who are you going to believe? I cast my vote with the experts, and against H.R. 5, the so-called Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2005.

This bill arbitrarily caps payments for pain and suffering at $250,000 and extends liability protection not only to doctors, but to HMOs, nursing homes and manufacturers of drugs and medical devices. Furthermore, the President and other Republican proponents claim that this bill will halt skyrocketing medical costs. That's hogwash. Even the non-partisan Congressional Budget Office has found that the this bill would have a negligible effect on health care spending, ultimately reducing insurance premiums by less than one-half of one percent.

Ineffective legislation is one thing, but this bill is legislative malpractice. It would mean that a child permanently disabled by an incompetent doctor would receive only $250,000 to be compensated for a lifetime of pain and the inability to lead a full life. If this bill were enacted, nursing homes that abuse our seniors, HMOs that deny critical care, and drug companies that market dangerous drugs like Vioxx can take your life for a guaranteed low price set by their friends in Congress.

The implication of limiting damages and attorneys' fees is that greedy lawyers and their irresponsible clients are somehow faking medical errors or blaming natural medical problems on innocent doctors. Given that medical errors are the eighth-leading cause of death in this country, exceeding car accidents, breast cancer, and AIDS, that suggestion is off base. Anyone who's ever been at the bedside of someone in the hospital and received 12 different answers from 12 different care providers about treatment instructions knows the risk of a serious medical error.

This bill does nothing to reduce medical errors, and it won't reduce malpractice premiums. Between 2000 and 2004, claims payments rose by less than 6% while insurers' net premiums rose by 120%. The money isn't going to lawyers—it is padding the pockets of wealthy insurance companies, and they have no intention of ending the windfall even if this bill passes.

I support the Democratic bill, which Republican leaders won't allow to come up for a vote. That bill reforms the insurance industry—breaks up insurance monopolies and gives doctors the right to challenge premium increases—and has sensible tort reform without blocking compensation for injured patients. Unlike the Republican bill, any savings by insurance companies would be required to actually reduce malpractice insurance premiums and 50% of punitive damage payments would go to the Agency for Healthcare Research and Quality to reduce medical errors.

If high premiums and medical errors are the problem, the Democratic bill seems like a logical solution. So logical in fact, so tempting even to my Republican colleagues, that their leadership won't even allow them to vote on the Democratic alternative. I urge my colleagues to reject this sham and force this House to consider real legislation to solve this national crisis.

Mr. RYUN of Kansas. Mr. Speaker, I rise today in support of H.R. 5, the next step in the ongoing struggle to reform medical malpractice liability. Skyrocketing insurance premiums are debilitating our Nation's health care

delivery system and liability insurers are either leaving the market or raising rates to excessive levels. In turn, more physicians, hospitals, and other health care providers are severely limiting their practices, moving to other states, or simply not providing care. Without a change, the exodus of these providers from the practice of medicine will continue, and patients will find it increasingly difficult to obtain needed health care.

H.R. 5 would help to lower the costs associated with health care coverage by encouraging the speedy resolution of claims, limiting lawyers' fees, and imposing caps on non-economic damages.

I urge the House to once again pass medical malpractice reform to help lower the cost of quality health care and make it accessible to more Americans.

Mr. CARDOZA. Mr. Speaker, I rise today to share my concerns about H.R. 5 and to urge my colleagues to support the Democratic Motion to Recommit.

I think we all agree that skyrocketing medical malpractice premiums are spiraling out of control and demand our immediate attention.

As a former member of the California Legislature, I voted to uphold MICRA on three separate occasions and I think that doctors everywhere deserve the same protection. MICRA is a model for federal reform because it has produced a stable, competitive medical liability insurance market while ensuring prompt and fair payments to those injured and in need.

While I am pleased that H.R. 5 adopts the basic framework of MICRA, I am deeply concerned about other elements of the bill that provide cover to special interests, including liability protection to HMOs, pharmaceutical manufacturers and medical device manufacturers.

Now is not the time to give greater protections to pharmaceutical companies that put unsafe drugs like Vioxx on the market. Such protections have nothing to do with the liability insurance crisis facing doctors and should be stripped from this bill.

I am also concerned that the caps California established in 1975 under MICRA were never indexed to inflation: To provide the same level of compensation in today's dollars, the cap would have to equal $800,000. Put another way, the $250,000 MICRA cap has decreased in value since 1975 to approximately $70,000.

With that in mind, I believe we should adjust the $250,000 cap to reflect its current value. As we all know, health care costs—including hospital charges and medical fees—have risen dramatically since 1975. If we are going to model our national law after the 1975 MICRA model, I suggest that we start by using realistic figures that reflect 2005 dollars.

Despite these concerns, in 2003 and again last year, I voted for H.R. 5 with the expectation that improvements would be made in conference with the Senate.

Unfortunately, that did not happen, and today we are considering a bill under a Rule that blocked a number of reasonable amendments, including a substitute offered by my colleague from Michigan, the ranking member on the Judiciary Committee.

While I plan to support this legislation today, my continued support is predicated on substantial changes as the Senate attempts to align it more closely to California's MICRA law. If this happens, I will support the conference report.

However, I—as well as a number of physicians I know—will oppose a bill that provides inappropriate protection to drug companies, HMOs and medical device makers.

I hope that my colleagues in the House leadership will take these concerns into mind as debate moves forward on this critically important issue.

Mr. MANZULLO. Mr. Speaker, the United States has been blessed with the best system of medicine in the world. But we are having a crisis of access. This problem is not a case of whether a patient has health insurance. You may not be able to find a doctor to treat you.

The headlines are replete with stories of women having to drive several hours because they cannot find a doctor to deliver their baby. If you are in a car accident in southern Illinois and need a neurosurgeon, you will be airlifted to another State because there are no neurosurgeons left to treat you.

Litigation has escalated and awards have skyrocketed. Multi-million dollar court decisions and jury awards have left doctors with medical liability premiums increase 40 to 50 percent per year.

Doctors in certain fields of high-risk fields of medicine can expect to be sued at least once in their career.

As a result, doctors are retiring or leaving the practice of medicine. Emergency rooms and rural facilities have closed. Many other doctors are moving to States that have taken action to cap jury awards, which stabilizes malpractice costs.

I know of one OB–GYN in Illinois who left her practice to go back to being a pharmacist where she could earn more money and not worry about malpractice premiums. She explained that after paying malpractice insurance, she and another physician made $50,000. A third doctor made $60,000 and the fourth doctor made $70,000. Their office manager made more than all of them: $75,000.

Thirty years ago, California passed comprehensive medical liability reform. According to the Department of Health and Human Services, States that have limited noneconomic damages have seen premium increases by less than 20 percent. States without limits on noneconomic damages have seen premiums increase on average of 45 percent.

This is quantifiable evidence that medical liability reform works. I urge my colleagues to vote for H.R. 5.

Ms. ESHOO. Mr. Speaker, for 4 years we've been debating what to do about the malpractice premium crisis. We clearly have a problem but what's not so clear is what the solution should be.

I'm a Californian, and in my State, we have a law titled the Medical Injury Compensation Reform Act, MICRA, that has been mentioned many times on the floor. This law was passed by a Democratic legislature and signed by a Democratic governor in 1975. It's been on the books ever since, without a single change. MICRA has contributed to stabilizing premiums in California, but without other reforms, we would still be facing the same skyrocketing increases as other States.

The Help Efficient, Accessible, Low-cost, Timely Healthcare, HEALTH, Act of 2005 has been described as a Federal version of MICRA. I respectfully dispute this assertion.

The HEALTH Act places a $250,000 cap on noneconomic damages for suits against physicians, insurers, HMOs and nursing homes as well as drug and medical device manufacturers. MICRA limits that cap solely to physicians. The Health Act also places a cap on punitive damages. MICRA does not.

One of the reasons MICRA has worked is because it's prescribed in its scope. If we're to get to the heart of exorbitant medical malpractice insurance, we have to focus our efforts on those who truly need our help. I'm concerned that extending these provisions to those outside of the physician community may have a harmful effect on patient care and on our legal system.

Patients must also be fairly compensated for any wrongs that befall them, but this bill also uses MICRA's cap level of $250,000, which has not been updated for inflation since the law was passed in California in 1975. When adjusted for inflation, $250,000 from 1975 is now worth only approximately $68,000.

This bill also does not contain any mechanism for studying the insurance industry and its role in the premium crisis. A review of the insurance industry is critical to understanding the problem and possible solutions. While MICRA was enacted in 1975, premiums in California continued to rise. MICRA did not address, collectively, the problem of rapidly escalating premiums faced by California doctors. Only because California voters enacted stringent insurance rate reform after tort reforms failed did doctor's premiums fall.

In 1988, California enacted insurance reform law, Proposition 103, which has saved physicians and other medical providers hundreds of millions of dollars by regulating the premiums insurance companies are allowed to charge. Premiums dropped and stabilized in the years following passage of Proposition 103. I urge my colleagues to accurately look to the experience in California. My State enacted both tort limits and insurance reform.

This is a multi-faceted problem. If we are to truly help physicians, we have to look at this issue from all angles and implement solutions across all levels.

For these reasons, I urge my colleagues to oppose the HEALTH Act.

Mr. BACA. Mr. Speaker, I rise in opposition to H.R. 5, the Republican Medical malpractice bill.

This bill is bad medicine for American consumers. It is a bitter pill for our seniors, our children, and the middle class.

The Republican majority will stop at nothing to prevent access to the legal system for those who are hurt. First they said that all they wanted to do was limit class action lawsuits to Federal courts. Now that they have succeeded, they are back again, to take more rights away from American patients and consumers.

Mr. Speaker, the majority will distort the facts, but the American people will not be deceived.

The bill places a $250,000 cap on pain-and-suffering awards in medical malpractice lawsuits. $250,000. Is that what a lifetime of pain and suffering at the hands of malpractice is worth?

Would you want your mother, grandfather or child to be in that situation? As the bills pile up, and the Republicans say, sorry, but we have sold out to the special interests?

The bill makes it much harder for patients injured by medical errors to seek redress. It shortens the time for patients to prove they were hurt by malpractice. It gives legal immunity to drug makers, those same companies

that have already killed and maimed people with products that were prematurely released on the market.

Many of us are alarmed at the skyrocketing cost of medical care, including patients, who are the consumers. However, medical malpractice is not the reason for these increasing costs. It is medical mismanagement and corporate greed.

The Washington Post had an article this past weekend about the health care system for our seniors. The frightening truth? Some health care providers deliberately, or indifferently, provide bad medical care, so that they can increase the costs of treatment, while patients become even sicker. Wounds become infected, equipment is covered with dust, and sterile techniques are not used.

It sounds like the plot of a bad medical thriller, or medical practice in some remote corner of the globe, but it is happening, right here in America, to your father or mother, grandmother or grandfather.

So, I say, stop picking on the legal system, which fights for the rights of the poor, the sick, the elderly, and the injured.

Many of the rights that consumers enjoy today are the result of path-breaking legal decisions and the lawyers who were willing to stand up and fight.

The Republicans would like to take us back to a darker time, when corporations ruled and the underserved had no rights. We must say, no; we must oppose this bad medicine. Enough is enough. We must oppose this bad bill.

Mr. SCOTT of Georgia. Mr. Speaker, one of the greatest challenges facing our Nation's health care system today is the medical malpractice insurance crisis. My State of Georgia is one of 18 States that have the highest, most significant medical malpractice insurance premium costs, and it is costing our Georgia and our entire country dearly. Because when our health care industry is in danger, we are all threatened.

Who among us is not a patient, who among us does not need and deserve quality medical care? At its heart, this crisis is a patient care issue. Every one of us wants ourselves and our loved ones to receive the highest quality health care possible.

We have to address the issue of medical malpractice insurance and the extremely high cost of health care. In 2000, Georgia physicians paid more than $92 million to cover jury awards. That amount was the 11th highest in the Nation despite the fact that Georgia ranks 38th in total number of physicians in the United States.

Forty percent of the State's hospitals faced premium increases of 50 percent or more in 2002. St. Paul, the State's second largest insurance carrier, stopped selling medical liability insurance last year. Remaining insurers have reportedly raised rates for some specialties by 70 percent or greater. Some emergency room physicians, OB–GYNs and radiologists have not yet found a new carrier.

Our health care system is suffering immensely, but some say that this moment in time will pass, that this crisis does not warrant taking serious action. But study after study proves them wrong.

Earlier this year, the Georgia Board for Physician Workforce released a study showing the effects of the medical liability crisis on access to health care for Georgia's patients. For example, the study shows that 17.8 percent of physicians, more than 2,800 physicians in Georgia, are expected to limit the scope of their practices which is by far the largest effect of the medical liability insurance crisis on access to medical care.

These physicians are expected to stop providing high-risk procedures in their practices during the next year in order to limit their liability risk. Nearly 1 in 3 obstetrician/gynecologists and 1 in 5 family practitioners reported plans to stop providing high-risk procedures, indicating that access to obstetrical care may be significantly reduced during the next year as a result of the medical liability insurance crisis.

In addition, nearly 11 percent or 1,750 physicians reported that they have stopped or plan to stop providing emergency room services. Six hundred and thirty physicians plan to stop practicing medicine altogether or leave the state because of high medical malpractice insurance rates. About 13 percent of doctors reported that they had difficulty finding malpractice insurance coverage.

In fact, at one particular Georgia hospital, the hospital could not give credentials to a surgeon and add that physician to its staff because the surgeon could not afford to buy medical malpractice insurance. In another instance, an obstetrician-gynecologist had to close his Georgia practice and work for a health care agency because he could not afford to buy medical malpractice insurance.

What happens to the patients that his hospital could have treated but now it cannot because it does not have the surgeons that it needs? What happens to the mothers who need a doctor to provide pre- and post-natal health care but cannot find one because doctors are leaving the profession due to the high cost of medical malpractice care?

In addition, Georgia is heavily dependent on other states to train physicians. Approximately 70 percent of participating physicians in Georgia completed training in another State. High costs of medical malpractice liability insurance may reduce the attractiveness of Georgia as a location for medical practice. High professional liability insurance costs are a significant financial problem for teaching hospitals, reducing the already limited funding available for faculty, residents, and other medical education costs.

Even more upsetting, the high cost of medical malpractice insurance for doctors and hospitals disproportionately affects seniors, minority and low-income patients. The physicians and hospitals who depend on Medicare reimbursements and who serve the over 44 million uninsured Americans every day cannot afford to pay higher insurance premiums. We need to ensure that these communities have access to quality health care and the best physicians or the health disparity that currently exists will continue to deepen and create a two-tier health care system.

But it is not only medical care in the present that is threatened, but also into the future. Many of the medical schools in our State are saying now that many of students are having second thoughts about even coming into the medical profession.

These statistics prove that Georgia's doctors cannot wait. More and more each day, good, principled health care providers are confronting the possibility of being unable to treat their patients because of out-of-control medical malpractice insurance premiums. There is no question that Congress must act, and act immediately.

I support H.R. 5 because doctors, hospitals, and the health care industry are caught in the middle between insurance companies and lawyers. Doctors are being squeezed by their medical malpractice insurance premiums and by the high amounts being awarded to injured patients. Doctors need to see results; they need to know that if this bill becomes law that their insurance premiums will go down. The message must reach the insurance companies that premiums have to go down so that the medical profession can survive and access to health care is improved. The health care industry must have relief and this bill, although not the final answer, is the first step in addressing the problems that affect doctors and the health care industry.

We must help doctors, physicians and dentists, hospitals, other health care providers, and, ultimately, American patients who are suffering in untold ways. Immeasurable damage is occurring in our Nation's health care delivery system because of the high cost of medical malpractice insurance. With the passage of this bill, the House of Representatives will send a clear and salient message to the insurance industry, and that message is: Bring down the cost of medical malpractice insurance for physicians and hospitals.

Mr. LARSON of Connecticut. Mr. Speaker, I rise today in opposition to H.R. 5, the so-called HEALTH Care Act of 2005. Quite simply, the problems that we should be addressing today are burdensome malpractice insurance rates, patient safety, and access to health care. This bill addresses none of these. In another attempt to cede power from States to the Federal Government, this bill would impose nationwide limits on the compensation injured persons can receive in medical malpractice cases.

We have all heard the stories of doctors leaving their practices because they cannot afford their malpractice insurance rates. For the 6-year period from 1998 through 2003, medical malpractice insurance premiums in my State of Connecticut increased, depending on the insurance company, between 37 percent and 241 percent for internal medicare, 35 percent and 185 percent for general surgery, and 45 percent and 128 percent for obstetrics/gynecology. During that same period of time, the consumer price index only rose 13 percent and the medical consumer price index rose 24 percent. I certainly cannot imagine running a business where one of my expenses was that out of line with the rest of my income and expenses. How can we expect doctors to do that when they provide such an important service

to us all? The end result is the loss of good doctors practicing and diminished access to health care. The bill we are debating today does not address the underlying problem and has many flaws.

First, it would remove authority on the issue of tort reform from States, where it has traditionally resided, and preempt various areas of State law, including important consumer protections. Each State has its own issues with regard to medical malpractice and tort law and a one-size-fits-all solution imposed by the Federal Government is not the answer.

Second, it would restrict the ability of injured patients to be compensated for their injuries. An inflexible $250,000 cap on noneconomic damages would punish victims of malpractice and cause significant inequalities in compensation for women, children, seniors, and lower-income workers. A woman who loses a pregnancy or her fertility is not judged to have high economic value, but juries can recognize the human value of her losses. A child with no job or income will obviously have a limited economic value, but juries can recognize the human value of his future. Even with the same injuries, a corporate CEO would receive a much larger economic damage award than a minimum-wage worker or a mother who stays at home to raise her kids, but a jury can recognize the human value of their pain and suffering.

My final objection to this legislation is the manner in which it was brought to the floor. It was never debated in committee and was reported to the floor with a closed rule. In fact, the Rules Committee has rejected 67 amendments to this legislation over the past 3 years. This is the third time the House has voted on this legislation in the past 3 years and the third time it has been the wrong answer for doctors and patients. This is just another example of the majority bringing the same legislation to the floor year after year knowing that it will go nowhere because it is the wrong answer for Americans. Legislation offered by the ranking members of the Judiciary Committee and the Energy and Commerce Committee, Mr. CONYERS and Mr. DINGELL, have been ignored as well as legislation offered by the gentlewoman from South Dakota, Ms. HERSETH. Americans deserve to have all of these bills debated side by each.

Mr. Speaker, I conclude by urging my colleagues to join me in opposing H.R. 5 and working on real solutions for reasonable malpractice rates, improved patient safety, and accessible health care.

Mr. JEFFERSON. Mr. Speaker, H.R. 5—the so-called HEALTH Act of 2005—is anything but healthy.

If there was even the remotest possibility that H.R. 5 could help get efficient, accessible, low-cost, timely health care to the American people, it would probably get 435 votes in this House.

However, H.R. 5 does absolutely nothing to achieve the admirable goals embodied in its misleading name. It does absolutely nothing to address the specific problem it is purported to fix: skyrocketing medical malpractice insurance premiums.

Let me be perfectly clear. I am in complete agreement with this bill's supposed and stated purpose: to help get efficient, accessible, low-cost, timely health care to all Americans. I agree that one of the obstacles to low-cost, accessible health care is outrageous medical malpractice liability insurance premiums charged to physicians and other health care providers throughout our Nation. I also agree that some litigation strategies contribute to the escalating costs of our Nation's health care by encouraging providers to order tests, procedures and treatments that may not be medically necessary. I agree with the supporters of H.R. 5 that high malpractice insurance premiums charged by carriers have led some physicians to abandon high-risk specialties and patients.

I ask you though to look at the legislation before us. H.R. 5 contains about 4,000 words. In those 4,000 words, the word ''premium'' appears only once; the word ''insurance'' appears only 5 times; and the word ''cost'' appears 14 times, the vast majority in the definitions and not the operative clauses of the bill.

I ask you to consider whether H.R. 5 is really about skyrocketing medical malpractice insurance premiums as its proponents claim. I have looked very carefully at this bill, and, after much reflection, have reached the only reasonable conclusion: It is not.

I stand here today because someone needs to stand up for American physicians. Someone needs to stand up for the American health care system.

The proponents of H.R. 5 tell us medical malpractice insurance premiums are skyrocketing out of control. There is no dispute that malpractice insurance premiums are increasing at an alarming rate. We agree on that.

There is no question that medical malpractice premiums are escalating across the country, particularly for physicians in high-risk specialties and certain geographic centers. In some cases, premiums have increased so dramatically that physicians have relocated their practices, reduced their services, or retired early. While there is little doubt that something must be done to alleviate this crisis, H.R. 5 is no solution.

Our friends on the other side of the aisle believe that if you limit the amount that insurance carriers have to pay for legitimate claims, then insurance rates will fall.

But I ask you to consider the fact that the American Insurance Association—the American Insurance Association—has repeatedly and specifically denied that tort reform will result in premium savings. Sherman Joyce, the president of the American Tort Reform Association, has stated, ''We wouldn't tell you or anyone that the reason to pass tort reform would be to reduce insurance rates.''

So, by the insurance industry's own admission, H.R. 5 will not stem the tide of rising medical malpractice insurance rates. Nevertheless, our friends on the other side would have us believe that limiting the exposure of insurance carriers is a panacea. It is not.

H.R. 5 is a hoax. It is a sham, and our friends on the other side know it. It is a fraud on the American medical establishment by insurance carriers who want to limit their exposure but will not commit to reducing premiums.

Please read the bill. H.R. 5 has absolutely no provision requiring the reduction of medical malpractice premiums, despite the fact that our friends believe that it is these high premiums that are crippling the health care system. Nevertheless, there is not a single word in this bill that directly calls for reductions in premiums: zero, zilch, nada, nothing, and they know it. It is a scam. H.R. 5 is absolutely nothing more than a boon, a windfall for the insurance industry.

Our friends on the other side tell us that damage caps will solve the premium crisis. Mr. Speaker, I ask that you consider the fact that in States that have enacted caps, the medical malpractice insurance premiums are higher than in States that have no caps. The carriers do not want us to know that.

In fact, in California—the State the other side holds up as a shining example of the benefits of legislation like H.R. 5—the average premium is $27,570, fully 8 percent higher than the average of all States that have no caps on noneconomic damages.

Recently, the American Medical Association issued a list of States that it concluded were in crisis due to exploding medical malpractice insurance rates. Five of those States have caps on noneconomic damages like the one proposed in H.R. 5. Yet, Mr. Speaker, they are still in crisis.

One of those States is Florida, where, despite having caps of just the kind proposed by H.R. 5, obstetricians and gynecologists pay the highest premiums in the Nation for medical malpractice insurance, some in excess of $200,000 per year. Florida has caps, and Florida has a crisis. So, Mr. Speaker, damage caps alone are not the solution to the problem.

If you look further at the California example, it becomes clear that damage caps alone are not an effective premium-reduction measure. In the 12 years after California passed MICRA, medical malpractice premiums rose 190 percent. Only after California passed Proposition 103—actual insurance reform—did medical malpractice premiums stabilize. Since California passed insurance reform—not medical malpractice reform—its medical malpractice premiums have been more stable than in most States.

Mr. Speaker, the lesson to be learned from California is that measures like H.R. 5 do not reduce medical malpractice insurance premiums. The facts simply do not bear it out.

Nevertheless, Mr. Speaker, our friends on the other side insist that one-size-fits-all approach of H.R. 5 is the last and best cure for the crisis of escalating malpractice insurance rates.

Some of our colleagues are, like me, very deeply concerned about rising malpractice insurance rates. Some of our colleagues have expressed an inclination to vote for this bill in order to get the ball rolling, in order to take a first step toward solving the premium crisis. But I want to be very clear: If H.R. 5 is our first step, as the saying goes, it's a doozy. It is a step on the backs of doctors, hospitals and patients to help out greedy insurance carriers. It is certainly a step in the wrong direction. H.R. 5—as the best evidence proves—is an ill-conceived, ill-advised bill that will not—let me repeat—will not solve the problem. This bill helps insurance companies—period.

Recent articles in newspapers across the country show in clear and compelling ways that this crisis is as complex as it is serious. ''Malpractice litigation is only part of the cause of the huge increases in insurance premiums. The insurance industry's pricing and accounting practices . . . play [at least] as big a role.''

The insurance company patrons of our friends on the other side want to hide behind what they consider out-of-control jury awards. Again, Mr. Speaker, the facts simply do not support this claim.

Over the past few years, many physicians have been hit with medical liability premium increases of 25 to 400 percent. Yet, according to The Journal of Health Affairs, during the past decade, malpractice payouts have grown approximately 6.2 percent per year. That's almost exactly the rate of medical inflation: an average of 6.7 percent between 1990 and 2004.

Moreover, contrary to the claims of proponents of H.R. 5, juries are not overly sympathetic to plaintiffs, as evidenced by the rate at which physicians prevail in medical malpractice suits. Dr. Barry Manuel, chairman and CEO of ProMutual Group, one of the Nation's leading malpractice insurance carriers, reported in 2001 that ''we continue to close 60 percent of all claims without payment, and of those cases we are forced to defend in court, we prevail in 90 percent.'' In addition, many of the leading scholars studying the problem have concluded that despite conventional wisdom, juries in fact often favor physicians.

Neil Vidmar, a professor at Duke University School of Law and a leading scholar in the field, states unequivocally that ''the assertion that jurors decide cases out of sympathy for injured plaintiffs rather than the legal merits of the case . . . have been made about malpractice juries in the United States since at least the nineteenth century. Yet, research shows no support for these claims.''

So, Mr. Speaker, one begins to wonder what has caused such extraordinary increases on medical malpractice insurance premiums during the past few years.

Well, investment losses, like those of average Americans, and a weak economy have made a greater dent in the bottom lines of insurance companies than malpractice payouts.

The difference between insurance companies and average Americans is that most of us can't give ourselves a raise to cover our losses. A medical malpractice insurance company can—and does. It alone controls the premium rates it charges our country's doctors. I think you can guess what malpractice carriers have done in response to the general economic climate in the past few years.

The truth is that medical malpractice insurance carriers are asking doctors, hospitals and patients to pay for underperforming investments. It is as simple as that. They know it. We have asked the insurance carriers to commit to reducing premiums in this bill. They will not do it. They will not even talk about it. That is because they have absolutely no intention of reducing medical malpractice insurance premiums.

The bottom line is that H.R. 5 is a jackpot for insurance carriers, and it is the doctors, hospitals and patients that are going to pay for it.

Mr. Speaker, I want to talk for just a minute about the cap on noneconomic damages. If H.R. 5 becomes law, we will be speaking with a loud and clear voice that the injuries victims of medical malpractice suffer are valued in direct relation to how much money those victims have. The unfortunate consequence of this legislation is that—regardless of the severity of your injury, regardless of how long you suffer, regardless of its effect on even the most basic functions of your life, the things we take for granted every day, regardless of whether you can ever play with your children again, regardless of whether you can ever hug your grandchildren again, regardless even whether you or your child or your wife or mother die due to medical malpractice—no one's injury is ever worth more than $250,000.

Our friends on the other side of the aisle like to equate ''noneconomic damages'' with ''pain and suffering.'' But ''pain and suffering'' is a misleading label. What is capped is recovery for disability and disfigurement, among other things, not just ''pain and suffering.'' H.R. 5 lumps together everything that is not ''economic'' and calls it ''noneconomic''—subject to a $250,000 cap that the bill does not even adjust for inflation.

Our friends on the other side of the aisle go to great lengths to emphasize that H.R. 5 in no way limits economic damages as long as they are objectively quantifiable monetary damages. In other words, if a surgeon loses his hand and is unable to perform surgery again, the injury he will suffer is greater than that suffered by a carpenter who loses his hand due to medical malpractice and is never again able to do his job. Why? Well, under H.R. 5 the answer is simple: The surgeon makes more money, so his economic damages are greater. Not to worry, they tell us, both of them can get up to $250,000 in addition to soothe their wounds.

The same is true in the case of an injury suffered by a working mother when compared to a mother working inside the home. Do our friends on the other side of the aisle believe that those women's husbands or children will understand the difference?

At many jobs, the loss of a leg, for example, may not prevent a worker from earning a living. But it will make it difficult to enjoy ''non-economic'' pursuits like playing soccer with your kids, or basketball and volleyball with friends, or a multitude of other things that make life enjoyable.

Mr. Speaker, H.R. 5 instructs that the value of life is capped at economic losses plus $250,000. That seems inconsistent with the administration's recent characterization of the value of life as ''immeasurable.'' Remarkably, our friends on the other side of the aisle have taken out their calculators, and they have measured the immeasurable. Perhaps they should call the White House, and let them know.

While the proponents of H.R. 5 appear already to have figured it all out, I want to ask them: How much is hugging your grandchildren worth? How much is kissing your husband or wife worth? How much is the ability to walk or to drive or to play a round of golf worth? How much is your ability to feed, bathe and clothe yourself worth? How much is seeing your children grow up worth? How much is your life worth?

I honestly don't know, and I don't think we should be answering those questions for every American either.

Whether it's losing a limb, or an eye, or just the freedom to be able to go where you want and do what you want, how many of us would trade a lifetime of disability or disfigurement, not to mention pain, for $250,000?

The very real consequence of this legislation is that it punishes the most economically vulnerable members of our society to the benefit of greedy insurance companies. It discriminates against children, against women, against older Americans, against ethnic minorities, against the poor. And for what, Mr. Speaker? History shows us the only winners emerging from H.R. 5 are the medical malpractice insurance carriers—not the doctors, hospitals and patients our friends on the other side of the aisle purportedly seek to help.

I urge you to vote against this ill-conceived and mean-spirited legislation.

Ms. SCHAKOWSKY. Mr. Speaker, I rise in strong opposition to H.R. 5, the so-called HEALTH Act. The civil justice system is about giving injured consumers their day in court, allowing them the opportunity to hold wrongdoers accountable, recover damages and change dangerous behaviors. H.R. 5 is a frontal assault on those consumer rights.

H.R. 5 is a dangerous, anti-consumer bill that would impose an arbitrary ceiling $250,000—on the amount a patient injured by medical malpractice, HMO denials, nursing home abuse or defective drugs or medical devices could receive for noneconomic damages, no matter how devastating the injury. In many cases, the victim may have few out-of pocket losses, but suffer great harm. For example, an l8–year old woman who loses her ability to have a child for the rest of her life may suffer no monetary loss. Under H.R. 5, the most she could recover in a medical malpractice lawsuit would be $250,000.

Politicians should not impose arbitrary caps on non-economic damages. We are no substitute for a jury of one's peers, which has the ability to look at the facts and weigh the evidence in individual cases. There are some who say that it is appropriate to limit non-economic damages since economic damages are not capped. But non-economic damages are not ''extras,'' they are not inconsequential. Unbearable and long-term pain, loss of sight and mobility, the inability to bear children, the loss of an infant or a grandparent—these may not be as easily quantifiable as lost wages but the losses are just as real. And, for many consumers who have been injured or lost a loved one, noneconomic damages might be the only damages available.

The National Citizens' Coalition for Nursing Home Reform has provided actual histories of nursing home residents harmed by medical negligence. Frances G's physician described her as ''the victim of gross nursing home neglect. Her pressure sores and dehydration were inexcusable.'' Her nursing home was consistently understaffed, her physician's orders were repeatedly ignored, and she endured excruciating and continual pain from pressure sores but was given no pain medication. Gertrude H., according to charge nurses, was grossly neglected and suffered life-threatening pressure sores. Her physician stated that, ''I have no doubt that Gertrude experienced severe and unrelenting pain from June 27, 2000 to February 6, 2001, from the deep, eroding pressure sores.'' Because both Frances and Gertrude were senior citizens, any compensation would come in the form of non-economic damages. Do my colleagues really believe that $250,000 is ''reasonable'' compensation for Frances and Gertrude and their families?

Children are also adversely affected by caps on non-economic damages. Shannon Hughes had a long and difficult labor. The doctor was called repeatedly and finally showed up at her 35th hour of labor. At 37 hours, the doctor performed an emergency C-section. The umbilical cord was twice wrapped around the child's neck. Tyler suffered cardiac arrest for 18 minutes. As a result, Tyler, who is now 7 years old, is severely brain-damaged and bedridden. He must be turned every two hours, is

fed through a tube, suffers seizures daily and is non-communicative. Shannon says, ''My son has no future but pain and suffering. No politician in Washington has the right to decide what is proper compensation for him.'' Like many parents, Shannon may need to use whatever noneconomic damages she received in order to pay for Tyler's care once her economic compensation runs out. In many instances, because of rising medical costs and new technologies, the damages awarded for medical care run out while the medical bills keep coming.

Tyler survived, but many babies do not. Where medical malpractice results in the death of a child during labor, a mother most often will not have any physical injury but only emotional distress of losing her child. In this case, under the proposal by H.R. 5, no amount of economic damages will be awarded, and the non-economic damages would be capped at $250,000.

Non-economic damage caps have a disproportionate effect on women who work inside the home, children, senior citizens, children and 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. But caps on damages are not the only anti-consumer provisions in this legislation.

In addition to the arbitrary ceiling on non-economic damages, H.R. 5 lets wrongdoers—those found guilty of medical malpractice—decide whether to pay damages on a periodic basis, even if the injured consumer wants and needs damages paid upfront.

H.R. 5 eliminates joint and several liability. This means that a consumer injured by more than one wrongdoer will not be fully compensated if one of those wrongdoers declares bankruptcy or cannot pay their share.

H.R. 5 eliminates the collateral source rule, which could mean that an injured consumer's health insurer—not the wrongdoer—pays the medical bill.

H.R. 5 also places limits on punitive damages, gives special protections for drug companies and medical device manufacturers, caps attorneys' fees for plaintiffs but not defendants, and shortens the statute of limitations. Finally, it includes a state preemption provision that leaves in place state laws more favorable to medical providers and organizations while overturning state laws more favorable to injured consumers.

While it is clear what H.R. 5 would do in terms of eliminating consumers' rights, it is equally clear what it won't do. No insurance company executive has yet to come forward to say that passage of H.R. 5 would reduce medical malpractice premiums. In fact, according to American Insurance Association spokesman Dennis Kelly, quoted in the January 3, 2005 Chicago Tribune, ''We have not promised price reductions with tort reform.'' The General Counsel for the American Tort Reform Association admitted that ''There is no question that it is very rare that frivolous suits are brought against doctors. They are too expensive to bring.'' (Los Angeles Times, 10/22/04).

At the same time, multiple studies have indicated that medical malpractice premiums are not connected to jury award or settlement levels. A recent analysis of the top 15 medical malpractice insurers found no rise in payouts from 2000 to 2004, at the same time that premiums doubled. Some companies significantly increased premiums while their claims actually decreased. A study by the Economic Policy Institute found that the number of tort cases fell 4 percent from 1993 to 2002 and that the real causes of higher premiums were economic factors and insurers' investment decisions.

H.R. 5 takes away consumers' rights and particularly hurts women, children and seniors, while doing nothing to help doctors with high malpractice insurance premiums. I urge my colleagues to vote ''no'' on H.R. 5.

Mr. DAVIS of Illinois. Mr. Speaker, I rise today to express my opposition to H.R. 5, the HEALTH Act of 2005. I rise to oppose this legislation, not because I do not recognize the crisis that is brewing in the area of medical malpractice insurance, but because this legislation tries to remedy this crisis with the wrong prescription.

Many of my distinguished colleagues on both sides of the aisle have expressed their concern regarding the access to healthcare that their constituents face. We all recognize this is a major problem in our country. In addition, physicians are constantly under increased pressure throughout the nation to deal with the increased burden that high malpractice premiums pose to their livelihood. In my home state of Illinois, only two neurosurgeons can be found south of Springfield because malpractice insurance rates are so out-of-control. Due to this shortage of neurosurgeons, patients with serious brain injuries are airlifted to St. Louis, many times costing them valuable minutes that can mean the difference between life and death. To remedy this situation as well as the overall problem of liability premium increases, my state imposed caps on non-economic damages to offer a quick fix to keep fleeing doctors. Currently, there are some 21 other states with similar caps.

While caps give the appearance of remedying this crisis in some states, they do nothing to stem the tide of ''frivolous lawsuits.'' Frivolous lawsuits by definition are lawsuits without merit. According to the Physicians Insurers Association of America, the trade group representing physician-owned insurance companies, 70% of malpractice lawsuits are dismissed and only 0.8% of cases actually go through a trial and reach a verdict in favor of the plaintiff.

Advocates of caps argue that this 0.8% is what drives up the cost of malpractice insurance. They argue that out-of-control jury awards drive up malpractice premiums. Are we to assume that this 0.8% of cases which go through fair trial, find in favor of the plaintiff, are in fact ''frivolous''? I would argue that the 70% of cases which are dismissed are the ''frivolous cases,'' and this 0.8% represents many egregious cases of malpractice.

Without addressing this problem, this bill does nothing to stop ''frivolous lawsuits,'' it only limits the claims of a person who suffers a terrible and often extreme example of malpractice. Minor injuries or pain and suffering do not receive massive awards. I ask my colleagues, if you or one of your family members suffered a tremendously egregious example of malpractice, would you want to be limited in what you or your family member could be compensated? I am sure your response, much as mine is that you would not.

My colleagues, we can debate over and over again on legislation such as this, but all the debate in the world will not lead to solving this problem when we are headed in a direction such as this. As many of my colleagues have pointed out, a recent study of the 15 largest malpractice insurers in the country found that insurers substantially increased their net premiums by an average of 120% while both their payments and projected future claims payments were flat or decreasing over the past few years. This directly contradicts the insurance industry's claims that premiums are increasing due to increased jury awards. Many of these same insurers even admit that capping malpractice awards will not reverse the trend of rising premiums. The malpractice insurance industry is unjustifiably raising their premiums, gouging doctors, and pushing for legislation that only does one thing: pits doctors against their patients.

If Congress is really serious about fixing this problem it will develop a system which benefits patients most while sidelining the interests of big business. Physicians are in the business of caring for patients, and I appreciate the burden they face with increased malpractice premiums. I am fully aware that this burden affects their ability to practice the profession they love. I only hope that in this struggle to find a remedy to this problem, the few patients who are harmed as a result of malpractice will not be further harmed by a limit on a just compensation.

Mr. LANGEVIN. Mr. Speaker, I rise today in strong opposition to H.R. 5, the Help Efficient, Accessible, Low Cost, Timely Health Care (HEALTH) Act. It is irresponsible to limit patients' access to the civil justice system, particularly without any guaranteed decrease in the cost of malpractice insurance coverage. This measure contains no provision requiring insurers to lower their rates once these so-called reforms are in place. As a result, it would leave countless patients deprived of relief while failing completely to help our struggling health providers.

Like many of my colleagues, I am deeply troubled by the rising cost of malpractice insurance. Doctors across the country are being adversely affected by an increase in medical liability insurance premiums. These increases are making it more costly for physicians to practice, and rising insurance rates could eventually mean that patients no longer will have easy access to medical care. Doctors completing residencies in expensive areas are seeking better rates elsewhere, and physicians already in the market are leaving. I recognize that this is becoming a national crisis.

There is wide agreement that something must be done to ensure reasonable rates and protect access to health care. Unfortunately, the leadership has presented us with a partisan bill, identical to that which we voted on in two previous Congressional sessions. Nothing in this legislation would decrease premium costs or increase the availability of medical malpractice insurance. Instead, it would make detrimental changes to the health care liability system that would extend beyond malpractice and compromise the ability of patients and other health care consumers to hold pharmaceutical companies, HMO's and health care and medical products providers accountable.

Once again, we are presented with a bill that the leadership claims will lower costs of medical liability insurance for doctors, but fails to address the rate-setting process followed by the insurance industry. Insurance companies benefit from a federal exemption to antitrust

laws, which allows them to collectively raise premiums without fear of prosecution. A recent study of the annual statements of the 15 largest medical malpractice insurers found that insurers substantially increased their premiums while both their claims payments and projected future claims payments were decreasing. Other studies suggest that rate changes in premiums are closely tied to the fluctuations of the stock market—not the increases in claims from frivolous lawsuits.

Perhaps most troubling to me is that nothing in this bill stipulates that savings earned as a result of the ''reforms'' must be passed along to doctors, through a lowering of their own insurance costs. In light of the lack of transparency requirements of the insurance industry, there is no mechanism to hold them accountable to actually lower costs. I believe this must be the crux of any meaningful reform measure.

I recognize that the rapid increase in insurance premiums is having real effects on the health care industry. Not only does it drive up the cost of health care for consumers and doctors—it is having an impact on the medical professional workforce. Residents are being encouraged to enter lower-risk fields of practice and doctors are making decisions about their careers based the costs of insurance.

The Democratic motion to recommit proposes to address these issues by allowing patients to seek redress and providing assistance to physicians and hospitals in need. Specifically, this alternative would end frivolous lawsuits by requiring affidavits to be filed by qualified specialists certifying that the case is meritorious. It would also establish an independent advisory commission to explore the impact of malpractice insurance rates, particularly in areas where health care providers are lacking. These are the steps that we must take in order to adequately address this problem.

In addition to meaningful systemic reform, any responsible approach to the issues of medical malpractice insurance costs should include efforts to reduce medical errors in the first place. Reports show that there preventable medical errors that kill nearly 100,000 hospital patients a year. The utilization of electronic health records at our hospitals can go a long way in this effort. The Veteran's Administration (VA), which relies heavily on information technology, has been the first large health system in the nation to replace paper charts with this fully electronic record. Electronic medical records and the efficient use of technology can be a significant agent for change in health care quality across all settings, reducing not only inefficiencies, but the number of medical errors as well.

Mr. Speaker, I urge my colleagues to oppose the underlying bill, support the Democratic alternative and commit to working together on reform measures that will result in significant change, benefiting doctors and consumers alike.

Mr. SHUSTER. Mr. Speaker, I rise today to urge my colleagues to support H.R. 5, the HEALTH Act.

This country's health care system and its providers are currently faced with a crisis in regard to medical liability coverage. Skyrocketing malpractice insurance premiums have taken an enormous toll on the physicians and hospitals in my district in Western and Central Pennsylvania. I have encountered many situations all over the communities that make up the 9th district where doctors have moved to lower-liability states, have reduced the scope of their practices, or have chosen to retire in the face of this growing malpractice crisis. This must not be allowed to continue.

I strongly disagree with those that would say there is no problem. Currently, only 4 percent of physicians practicing in Pennsylvania are under the age of 35 and students graduating from our medical schools are choosing not to stay and practice in State. As our older doctors retire or limit their practices there is no one to continue their important work. This real and increasing threat to patients' access to quality care cannot be ignored. The medical liability system in this country is in desperate need of reform.

We must act now to reverse a dangerous litigious trend that is eliminating doctors faster than we can replace them. I urge my colleagues to support and vote in favor of H.R. 5.

Mr. SALAZAR. Mr. Speaker, today, the House of Representatives will debate and vote on a proposal that supporters claim will solve the problem of increasingly unaffordable medical malpractice insurance premiums for our Nation's doctors. They argue that outrageous jury awards are to blame for rising healthcare costs.

I am afraid this bill is not the end-all, save-all solution to our health care crisis; and, in fact, I fear it will do nothing to relieve the burden our doctors face. If we are serious about lowering the cost of medical malpractice insurance why aren't we addressing the issue of insurance reform or ways in which we can weed out bad doctors, or for that matter, trial lawyers who abuse the court system?

This bill does little more than set a 1970's era cap on jury awards for medical malpractice cases, an action which will only hurt those who are already suffering—the patients and their loved ones.

An analysis of State by State medical malpractice insurance premiums, obtained from the Medical Liability Monitor, compared with caps on damages reveals no conclusive evidence these caps work. In fact, according to one survey, insurance premiums in states with caps were on average $4170 higher than those in States without caps.

This bill goes much further than simply addressing the medical malpractice insurance dilemma; it even sets caps on damages for nursing home neglect, unsafe prescription drugs, and a variety of other health-related industries. In 2004, Congress and others raised questions about the safety and effectiveness of several FDA-approved biomedical products on the market, including certain antidepressants, Merck's pain relief drug, Vioxx, Boston Scientific's cardiac stents, and other drugs and medical devices. Evidence has suggested that there were problems with these items during clinical trials.

Does this Congress really want to protect companies who knowingly put dangerous products on the market? I know I don't.

H.R. 5 does not go nearly far enough to address the climbing medical malpractice insurance rates or the healthcare crisis our constituents are trying to negotiate. I again pose the questions, why doesn't this bill address the insurance industry; why aren't we trying to weed out bad doctors; or punish trial lawyers who abuse the system?

We need something more than caps on jury awards to lower the cost of health care in this country.

Mr. CARDIN. Mr. Speaker, I rise in opposition to this bill. I support reform of our nation's medical liability system. I also believe that doctors and medical institutions who are experiencing unsustainable increases in their malpractice premiums deserve relief. Before coming to Congress, as Speaker of the Maryland House of Delegates, I worked to craft legislation that brought significant changes at the state level, including reasonable caps on non-economic damages. It worked well to hold down the cost of premiums and make our State's malpractice system a much fairer one.

The problems in our Nation's medical liability system require a multi-faceted approach that includes addressing the causes of premium increases, reducing the number of frivolous lawsuits, and limiting the number of medical errors. I support enacting fair reforms that will continue to permit injured patients to hold wrongdoers accountable, and I am willing to support legislation that provides for reasonable caps on non-economic and punitive damages.

In recent years, I have seen so-called malpractice ''reform'' bills come to the floor of this House. Those bills provided an inequitable approach—limiting patients' access to the courts and imposing strict limits on compensation for their injuries, no matter how serious the injury or how egregious the malpractice, while doing nothing to lower malpractice premiums. Fortunately, they were not enacted into law.

I had hoped that this year's legislation would be the product of careful deliberation at the committee level. I had hoped that the authors would take into consideration the rights of patients and balance them carefully with the need to alleviate the burden of escalating malpractice insurance costs. Unfortunately, once again this year, the bill before us does neither. In fact, the leadership has simply rolled out a bill that is nearly identical to the one we considered in the last Congress. There were no hearings, no markups, and today, there are no opportunities to amend the bill. The same bill, the same bill number, the same disregard for the rights of patients, the same ineffectual approach to helping physicians.

Mr. Speaker, I want to call attention to a few aspects of this bill. First, this bill contains an arbitrary cap of $250,000 on non-economic damages. Non-economic awards compensate patients and their families for real injuries, and sharply capping them will disproportionately hurt families, children, seniors, and others who have lower or fixed incomes.

Second, H.R. 5 provides a shield against punitive damages for manufacturers of prescription drugs and medical devices as long as they have been approved by the U.S. Food and Drug Administration. At one time, the FDA shield might have been less controversial. After all, the FDA has long been considered the gold standard for prescription drug quality and safety, and for years its seal of approval was viewed by the American public as a guarantee that drugs were safe. But in light of developments related to several other pharmaceuticals approved by the FDA, this provision is truly baffling. Cases involving life-threatening complications from these drugs have raised fundamental questions about the safety determinations made by the FDA.

In 2004, the Energy and Commerce Committee held hearings to examine safety Issues

surrounding the prescribing of antidepressants to children. At that time, several members of the Committee criticized the FDA for failing to take prompt action to address these concerns. Last September, Vioxx was withdrawn from the market after a study showed it doubled the risk of heart attacks and strokes in patients taking the drug for more than 18 months. Since then, it has been reported that more than 130,000 persons have suffered heart attacks as a result of taking Vioxx. Richard Matthews of Thurmont, Maryland, was one of the first reported fatalities from Vioxx. According to an Associated Press account, Richard's wife, Lisa, said her husband had no previous heart problems and died in 2002 at age 42 of a heart arrhythmia only a few days after he began taking Vioxx. Several Congressional committees have responded to these events by initiating investigations of drug safety issues, including the FDA's procedures for evaluating the safety of prescription drugs.

Given the questions that have arisen about FDA's effectiveness, it is truly astonishing that the leadership is here promoting a bill that prohibits the awarding of any punitive damages and limits non-economic damages for drugs and devices approved by the FDA. This bill, H.R. 5, was referred to the Energy and Commerce Committee, the same committee that acknowledged problems at the FDA. Did the committee's members try to amend this bill to strike or tone down the FDA provision? There was no opportunity. H.R. 5 was introduced one week ago, July 21, referred to the Judiciary and Energy and Commerce Committees, which did not hold a hearing or mark-up, and then brought to the floor today. The FDA shield is an irresponsible provision that should have been stricken from this bill. We have no opportunity to strike it today, because an amendment that would have done so was not made in order by the Rules Committee. It may endanger the health and lives of thousands of Americans. It will certainly deny them the opportunity to receive fair compensation when they are injured.

Third, I firmly believe that we must reduce medical errors in our health care system if we are to reduce the number of malpractice cases. It has been nearly six years since the 1999 report of the Institute of Medicine, IOM, entitled ''To Err Is Human: Building A Safer Health System.'' That report focused a great deal of attention on the issue of medical errors and patient safety. IOM estimated that between 44,000 and 98,000 people die in hospitals each year as the result of medical errors.

Even using the lower estimate, this would make medical errors the eighth leading cause of death in this country, higher than motor vehicle accidents, breast cancer, or AIDS. This House has just passed S. 544, legislation intended to reduce medical errors and improve patient safety. But its passage by a nearly unanimous vote of 428 to 3 is a clear indication that Congress knows there are valid cases whose victims deserve their day in court. The patient safety bill has not yet been signed into law. I hope it will be law soon, and that it will help improve patient safety. But each case is an individual case, and those who are harmed by medical errors deserve just compensation for their injuries.

Finally, I must question why the authors of this bill are not addressing malpractice insurance premium increases in this bill. The provisions of H.R. 5 would not reduce the rates that insurance companies charge providers. We have an alternative that would directly address the problems of frivolous lawsuits and insurance industry abuses. But once again this year, the base bill, H.R. 5, contains no provisions that will lower malpractice premiums.

Mr. Speaker, I must tell you, malpractice premium costs are the reason that providers ask me to support medical malpractice reform. These are practitioners who truly love their professions, and they are troubled by dramatic increases in their malpractice rates, increases that they must pay whether or not there have been any malpractice claims filed against them in the past year. They say that they want to continue practicing medicine next year, but they may not be able to afford to. When I ask if they would like to see provisions in the bill that limit their premium increases, they emphatically reply yes. So it is puzzling that this bill, which the authors say was written to help physicians stay in business, fails to address their central concern by even monitoring insurance companies' rate hikes. In fact, there are no provisions anywhere in the bill that affect malpractice insurers.

In sum, H.R. 5 represents a missed opportunity for this House. We could have produced a bill that would truly make a difference, in lowering malpractice premiums, in placing reasonable caps on non-economic damages. I am disappointed that we don't have a better bill, a more responsible bill that we can vote on today. I urge my colleagues to reject this approach, which will do nothing to improve access to care, nothing to hold insurance companies accountable for premium increases, and nothing to make our nation's medical liability system more fair.

Ms. MCCOLLUM of Minnesota. Mr. Speaker, I rise in opposition to H.R. 5, the Republican Medical Malpractice legislation. This flawed bill provides sweeping liability protections to pharmaceutical and insurance companies, provides inadequate protections for doctors, and will do nothing to lower health care costs.

Doctors are rightly frustrated over the significant increases in medical liability insurance premiums and I am truly concerned that additional costs make it more difficult for physicians to stay in practice. However, I do not believe that this legislation addresses the real problem, which lies with the insurance companies.

Republicans have for years claimed that the rising costs of malpractice insurance are due to a dramatic increase in malpractice lawsuits. However, a recent study of the 15 largest insurance companies shows that over the past 5 years, premiums have doubled while claims payments have been reduced or remained static. This study proves that insurance companies are simply increasing their profits on the backs of our physicians.

Another totally outrageous provision of this bill is the sweeping liability protection for pharmaceutical companies. This bill states that if a product has gone through the Food and Drug Administration approval process, no punitive damages can be awarded against the manufacture of the device or drug later. If this were to become law, the manufacturers of Vioxx would be protected from lawsuits from the families of those harmed or killed by this faulty medication. It is unacceptable to put into law that pharmaceutical and insurance companies are without accountability when their products or decisions knowingly cause harm.

This Republican bill will hurt patients who are harmed by medical malpractice by arbitrarily capping damages and denying justice to injured patients and their families. This is not only unfair, it is unnecessary. New information shows that there is no link between the existence of malpractice caps and insurance premiums.

Finally, because medical malpractice accounts for less than one percent of national health care costs, this legislation will do nothing to reduce health care premiums. Families across America are struggling to afford quality health care and the numbers of uninsured are on the rise. We need to address the real issues involved in the dramatic increase in health care costs, such as the cost of prescription drugs, provider shortages, uninsurance, and the cost of new technologies.

This Congress must become serious about increasing access to quality health care. We need to put families, not pharmaceutical companies, first. I support the Democratic substitute which would have weeded out frivolous lawsuits but allowed justice for injured patients. Democrats were ready to take steps to really reduce insurance premiums by requiring insurance companies to give half of their savings to reductions in medical malpractice rates for doctors. Finally, this substitute would create a commission to evaluate the real causes of increases in premiums as well as insurance reform proposals. We all recognize that this is an important issue. This substitute will give us an opportunity to work together, with accurate information, to make real progress for patients and providers.

Mr. Smith of Texas. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SHAW). Pursuant to House Resolution 385, the bill is considered read and the previous question is ordered.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. CONYERS. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Conyers moves to recommit the bill H.R. 5 to the Committee on the Judiciary and the Committee on Energy and Commerce with instructions to report the same back to the House forthwith with the following amendment:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Medical Malpractice and Insurance Reform Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—LIMITING FRIVOLOUS MEDICAL MALPRACTICE LAWSUITS

SEC. 101. STATUTE OF LIMITATIONS.

(a) IN GENERAL.—A medical malpractice action shall be barred unless the complaint is filed within 3 years after the right of action accrues.

(b) ACCRUAL.—A right of action referred to in subsection (a) accrues upon the last to occur of the following dates:

(1) The date of the injury.

(2) The date on which the claimant discovers, or through the use of reasonable diligence should have discovered, the injury.

(3) The date on which the claimant becomes 18 years of age.

(c) APPLICABILITY.—This section shall apply to any injury occurring after the date of the enactment of this Act.

SEC. 102. HEALTH CARE SPECIALIST AFFIDAVIT.

(a) REQUIRING SUBMISSION WITH COMPLAINT.—No medical malpractice action may be brought by any individual unless, at the time the individual brings the action (except as provided in subsection (b)(1)), it is accompanied by the affidavit of a qualified specialist that includes the specialist's statement of belief that, based on a review of the available medical record and other relevant material, there is a reasonable and meritorious cause for the filing of the action against the defendant.

(b) EXTENSION IN CERTAIN INSTANCES.—

(1) IN GENERAL.—Subject to paragraph (2), subsection (a) shall not apply with respect to an individual who brings a medical malpractice action without submitting an affidavit described in such subsection if, as of the time the individual brings the action, the individual has been unable to obtain adequate medical records or other information necessary to prepare the affidavit.

(2) DEADLINE FOR SUBMISSION WHERE EXTENSION APPLIES.—In the case of an individual who brings an action for which paragraph (1) applies, the action shall be dismissed unless the individual (or the individual's attorney) submits the affidavit described in subsection (a) not later than 90 days after obtaining the information described in such paragraph.

(c) QUALIFIED SPECIALIST DEFINED.—In subsection (a), a ''qualified specialist'' means, with respect to a medical malpractice action, a health care professional who is reasonably believed by the individual bringing the action (or the individual's attorney)—

(1) to be knowledgeable in the relevant issues involved in the action;

(2) to practice (or to have practiced) or to teach (or to have taught) in the same area of health care or medicine that is at issue in the action; and

(3) in the case of an action against a physician, to be board certified in a specialty relating to that area of medicine.

(d) CONFIDENTIALITY OF SPECIALIST.—Upon a showing of good cause by a defendant, the court may ascertain the identity of a specialist referred to in subsection (a) while preserving confidentiality.

SEC. 103. SANCTIONS FOR FRIVOLOUS ACTIONS AND PLEADINGS.

(a) SIGNATURE REQUIRED.—Every pleading, written motion, and other paper in any medical malpractice action shall be signed by at least 1 attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) CERTIFICATE OF MERIT.—(1) A medical malpractice action shall be dismissed unless the attorney or unrepresented party presenting the complaint certifies that, to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

(A) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(B) the claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

(C) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

(2) By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances—

(A) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(B) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

(C) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are reasonable based on a lack of information or belief.

(c) MANDATORY SANCTIONS.—

(1) FIRST VIOLATION.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated, the court shall find each attorney or party in violation in contempt of court and shall require the payment of costs and attorneys fees. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit, and sanctions plus interest, upon the person in violation, or upon both such person and such person's attorney or client (as the case may be).

(2) SECOND VIOLATION.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated and that the attorney or party with respect to which the determination was made has committed one previous violation of subsection (b) before this or any other court, the court shall find each such attorney or party in contempt of court and shall require the payment of costs and attorneys fees, and require such person in violation (or both such person and such person's attorney or client (as the case may be)) to pay a monetary fine. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit and sanctions plus interest, upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

(3) THIRD VIOLATION.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated and that the attorney or party with respect to which the determination was made has committed more than one previous violation of subsection (b) before this or any other court, the court shall find each such attorney or party in contempt of court, refer each such attorney to one or more appropriate State bar associations for disciplinary proceedings, require the payment of costs and attorneys fees, and require such person in violation (or both such person and such person's attorney or client (as the case may be)) to pay a monetary fine. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit, and sanctions plus interest, upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

SEC. 104. MANDATORY MEDIATION.

(a) IN GENERAL.—In any medical malpractice action, before such action comes to trial, mediation shall be required. Such mediation shall be conducted by one or more mediators who are selected by agreement of the parties or, if the parties do not agree, who are qualified under applicable State law and selected by the court.

(b) REQUIREMENTS.—Mediation under subsection (a) shall be made available by a State subject to the following requirements:

(1) Participation in such mediation shall be in lieu of any alternative dispute resolution method required by any other law or by any contractual arrangement made by or on behalf of the parties before the commencement of the action.

(2) Each State shall disclose to residents of the State the availability and procedures for resolution of consumer grievances regarding the provision of (or failure to provide) health care services, including such mediation.

(3) Each State shall provide that such mediation may begin before or after, at the option of the claimant, the commencement of a medical malpractice action.

(4) The Attorney General, in consultation with the Secretary of Health and Human Services, shall, by regulation, develop requirements with respect to such mediation to ensure that it is carried out in a manner that—

(A) is affordable for the parties involved;

(B) encourages timely resolution of claims;

(C) encourages the consistent and fair resolution of claims; and

(D) provides for reasonably convenient access to dispute resolution.

(c) FURTHER REDRESS AND ADMISSIBILITY.—Any party dissatisfied with a determination reached with respect to a medical malpractice claim as a result of an alternative dispute resolution method applied under this section shall not be bound by such determination. The results of any alternative dispute resolution method applied under this section, and all statements, offers, and communications made during the application of such method, shall be inadmissible for purposes of adjudicating the claim.

SEC. 105. LIMITATION ON PUNITIVE DAMAGES.

(a) IN GENERAL.—Punitive damages may not be awarded in a medical malpractice action, except upon proof of—

(1) gross negligence;

(2) reckless indifference to life; or

(3) an intentional act, such as voluntary intoxication or impairment by a physician, sexual abuse or misconduct, assault and battery, or falsification of records.

(b) ALLOCATION.—In such a case, the award of punitive damages shall be allocated 50 percent to the claimant and 50 percent to a trustee appointed by the court, to be used by such trustee in the manner specified in subsection (d). The court shall appoint the Secretary of Health and Human Services as such trustee.

(c) EXCEPTION.—This section shall not apply with respect to an action if the applicable State law provides (or has been construed to provide) for damages in such an action that are only punitive or exemplary in nature.

(d) TRUST FUND.—

(1) IN GENERAL.—This subsection applies to amounts allocated to the Secretary of Health and Human Services as trustee under subsection (b).

(2) AVAILABILITY.—Such amounts shall be available for use by the Secretary of Health and Human Services under paragraph (3) and shall remain so available until expended.

(3) USE.—

(A) Subject to subparagraph (B), the Secretary of Health and Human Services, acting through the Director of the Agency for Healthcare Research and Quality, shall use the amounts to which this subsection applies for activities to reduce medical errors and improve patient safety.

(B) The Secretary of Health and Human Services may not use any part of such amounts to establish or maintain any system that requires mandatory reporting of medical errors.

(C) The Secretary of Health and Human Services shall promulgate regulations to establish programs and procedures for carrying out this paragraph.

(4) INVESTMENT.—

(A) The Secretary of Health and Human Services shall invest the amounts to which this subsection applies in such amounts as such Secretary determines are not required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired on original issue at the issue price, or by purchase of outstanding obligations at the market price.

(B) Any obligation acquired by the Secretary in such Secretary's capacity as trustee of such amounts may be sold by the Secretary at the market price.

SEC. 106. REDUCTION IN PREMIUMS PAID BY PHYSICIANS FOR MEDICAL MALPRACTICE INSURANCE COVERAGE.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, each medical malpractice liability insurance company shall—

(1) develop a reasonable estimate of the annual amount of financial savings that will be achieved by the company as a result of this title;

(2) develop and implement a plan to annually dedicate at least 50 percent of such annual savings to reduce the amount of premiums that the company charges physicians for medical malpractice liability coverage; and

(3) submit to the Secretary of Health and Human Services (hereinafter referred to in this section as the ''Secretary'') a written certification that the company has complied with paragraphs (1) and (2).

(b) REPORTS.—Not later than one year after the date of the enactment of this Act and annually thereafter, each medical malpractice liability insurance company shall submit to the Secretary a report that identifies the percentage by which the company has reduced medical malpractice coverage premiums relative to the date of the enactment of this Act.

(c) ENFORCEMENT.—A medical malpractice liability insurance company that violates a provision of this section is liable to the United States for a civil penalty in an amount assessed by the Secretary, not to exceed $11,000 for each such violation. The provisions of paragraphs (3) through (5) of section 303(g) of the Federal Food, Drug, and Cosmetic Act apply to such a civil penalty to the same extent and in the same manner as such paragraphs apply to a civil penalty under such section.

(d) DEFINITION.—For purposes of this section, the term ''medical malpractice liability insurance company'' means an entity in the business of providing an insurance policy under which the entity makes payment in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim.

SEC. 107. DEFINITIONS.

In this title, the following definitions apply:

(1) ALTERNATIVE DISPUTE RESOLUTION METHOD.—The term ''alternative dispute resolution method'' means a method that provides for the resolution of medical malpractice claims in a manner other than through medical malpractice actions.

(2) CLAIMANT.—The term ''claimant'' means any person who alleges a medical malpractice claim, and any person on whose behalf such a claim is alleged, including the decedent in the case of an action brought through or on behalf of an estate.

(3) HEALTH CARE PROFESSIONAL.—The term ''health care professional'' means any individual who provides health care services in a State and who is required by the laws or regulations of the State to be licensed or certified by the State to provide such services in the State.

(4) HEALTH CARE PROVIDER.—The term ''health care provider'' means any organization or institution that is engaged in the delivery of health care services in a State and that is required by the laws or regulations of the State to be licensed or certified by the State to engage in the delivery of such services in the State.

(5) INJURY.—The term ''injury'' means any illness, disease, or other harm that is the subject of a medical malpractice action or a medical malpractice claim.

(6) MANDATORY.—The term ''mandatory'' means required to be used by the parties to attempt to resolve a medical malpractice claim notwithstanding any other provision of an agreement, State law, or Federal law.

(7) MEDIATION.—The term ''mediation'' means a settlement process coordinated by a neutral third party and without the ultimate rendering of a formal opinion as to factual or legal findings.

(8) MEDICAL MALPRACTICE ACTION.—The term ''medical malpractice action'' means an action in any State or Federal court against a physician, or other health professional, who is licensed in accordance with the requirements of the State involved that—

(A) arises under the law of the State involved;

(B) alleges the failure of such physician or other health professional to adhere to the relevant professional standard of care for the service and specialty involved;

(C) alleges death or injury proximately caused by such failure; and

(D) seeks monetary damages, whether compensatory or punitive, as relief for such death or injury.

(9) MEDICAL MALPRACTICE CLAIM.—The term ''medical malpractice claim'' means a claim forming the basis of a medical malpractice action.

(10) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and any other territory or possession of the United States.

SEC. 108. APPLICABILITY.

(a) IN GENERAL.—Except as provided in section 104, this title shall apply with respect to any medical malpractice action brought on or after the date of the enactment of this Act.

(b) FEDERAL COURT JURISDICTION NOT ESTABLISHED ON FEDERAL QUESTION GROUNDS.—Nothing in this title shall be construed to establish any jurisdiction in the district courts of the United States over medical malpractice actions on the basis of section 1331 or 1337 of title 28, United States Code.

TITLE II—INDEPENDENT ADVISORY COMMISSION ON MEDICAL MALPRACTICE INSURANCE

SEC. 201. ESTABLISHMENT.

(a) FINDINGS.—The Congress finds as follows:

(1) The sudden rise in medical malpractice premiums in regions of the United States can threaten patient access to doctors and other health providers.

(2) Improving patient access to doctors and other health providers is a national priority.

(b) ESTABLISHMENT.—There is established a national commission to be known as the ''Independent Advisory Commission on Medical Malpractice Insurance'' (in this title referred to as the ''Commission'').

SEC. 202. DUTIES.

(a) IN GENERAL.—The Commission shall evaluate the causes and scope of the recent and dramatic increases in medical malpractice insurance premiums and formulate additional proposals to reduce such medical malpractice premiums and make recommendations to avoid any dramatic increases in medical malpractice premiums in the future, in light of proposals for tort reform regarding medical malpractice.

(b) CONSIDERATIONS.—In formulating proposals under this section, the Commission shall, at a minimum, consider the following:

(1) Alternatives to the current medical malpractice tort system that would ensure adequate compensation for patients, preserve access to providers, and improve health care safety and quality.

(2) Modifications of, and alternatives to, the existing State and Federal regulations and oversight that affect, or could affect, medical malpractice lines of insurance.

(3) State and Federal reforms that would distribute the risk of medical malpractice more equitably among health care providers.

(4) State and Federal reforms that would more evenly distribute the risk of medical malpractice across various categories of providers.

(5) The effect of a Federal medical malpractice reinsurance program administered by the Department of Health and Human Services.

(6) The effect of a Federal medical malpractice insurance program, administered by the Department of Health and Human Services, to provide medical malpractice insurance based on customary coverage terms and liability amounts in States where such insurance is unavailable or is unavailable at reasonable and customary terms.

(7) Programs that would reduce medical errors and increase patient safety, including new innovations in technology and management.

(8) The effect of State policies under which—

(A) any health care professional licensed by the State has standing in any State administrative proceeding to challenge a proposed rate increase in medical malpractice insurance; and

(B) a provider of medical malpractice insurance in the State may not implement a rate increase in such insurance unless the provider, at minimum, first submits to the appropriate State agency a description of the rate increase and a substantial justification for the rate increase.

(9) The effect of reforming antitrust law to prohibit anticompetitive activities by medical malpractice insurers.

(10) Programs to facilitate price comparison of medical malpractice insurance by enabling any health care provider to obtain a quote from each medical malpractice insurer to write the type of coverage sought by the provider.

(11) The effect of providing Federal grants for geographic areas that have a shortage of one or more types of health providers as a result of the providers making the decision to cease or curtail providing health services in the geographic areas because of the costs of maintaining malpractice insurance.

SEC. 203. REPORT.

(a) IN GENERAL.—The Commission shall transmit to Congress—

(1) an initial report not later than 180 days after the date of the initial meeting of the Commission; and

(2) a report not less than each year thereafter until the Commission terminates.

(b) CONTENTS.—Each report transmitted under this section shall contain a detailed statement of the findings and conclusions of the Commission, including proposals for addressing the current dramatic increases in medical malpractice insurance rates and recommendations for avoiding any such dramatic increases in the future.

(c) VOTING AND REPORTING REQUIREMENTS.—With respect to each proposal or recommendation contained in the report submitted under subsection (a), each member of the Commission shall vote on the proposal or recommendation, and the Commission shall include, by member, the results of that vote in the report.

SEC. 204. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 15 members appointed by the Comptroller General of the United States.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The membership of the Commission shall include individuals with national recognition for their expertise in health finance and economics, actuarial science, medical malpractice insurance, insurance regulation, health care law, health care policy, health care access, allopathic and osteopathic physicians, other providers of health care services, patient advocacy, and other related fields, who provide a mix of different professionals, broad geographic representations, and a balance between urban and rural representatives.

(2) INCLUSION.—The membership of the Commission shall include the following:

(A) Two individuals with expertise in health finance and economics, including one with expertise in consumer protections in the area of health finance and economics.

(B) Two individuals with expertise in medical malpractice insurance, representing both commercial insurance carriers and physician-sponsored insurance carriers.

(C) An individual with expertise in State insurance regulation and State insurance markets.

(D) An individual representing physicians.

(E) An individual with expertise in issues affecting hospitals, nursing homes, nurses, and other providers.

(F) Two individuals representing patient interests.

(G) Two individuals with expertise in health care law or health care policy.

(H) An individual with expertise in representing patients in malpractice lawsuits.

(3) MAJORITY.—The total number of individuals who are directly involved with the provision or management of malpractice insurance, representing physicians or other providers, or representing physicians or other providers in malpractice lawsuits, shall not constitute a majority of the membership of the Commission.

(4) ETHICAL DISCLOSURE.—The Comptroller General of the United States shall establish a system for public disclosure by members of the Commission of financial or other potential conflicts of interest relating to such members.

(c) TERMS.—

(1) IN GENERAL.—The terms of the members of the Commission shall be for 3 years except that the Comptroller General of the United States shall designate staggered terms for the members first appointed.

(2) VACANCIES.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(3) COMPENSATION.—Members of the Commission shall be compensated in accordance with section 1805(c)(4) of the Social Security Act.

(4) CHAIRMAN; VICE CHAIRMAN.—The Comptroller General of the United States shall designate at the time of appointment a member of the Commission as Chairman and a member as Vice Chairman. In the case of vacancy of the Chairmanship or Vice Chairmanship, the Comptroller General may designate another member for the remainder of that member's term.

(5) MEETINGS.—

(A) IN GENERAL.—The Commission shall meet at the call of the Chairman.

(B) INITIAL MEETING.—The Commission shall hold an initial meeting not later than the date that is 1 year after the date of the enactment of this title, or the date that is 3 months after the appointment of all the members of the Commission, whichever occurs earlier.

SEC. 205. DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.

Subject to such review as the Comptroller General of the United States deems necessary to assure the efficient administration of the Commission, the Commission may—

(1) employ and fix the compensation of an Executive Director (subject to the approval of the Comptroller General) and such other personnel as may be necessary to carry out its duties (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service);

(2) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

(3) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of the Commission (without regard to section 3709 of the Revised Statutes (41 U.S.C. 5));

(4) make advance, progress, and other payments which relate to the work of the Commission;

(5) provide transportation and subsistence for persons serving without compensation; and

(6) prescribe such rules and regulations as it deems necessary with respect to the internal organization and operation of the Commission.

SEC. 206. POWERS.

(a) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman, the head of that department or agency shall furnish that information to the Commission on an agreed upon schedule.

(b) DATA COLLECTION.—In order to carry out its functions, the Commission shall—

(1) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in accordance with this section;

(2) carry out, or award grants or contracts for, original research and experimentation, where existing information is inadequate; and

(3) adopt procedures allowing any interested party to submit information for the Commission's use in making reports and recommendations.

(c) ACCESS OF GENERAL ACCOUNTING OFFICE TO INFORMATION.—The Comptroller General of the United States shall have unrestricted access to all deliberations, records, and nonproprietary data of the Commission, immediately upon request.

(d) PERIODIC AUDIT.—The Commission shall be subject to periodic audit by the Comptroller General of the United States.

SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out this title for each of fiscal years 2006 through 2010.

(b) REQUESTS FOR APPROPRIATIONS.—The Commission shall submit requests for appropriations in the same manner as the Comptroller General of the United States submits requests for appropriations, but amounts appropriated for the Commission shall be separate from amounts appropriated for the Comptroller General.

Amend the title so as to read: ''A bill to limit frivolous medical malpractice lawsuits, to reform the medical malpractice insurance business in order to reduce the cost of medical malpractice insurance, to enhance patient access to medical care, and for other purposes.''.

Mr. CONYERS (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Speaker, I am pleased to bring a motion to recommit that goes to the heart of the medical malpractice crisis. Rather than limiting the rights of legitimate malpractice victims, as the underlying bill actually does, our motion would directly address the problem of frivolous lawsuits and insurance industry abuses.

Title I of the substitute addresses the problem of frivolous lawsuits. Among other things, it would require that both an attorney and health care specialist submit an affidavit that the claim is warranted before a malpractice action

can be brought, and imposes strict sanctions for attorneys who make any frivolous pleadings.

Unlike the majority's bill, our amendment is limited to licensed physicians and health care professionals for malpractice cases only. It does not include lawsuits against HMOs, insurance companies, nursing homes, and drug and device manufacturers. And it sure does not insulate the manufacturer of Vioxx from liability.

Title II establishes a national commission to evaluate the rising insurance premiums and to review whether the McCarran-Ferguson antitrust exemption for medical malpractice insurers should be repealed.

This is a good motion.

Mr. Speaker, I yield the balance of my time, the last 2½ minutes, to the gentlewoman from Colorado (Ms. DEGETTE).

Ms. DEGETTE. Mr. Speaker, Congress is faced with an irony today. We have identified a problem, and the problem is that doctors are going out of business because of their high medical malpractice insurance premiums. So what are we going to do? We are going to pass a bill that caps damages for victims injured by medical malpractice, but we are going to do nothing to reduce the premiums for these doctors.

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So doctors get no relief, and victims of malpractice get less. But wait, there is more. There is so much more to this bill. We have not heard one word today about the pressing problems the pharmaceutical industry has and how we need to give them immunity so they will keep making drugs. But yet that is what this bill does.

We have not heard one word today about how all of the nursing homes are going out of business because of the lawsuits against them, but we are giving them immunity today.

We have not heard a thing about the medical device manufacturers and how they will not make the titanium hip replacements or the insulin pumps, but yet we are giving them immunity today.

This bill goes further than any State law. It goes further than any law anybody would contemplate, and it is just a giveaway to the insurance industry, to the pharmaceutical industry, to the nursing home industry, and to the medical device manufacturers.

If we pass the Conyers-Dingell motion to recommit, we will send this bill back and we will do something that will really give relief to the doctors who face these high malpractice insurance premiums.

I urge a ''yes'' vote on the motion to recommit. If that fails, I urge a ''no'' vote on the underlying bill.

Mr. CONYERS. Mr. Speaker, I yield myself the balance of my time.

This motion to recommit sets up a limitation on malpractice cases being brought. It requires that there be an attorney and health care specialist to submit an affidavit that the claim is warranted; and then in the second part, we establish a national commission to evaluate the causes of rising health insurance premiums.

This motion to recommit protects legitimate victims, limits frivolous lawsuits, and gives us a much-needed opportunity to examine the real causes of the medical malpractice insurance crisis that has this Nation in its grip.

I urge my colleagues to support the motion to recommit so that we can deal with medical malpractice insurance as a crisis and not as a giveaway to the companies that have been named throughout this debate.

Mr. Speaker, I yield back the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I rise to claim the time in opposition to the motion to recommit.

The SPEAKER pro tempore (Mr. SHAW). Is the gentleman opposed to the motion?

Mr. SMITH of Texas. Yes, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from Texas (Mr. SMITH) is recognized for 5 minutes.

Mr. SMITH of Texas. Mr. Speaker, the motion to recommit must be defeated because it contains zero legal protections for doctors beyond current law, and in some cases it actually makes the current crisis even worse.

The Democratic alternative would require that before a health care lawsuit is filed, the claimant file an affidavit declaring that a qualified specialist has been consulted and has issued a written report that says the filing is meritorious.

Mr. Speaker, the definition is so broad it is meaningless. The Democratic alternative also imposes another wasteful layer of bureaucracy on the health care system, mandatory mediation, which simply has no binding effect.

The motion to recommit even makes the situation of OB/GYNs worse than it is today by allowing someone as old as 21 to file a lawsuit claiming the doctor who delivered them caused their injury 21 years before. The motion to recommit would subject OB/GYNs to even more nuisance suits and drive even more of them out of business.

So the Conyers-Dingell substitute contains zero legal reforms and would make the current litigation crisis even worse; yet legal reforms are needed to solve the current crisis in medical liability insurance and increase access to health care.

H.R. 5 is the only proven legislative solution. According to the Congressional Budget Office under the HEALTH Act, ''premiums for medical malpractice insurance ultimately would be an average of 25 to 30 percent below what they would be under current law.''

Mr. Speaker, for the sake of health care providers and the people who need them, let us keep doctors practicing their profession and defeat this motion to recommit.

Mr. Speaker, I yield the balance of my time to the gentleman from Wisconsin (Mr. GREEN), who is an expert on this subject.

Mr. GREEN of Wisconsin. Mr. Speaker, it all boils down to this: we cannot get a handle on health care costs unless we first get a handle on the least productive part of heath care costs. Excessive liability costs are unproductive. They do not increase the quality of care. They do not increase accessibility to care, and they certainly do not increase affordability of care.

Here is what excessive liability costs do. They drive up insurance costs for doctors. They drive physicians out of high-risk specialties and fields, and they drive them out of high-cost areas. In some cases, they drive them out of practice altogether; and in those cases we all lose.

The great thing about the bill before us is we know it will work. It is not speculative. We know it works. We know that reforms which permit injured parties to recover every last dollar of economic damages, but place a modest cap on noneconomic damages, loss of society, loss of companionship, we know these reforms can help solve the medical liability crisis. It worked in California. It once worked in Wisconsin. And it can work all across America if we pass the HEALTH Act. If we defeat this motion to recommit, we can solve the medical liability crisis. This is what we must do.

Mr. SMITH of Texas. Mr. Speaker, I urge my colleagues to vote ''no'' on the motion to recommit and ''yes'' on the HEALTH Act.

The SPEAKER pro tempore (Mr. SWEENEY). Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CONYERS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of passage.

The vote was taken by electronic device, and there were—yeas 193, nays 234, answered ''present'' 1, not voting 5, as follows:

[Roll No. 448]

YEAS—193

Abercrombie	Berry	Butterfield
Ackerman	Bishop (GA)	Capps
Allen	Bishop (NY)	Capuano
Baca	Blumenauer	Cardin
Baird	Boren	Cardoza
Baldwin	Boswell	Carnahan
Barrow	Boucher	Case
Bean	Boyd	Chandler
Becerra	Brady (PA)	Clay
Berkley	Brown (OH)	Cleaver
Berman	Brown, Corrine	Clyburn

Conyers
Cooper
Costa
Costello
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinchey
Hinojosa
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Marshall
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Moore (KS)
Moore (WI)
Moran (VA)
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NAYS—234

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Cox
Cramer
Crenshaw
Cubin
Culberson
Cunningham
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Mollohan
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schwarz (MI)
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

ANSWERED ''PRESENT''—1

Sensenbrenner

NOT VOTING—5

Andrews
Carson
Kelly
Paul
Schakowsky

□ 1631

Mr. McHUGH, Mr. ISSA, Mrs. DRAKE, Mr. GORDON, Mrs. MUSGRAVE, and Mr. HOBSON changed their vote from ''yea'' to ''nay.''

Messrs. HINCHEY, FARR, SMITH of Washington, and SPRATT changed their vote from ''nay'' to ''yea.

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. SWEENEY). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 230, noes 194, answered ''present'' 2, not voting 7, as follows:

[Roll No. 449]

AYES—230

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boustany
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardoza
Carter
Castle
Chabot
Chocola
Cole (OK)
Conaway
Cox
Cramer
Crenshaw
Cubin
Cuellar
Culberson
Cunningham
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, M.
Doolittle
Drake
Dreier
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Jindal
Johnson (CT)
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schwarz (MI)
Scott (GA)
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—194

Abercrombie
Ackerman
Allen
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Carnahan
Case
Chandler
Clay
Cleaver
Clyburn
Coble
Conyers
Cooper
Costa
Costello
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Diaz-Balart, L.
Dicks
Dingell
Doggett
Doyle
Duncan
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Flake
Ford
Frank (MA)
Gonzalez
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinchey
Hinojosa
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (NY)

Kucinich	Moore (KS)	Scott (VA)
Langevin	Moore (WI)	Serrano
Lantos	Moran (VA)	Sherman
Larsen (WA)	Nadler	Skelton
Larson (CT)	Napolitano	Slaughter
Lee	Neal (MA)	Smith (WA)
Levin	Oberstar	Snyder
Lewis (GA)	Obey	Solis
Lipinski	Olver	Spratt
Lofgren, Zoe	Ortiz	Stark
Lowey	Owens	Strickland
Lynch	Pallone	Stupak
Maloney	Pascrell	Tanner
Markey	Pastor	Tauscher
Marshall	Payne	Terry
Matsui	Pelosi	Thompson (CA)
McCarthy	Price (NC)	Thompson (MS)
McCollum (MN)	Rahall	Tierney
McDermott	Rangel	Towns
McGovern	Reyes	Udall (CO)
McIntyre	Ross	Udall (NM)
McKinney	Rothman	Van Hollen
McNulty	Roybal-Allard	Velázquez
Meehan	Ruppersberger	Visclosky
Meek (FL)	Rush	Wasserman Schultz
Meeks (NY)	Ryan (OH)	Waters
Melancon	Sabo	Watson
Menendez	Salazar	Watt
Michaud	Sánchez, Linda T.	Waxman
Millender-McDonald	Sanchez, Loretta	Weiner
Miller (NC)	Sanders	Wexler
Miller, George	Schiff	Woolsey
Mollohan	Schwartz (PA)	Wynn

ANSWERED ''PRESENT''—2

Burton (IN)	Sensenbrenner

NOT VOTING—7

Andrews	Johnson, Sam	Wu
Burgess	Paul	
Carson	Schakowsky	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1640

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate has passed without amendment a bill of the House of the following title:

H.R. 3423. An act to amend the Federal Food, Drug, and Cosmetic Act with respect to medical device user fees.

GENERAL LEAVE

Mr. TAYLOR of North Carolina. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and that I may include tabular and extraneous material on the conference report to accompany H.R. 2361.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

CONFERENCE REPORT ON H.R. 2361, DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2006

Mr. TAYLOR of North Carolina. Mr. Speaker, pursuant to House Resolution 392, I call up the conference report on the bill (H.R. 2361) making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 392, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of July 26, 2005 at page H6562.)

The SPEAKER pro tempore. The gentleman from North Carolina (Mr. TAYLOR) and the gentleman from Washington (Mr. DICKS) each will control 30 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. TAYLOR).

□ 1645

Mr. TAYLOR of North Carolina. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today we bring before the House the conference agreement on H.R. 2361, the Interior, Environment, and Related Agencies Appropriations Act for fiscal year 2006. I would like to thank all of the members of the Subcommittee for their support and guidance this year. I want to extend special thanks to the subcommittee vice chairman, the gentleman from Idaho (Mr. SIMPSON), and the gentleman from Washington (Mr. DICKS), the ranking member and my good friend, for their assistance in shaping the bill. We are under last year, and we are under the allocation.

The conference report balances many competitive and diverse needs. It provides funding for programs in the Department of the Interior, the Environmental Protection Agency, the Forest Service, the Indian Health Agency, the Smithsonian Institution, and several other environmental and cultural agencies and commissions.

With the ongoing war on terrorism and a sizable Federal debt, the American taxpayer demands fiscal prudence, yet entrusts us to continue the conservation and care of our Nation's natural resources, the protection of the environment, and critical programs for native Americans and other programs. The needs far outweigh the funds available, but I believe this bill addresses the most critical needs.

The conference report is the product of a balanced, bipartisan, bicameral effort that resolves over 2,000 differences between the House and the Senate bills. Moreover, it addresses many of the key issues raised on the House floor in May and stays true to the fundamental issues that helped the bill pass overwhelmingly in the House. Here are a few of the highlights:

Payments in Lieu of Taxes are $9 million over the enacted level. The arts and humanities are $5 million each over the enacted level. Funding for operations of the national parks has increased by $61 million. Restrictions remain in the bill for pesticide testing on human subjects. Funding for the Clean Water State Revolving Act is $900 million, which is $50 million above the House level and $170 million above the budget request.

The Forest Health Program, which is critical to reducing this Nation's risk of catastrophic wildfires, is restored to the enacted level.

Finally, I am proud to say that this conference agreement contains $1.5 billion in critically needed funds for veterans medical care.

Mr. Speaker, I believe the priorities of the American people are reflected in the conference agreement, and I urge all of my colleagues to support it.

I would like to thank staff on both sides of the aisle because, without their hard work, we would not be able to bring this bill forward at this time.

At this time, I will include a table detailing the various accounts in the bill for insertion in the RECORD.