



**National
Business
Group on
Health**

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Creative Health Benefits Solutions for Today, Strong Policy for Tomorrow

March 4, 2011

The Honorable Phil Gingrey
U.S House of Representatives
442 Cannon HOB
Washington, DC 20515

The Honorable David Scott
U.S House of Representatives
225 Cannon HOB
Washington, DC 20515

Dear Representatives Gingrey and Scott:

The National Business Group on Health writes to wholeheartedly support H.R. 5, the Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2011 to reduce the billions of health care dollars wasted annually on defensive medicine and frivolous lawsuits which have contributed significantly to skyrocketing health care costs, threatened access to care in several parts of the country, and hindered efforts to improve quality. **We believe that comprehensive reform of the health care legal system is the only way to achieve more effective, efficient, and affordable care and coverage for all Americans.**

The National Business Group on Health (Business Group) represents approximately 316, primarily large, employers (including 66 of the Fortune 100) who voluntarily provide health care benefits and other health programs to over 55 million American employees, retirees, and their families.

Specifically, the Business Group believes that comprehensive health care legal reform must encompass the following provisions that you included in H.R. 5:

- Capping noneconomic damages at \$250,000;
- Limiting punitive damages to the greater of \$250,000 or twice economic damages in medical malpractice awards, except when state laws specify specific amounts for compensatory or punitive damages;
- Allowing for periodic payments for damages exceeding \$50,000;
- Establishing a 3 year time limit following the date of injuries or 1 year after claimants discover injuries when they would have to file, with certain exemptions for fraud, intentional concealment, foreign bodies left in patients or until minors' 8th birthdays—this provision will ensure that fair, just and equitable compensation is appropriately awarded to patients deemed injured; and
- Limiting attorneys' contingent fees in medical malpractice cases on a sliding scale ranging from a maximum of 40% on the first \$50,000 to 15% on awards of more than \$600,000.

We also encourage you to include the following additional provisions in any final version of H.R. 5:

- Strengthening the criteria for the expert witness rule to ensure accurate medical opinions and information; and
- Requiring jurisdiction of health care litigation to be presided over by Federal courts.

As you know, increasing numbers of physicians, hospitals, and other providers are curtailing their services, particularly Ob/Gyns and emergency care, relocating to other states; or ceasing to practice altogether.

Furthermore, the current legal environment encourages defensive medicine, fears about reporting serious adverse events, and works against quality enhancement. Overuse of medicine—subjecting patients to unnecessary tests and treatments is common. For example, a 2011 study by the American Academy of Orthopedic Surgeons found that nearly 35 percent of all imaging scans for 2,068 orthopedic patient encounters in Pennsylvania were ordered for defensive purposes to protect providers from lawsuits.¹

Fear of malpractice litigation also encourages physicians and other health professionals and facilities to keep silent about medical errors because they fear lawyers would use the information in court or they fear adverse consequences for their careers.

Comprehensive changes in the health care legal system will reduce the amount of employer and employee dollars diverted from paying for needed, quality care toward frivolous lawsuits and defensive medicine (estimated to account for 20-30% of all medical costs). In addition, employees could expect improved access to and reduced out-of-pocket costs for health care, especially for high-risk services. Employees could expect improved access to emergency rooms that have closed or reduced hours and ob-gyn services in areas where Ob/Gyns have reduced their practices or stopped practicing altogether because of stratospheric increases in malpractice insurance rates. Patients would also receive fewer unnecessary tests, scans and procedures as defensive medicine declines. Although those successfully suing for malpractice would receive smaller total damage awards, they would receive a greater percentage of the amount, as H.R. 5 would also limit attorneys' fees.

For those reasons, the National Business Group on Health strongly supports your efforts to enact legislation to reform the health care legal system to protect access to affordable, quality health care. **We believe that comprehensive health care legal reform is an**

¹ Miller, Robert Andrew. Et. al. The prevalence of defensive orthopedic imaging: a prospective practice audit in Pennsylvania. 2011 Annual Meeting Paper Presentations. American Academy of Orthopedic Surgeons. February 16, 2011. Available at:

<http://www3.aaos.org/education/anmeet/anmt2011/podium/podium.cfm?Pevent=119>

essential element of health care reform. Please contact me or Steven Wojcik, the National Business Group on Health's Vice President of Public Policy, at (202) 558-3012, if you would like to discuss our comments in more detail.

Sincerely,

A handwritten signature in cursive script that reads "Helen Darling".

Helen Darling
President

cc:

The Honorable Lamar Smith, Chair, U.S. House Committee on the Judiciary