

**Statement of F. James Sensenbrenner, Jr.
Chairman of the House Committee on the Judiciary**

“Dying for Help: Are Patients Needlessly Suffering Due to the High Cost of Medical Liability Insurance?”

A national insurance crisis is ruining the nation’s essential health care system. Medical professional liability insurance rates have soared, causing major insurers to either drop coverage or raise premiums to unaffordable levels. Doctors and other health care providers are being forced to abandon patients and practices, particularly in high-risk specialties such as emergency medicine and obstetrics and gynecology. Women are being particularly hard hit, as are low-income neighborhoods and rural areas, and medical schools large and small.

When California faced a similar crisis over 25 years ago, its Democratic Governor Jerry Brown enacted the Medical Injury Compensation Reform Act, the so-called “MICRA” law.

MICRA’s reforms include a \$250,000 cap on non-economic damages, limits on the contingency fees lawyers can charge, and provisions that prevent double recoveries. According to *The Los Angeles Times*, “Because of 1975 tort reform, doctors in California are largely unaffected by increasing insurance rates. But the situation is dire in [other] states ...” Exhaustive research by top economists has confirmed that direct medical care litigation reforms – including caps on non-economic damage awards – generally reduce malpractice claims rates, insurance premiums, and other stresses on doctors that may impair the quality of medical care.

Federal legislation to address the current crisis in access to health care should be modeled on MICRA’s reforms, while also creating a “fair share” rule, by which damages are allocated fairly, in direct proportion to fault, and

reasonable guidelines – but not caps – on the award of punitive damages.

Such federal legislation should accomplish reform without in any way limiting compensation for 100% of plaintiffs’ economic losses, namely any quantifiable loss to which a receipt can be attached, including their medical costs, including pain reducing medication, their lost wages, their future lost wages, rehabilitation costs, and any other economic out of pocket loss suffered as the result of a health care injury.

A recent survey conducted for the bipartisan legal reform organization “Common Good” – whose Board of Advisors includes former Clinton Administration Deputy Attorney General Eric Holder, and former Democratic Senator Paul Simon – reveals the dire need for regulating the current medical tort system in America. According to the survey, which was conducted by the reputable Harris organization:

- More than three-fourths of physicians feel that concern about malpractice litigation has hurt their ability to provide quality care in recent years.
- 79% of physicians report that the fear of malpractice claims causes them to order more tests than they would based only on professional judgment of what is medically needed. As former Democrat Senator and presidential candidate George McGovern and former Republican Senator Alan Simpson have written, “Legal fear drives [doctors] to prescribe medicines and order tests, even invasive procedures, that they feel are unnecessary. Reputable studies estimate that this ‘defensive medicine’ squanders \$50 billion a year ...”
- The “Common Good” survey also asked physicians the following question: “Generally speaking, how much do you think that fear of liability discourages medical professionals from openly discussing and thinking of ways to reduce medical errors?” An astonishing 59% of

physicians replied “a lot.”

So it’s apparent that doctors themselves, who are most keenly aware of the litigation threats they face, are not blaming insurance companies for high premiums because they know the problem lies in an unregulated medical litigation system.

Some opponents of reforms that reasonably limit the currently unregulated health care litigation system make two fundamental errors. First, they think that when friends or loved ones suffer serious injuries requiring immediate medical attention, Americans will think first about lawyers and lawsuits, not doctors and healing. And second, some opponents of reform assume that when friends or loved ones suffer serious injuries, there will be a doctor to sue in the first place. But just the opposite is increasingly true: Americans want most to see their friends and loved ones receive the best and most accessible health care available, but with greater and greater frequency doctors are not there to deliver it because they have been priced out of the healing profession by unaffordable professional liability insurance rates.

Sound policy does not favor supporting people’s abstract ability to sue a doctor for unlimited, unquantifiable damages when doing so means that there is no doctor to treat people in the first place.

The American Bar Association estimates there are 1 million lawyers in America. But all of us – all 287 million Americans – are patients. As patients, and for patients, Congress should pass and submit to the President meaningful federal legislation addressing the current health care access crisis.