



Congress of the United States
House of Representatives

□ 1318 LONGWORTH HOUSE OFFICE B
WASHINGTON, DC 20515-4332
TELEPHONE: 202.225.2231
FAX: 202.225.5878
DISTRICT OFFICE:
□ PARK CENTRAL VII
12750 MERIT DRIVE
SUITE 1434
DALLAS, TEXAS 75251
TELEPHONE: 972.392.0505
FAX: 972.392.0615
e-mail: petes@mail.house.gov
web page: www.house.gov/sessions/

July 2, 2005

Ms. Bessie Sharpshooter
324 West Shaky Gun Way
Dallas, TX 75123

Dear Ms. Sharpshooter:

Thank you for contacting me regarding Medical Malpractice Liability Reform. As you may know, our nation's health care delivery system is facing a crisis due to out of control frivolous lawsuits. As a member of Congress, addressing this has been a top priority. I believe that we must protect patient access to health care providers and give them lower costs. While we are currently addressing this in Congress, I am pleased to inform you that we are seeing success in Texas due to legislation passed at the state level.

Action in Texas

Since the enactment of Proposition 12, thirteen new carriers have applied for entry into Texas, creating new competition and refreshing competitive rates for customers. After implementation of Proposition 12, Texas Medical Liability Trust (TMLT), the state's largest carrier, reduced its rates significantly by 17 percent.

Over 600 physicians have joined or started practices in Texas since the passage of this legislation. Large groups are now able to offer self-insured options with better predictability. One astounding example comes from Christus Health, a not-for-profit Catholic health system with hospitals throughout Texas. Christus is projecting a \$20 million savings on its liability cost. Officials of Christus state this savings is a direct result of the new liability reforms.

The difference in the average number of lawsuits filed in Harris County alone is staggering, down more than 30 percent since January 2005:

- 48 lawsuits per month filed two and a half months prior to Proposition 12
- 248 lawsuits per month filed in three months between passage and mandatory effective date
- 14 lawsuits per month since September 1, 2003 and mandatory effective date

Action at the Federal Level

I believe that the success in Texas can serve as a model for reform at the federal level. Despite the number of cases filed, since Proposition 12 we have already seen results. I join my colleagues in supporting 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, in an effort to address this crisis. Studies indicate that reform could save over \$50 billion in the Medicare program alone, due to defensive medicine.¹

This legislation currently has many supporters in Congress who recognize that doctors and other healthcare providers are being forced to abandon patients and practices. H.R. 5 is virtually identical to its counterpart and H.R. 4280, in the 108th Congress, as passed by the House of Representatives. **H.R. 5 is similar to its Senate counterpart S. 354, the House version was passed by a vote of 230 – 194, on July 28, 2005.**

H.R. 5 is modeled after California's Medical Injury Compensation Reform Act (MICRA), enacted in 1975, which has proven to be immensely successful in increasing access to affordable medical care in California. Since 1976, premiums across the nation increased three times faster than in California. An OB-GYN in California pays about \$57,000 a year for insurance. A similarly situated OB-GYN in Florida (where there are no reforms) pays \$210,000 for liability insurance – a dramatic difference.

H.R. 5 protects access for patients by:

- Imposing up to a \$250,000 cap on non-economic damages in any healthcare lawsuit, regardless of the number of parties against who the action is brought or the number of separate claims or actions brought with respect to the same injury;
- Placing reasonable limits on punitive damages to be the greater of two times the amount of economic damages awarded or \$250,000;
- Limits the number of years a plaintiff has to file a healthcare liability action to ensure that claims are brought while evidence and witnesses are available;
- Allowing patients the right to the collateral source rule, which is the common-law rule that allows an injured party to recover damages from the defendant even if he/she is entitled to receive them from a third party, such as a health insurance company, employer, or the government;
- Restricts lawyers' contingent fees in effort to scale back the normal 40 percent of the awarded amount usually paid to the lawyer instead of claiming an hourly fee;

¹ Department of Health and Human Services report. July 2002.

- Permits periodic payment of future damages through the purchase of an annuity or through self-funding by an institutional defendant as a replacement for a lump sum payment.

Opponents of medical malpractice reform often support their position by maliciously portraying physicians and other healthcare providers as those who carelessly endanger the lives of patients. These opponents file frivolous lawsuits on behalf of patients in order to take advantage of a flawed system and needlessly send insurance rates skyrocketing. These opponents suggest that reform will not bring patients the justice that they deserve.

The opposition often fails to note that H.R. 5 will not limit in any way an award of “economic damages” from anyone responsible for harm. Under the common-sense reforms that we are proposing, patients will receive their economic damages with caps on non-economic damages compared to a state without caps on non-economic damages. **Nothing in H.R. 5 prevents juries from awarding very large amounts to victims of medical malpractice.**

Why Reforms are Necessary

Research confirms that litigation reforms such as those in H.R. 5 reduce medical professional liability premiums. According to the Congressional Budget Office (CBO), “certain tort limitations, primarily caps on awards and rules governing offsets from collateral-source benefits, effectively reduce average premiums for medical malpractice insurance.” Consequently, CBO estimates that, in States that currently do not have controls on malpractice torts, [H.R. 5] would significantly lower premiums for medical malpractice insurance from what they would otherwise be under current law. Also, premiums for medical malpractice insurance ultimately would be an average of 25 percent to 30 percent below what they would be under current law.²

Reform not only affects physicians and hospitals, but it increases workers’ access to health care everywhere. We live in an interconnected economy that includes many businesses that operate in many different states. Unlimited liability in some states makes health care costs in various states increase. When health care costs increase in one state, they can affect a company’s ability to offer health insurance to employees nationwide. Because of this, CBO concluded that the H.R. 5 would lead to an increase in the number of employers offering insurance to their employees and in the number of employees enrolling in employer-sponsored insurance, changes in the types of health plans that are offered and increases in the scope or generosity of health insurance benefits.

H.R. 5 will also save taxpayers billions of dollars. Defensive medicine defined as the ordering of unnecessary and duplicate tests. This causes 79 percent³ of doctors to prescribe medicines and order tests that they feel are unnecessary, but a precaution against frivolous lawsuits, costing \$70-126 billion a year.⁴ According to the Department of Health and Human Services, “If reasonable limits were placed on non-economic damages to reduce defensive medicine, it would

² “Cost of the Health Act.” Congressional Budget Office. September 24, 2002.

³ “Fear of Litigation Study.” The Impact on Medicine,” Common Good. April 11, 2002.

⁴ “Addressing the New Health Care Crisis.” Department of Health and Human Services. March 2003.

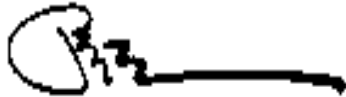
reduce the amount of taxpayers' money the Federal Government spends by \$25.3 - 44.3 billion per year, a very significant amount. It would more than fund a prescription drug benefit for Medicare beneficiaries and help uninsured Americans obtain coverage through a refundable health credit.”⁵

The Legislation's Future

I am pleased with the results of Proposition 12 in Texas. I hope that we can translate this into national success. Unfortunately, some in the Senate are blocking much needed reform at the federal level. Since the House version passed, we are awaiting the conclusion of hearings offered by the Senate. S. 354 should be taken up by the Senate in the near future. I am optimistic that the Senate will mirror the House's support for this legislation.

It is a priority of mine to fight for medical malpractice liability reform on the federal level. Reforming the medical malpractice insurance crisis is vital to Texas if it is to serve as the premier area in the nation to provide and receive healthcare. If I can be of any further assistance, please do not hesitate to contact either me or my Legislative Assistant, Bobby Hillert, at 202.225.2231 or via email at Robert.Hillert@mail.house.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Sessions", with a long horizontal flourish extending to the right.

Pete Sessions
Member of Congress

PS\cs

⁵ “Confronting the New Health Care Crisis.” Department of Health and Human Services. July 24, 2002.