



NATIONAL CONFERENCE *of* STATE LEGISLATURES

*The Forum for America's Ideas*

February 16, 2011

Representative Lamar Smith  
Chairman  
House Judiciary Committee  
2138 Rayburn House Office Building  
Washington, DC 20515

Representative John Conyers Jr.  
Ranking Member  
House Judiciary Committee  
2426 Rayburn House Office Building  
Washington, DC 20515

Richard Moore  
*Senator*  
*Massachusetts Senate*  
*President, NCSL*

Tim Rice  
*Executive Director*  
*Illinois Legislative Information System*  
*Staff Chair, NCSL*

William Pound  
*Executive Director*

**RE: H.R. 5, the “Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act of 2011.”**

Dear Chairman Smith and Ranking Member Conyers:

On behalf of the National Conference of State Legislatures, we are writing to express strong, bipartisan opposition to the passage of the latest federal medical malpractice legislation, H.R. 5, the “Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act of 2011,” pending before the United States House of Representatives.

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. Over the past several years, states have continued to revise and refine their medical malpractice laws and procedures.

NCSL has a longstanding Medical Malpractice policy that was initially passed in 2006 and was renewed in 2009. Our 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. Many states have caps on noneconomic damages and limitations on attorney’s fees in medical malpractice cases.

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NCSL studied this issue in 2005 when the last iteration of H.R. 5 was being considered by the U.S. House of Representatives. 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 goals. 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 medical malpractice legislation is unnecessary.**

NCSL's opposition will extend 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 (202-624-3566) or Jennifer Arguinzoni (202-624-8691) in NCSL's Washington, D.C. office.

Respectfully,



Assemblyman William Horne, Nevada  
Chair, NCSL  
Committee on Law and Criminal Justice



Representative Jerry Madden, Texas  
Immediate Past Chair, NCSL  
Committee of Law and Criminal Justice

CC: Members of the U.S. House Committee on the Judiciary