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CONGRESSWOMAN SHEILA JACKSON LEE,
OF TEXAS

COMMITTEE ON RULES
HEARING
TALKING POINTS

AMENDMENT: IRREVERSIBLE INJURY

**H.R. 5, "HELP EFFICIENT, ACCESSIBLE, LOW-COST, TIMELY
HEALTHCARE (HEALTH) ACT OF 2011"**

MARCH 20, 2012



First, I would like to thank Chairman Dreier and Ranking Member Slaughter for holding today's hearing.

- Today we are considering H.R. 5, the “Help Accessible, Efficient, Low-cost, Timely Healthcare (HEALTH) Act.” This bill is intended to change what some of my colleagues on the right believe to be a broken medical malpractice liability system.
- First, I would like to introduce an amendment, joined by my colleagues, Mr. Quigley of Illinois and Mr. Johnson of Georgia, which carves out an exemption for healthcare lawsuits for serious and irreversible injury.
- This will exempt victims of malpractice that resulted in irreversible injury, including loss of limbs and loss of

reproductive ability, from the \$250,000 cap that H.R. 5 imposes on non-economic damages.

- While the system may need some tweaks to help control ballooning medical malpractice insurance premiums paid by doctors, it is imperative that as we make changes, we are careful not to remove incentive for doctors to perform their duties at the highest standard. We must not leave victims of malpractice without a viable method of recourse.
- The bill before us today is not new; in fact, it was first introduced in 2005. As written, the HEALTH Act would severely limit the ability of injured patients and their families to hold health care and medical products providers accountable.

- The bill is so broadly drafted that it would also limit remedies against the for-profit nursing home, insurance and pharmaceutical industries, and even against doctors who commit intentional torts, such as sexual abuse.
- There are a number of reasons why this bill is flawed. Its scope is extremely broad and encompasses much more than necessary to simply protect doctors from high insurance premiums. It contains a sweeping preemption of state law. It reduces the statute of limitations on malpractice claims.
- It severely restricts contingency fees, discouraging lawyers from taking on malpractice cases. And it essentially strips victims of the right to bring a claim against drug and medical device manufacturers.

- According to a November 2010 study by the Office of Inspector General of the U.S. Department of Health and Human Services about 1 in 7 patients experience a medical error, 44 percent of which are preventable. These errors cost Medicare \$4.4 billion annually. U.S. Dept. of HHS, Office of the Inspector General, “*Adverse Events in Hospitals: National Incidence Among Medicare Beneficiaries*” (November 2010.)
- **Amendment: Exemption for Irreversible Injury**
 - Because this bill is so overbroad, I would like to introduce an amendment that will help to close the wide gaps created by this bill.
 - First, I would like to introduce an amendment which carves out an exemption for healthcare lawsuits for serious and irreversible injury. This will exempt victims

of malpractice that resulted in irreversible injury, including loss of limbs and loss of reproductive ability, from the \$250,000 cap that H.R. 5 imposes on non-economic damages.

- As individuals who are blessed to have all of our limbs and use of all of our senses, it is difficult to understand how challenging day-to-day life can be for someone who lacks these things. However, it is nearly impossible to imagine the stress and challenges faced by someone who has suffered irreversible bodily injury because of the negligence of another.
- Imagine going to the hospital for minor pain and leaving with no limbs because of thoughtless mistakes made by the trained experts who are supposed to take care of you.

- For Connie Spears, a Texas woman from Chairman Smith's district, this exact nightmare is a reality. As a patient who had dealt with blood clots in the past, and had a filter installed in one of her heart's main arteries, Ms. Spears went into a San Antonio hospital complaining of leg pain. She was made to wait, eventually treated, and was discharged.
- However, three days later, when her legs were the color of a cabernet and she was delirious, she called 911. When Spears, who was rendered unconscious, was treated at a different hospital, they determined that the filter in her artery was severely clotted and had caused tissue death in her legs, as well as kidney failure. Weeks later, Connie Spears regained consciousness, and learned that doctors had to amputate not one, but *both* of her legs in order to save her life.

- As a result of negligence by the emergency room doctors who initially treated Ms. Spears, she lost her legs, and nearly her life. To make matters worse, when she attempted to seek the aide of a lawyer to handle her case, she was unable to find an attorney to represent her. She was repeatedly told, “You have a great case, but not in Texas.” In 2003, state lawmakers in Texas passed tort reform laws, similar to the one proposed today, that make it extremely difficult for patients to win damages in any health care setting, but especially emergency rooms. It caps damages at \$250,000, like H.R. 5, and requires patients to prove that emergency room doctors acted with “willful and wanton” negligence – a near impossible standard to prove.
- This nightmare has also become a reality for Jennifer McCreedy, a San Antonio single mother who fell and severely injured her ankle and sought treatment at an

emergency room. Despite the severity of the break, the bone in her ankle was never set, a common practice done to prevent excess swelling, and she was not seen by an orthopedic surgeon. She was sent home and told to wait until the swelling went down. However, the swelling did not go down, and a surgery that should have only taken one hour, took four. Because of the swelling, the surgeon had to slice her Achilles tendon, and wounds that refused to heal required grafts.

- To date, Ms. McCreedy has endured five surgeries and has been rendered permanently disabled, curbing her ability to work and provide for her family. As a result of the negligence of those emergency room doctors, Ms. McCreedy went from a hard working, financially secure mother and homeowner, to dodging creditors and nearly losing her home to foreclosure.

- For victims of malpractice who have suffered irreversible injury, like Connie Spears and Jennifer McCreedy, it is impossible to put a price tag on the stress and pain and suffering they have already endured. Furthermore, it is outrageous that we would attempt to pass a law that puts a cap on the future challenges they are sure to face. It is inhuman to neglect the emotional price paid by victims of egregious acts that result in such serious, irreparable harm.
- We should not deprive patients who have suffered injury as a result of one of these drugs or devices of the right to receive compensation from the manufacturer or distributor of such.
- As we strive to become a healthier, more competitive nation, we need all the outstanding doctors, nurses and

other health care providers we can get. They must be unconstrained by excessive health care liability premiums. We also need our nation's students to be excited and encouraged to enter the life sciences without the fear of being crushed under the weight of excessive liability premiums.

- Placing caps on medical liability recovery does not necessarily lead to lower liability insurance premiums for doctors and health care providers. In fact, there is evidence that insurance companies have raised premiums in states like my home state of Texas and in California which use medical liability caps to reap an unearned profit at a time when health care lawsuits and the damages from those lawsuits were declining.
- If it is the intention of this committee to pass legislation that will reform the system of medical malpractice

liability in a sensible manner, then it is imperative that we strongly consider and pass the amendments being offered by myself and my Democratic colleagues.

Again, I would like to thank the Chairman and Ranking Member for their work to move these bills. I yield back the remainder of my time.