

THE DAILY WHIP

Thursday, March 13, 2003 | Floor News from Democratic Whip Steny Hoyer

HOUSE MEETS AT...	LAST VOTE PREDICTED...
10:00 a.m.: Legislative Business	4:00 – 5:00 p.m.
Number of "One-Minutes" Today: 5 per side	

***** ATTENDANCE IS CRITICAL FOR TODAY'S CONSIDERATION OF MEDICAL MALPRACTICE LEGISLATION. PLEASE NOTIFY THE DEMOCRATIC WHIP'S FLOOR STAFF IF YOU PLAN TO BE ABSENT.**

FLOOR SCHEDULE AND PROCEDURE

H.R. 5 – Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act --- Medical Malpractice, (Subject to a Rule)

BILL SUMMARY AND KEY ISSUES

H.R. 5 – Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act --- Medical Malpractice, (Subject to a Rule). This bill purports to address the problem of high insurance costs for doctors by capping non-economic awards for pain and suffering at \$250,000, and punitive damages at \$250,000 or twice economic damages. Republicans' approach to reduce insurance costs is to impose hurdles on meritorious medical malpractice litigation currently available to aggrieved patients, including limiting the amount of damages that may be awarded.

- **Republicans do nothing to directly limit frivolous lawsuits.** Republicans claim H.R.5 would reduce insurance costs for doctors by discouraging frivolous lawsuits, which they blame for driving up insurance premiums and reducing access to health care for patients, but H.R. 5 completely ignores the rate-setting process followed by the insurance industry.
- **Republicans restrict the rights of doctors by protecting HMOs.** Republicans broadly define "medical malpractice action" to protect HMOs, insurance companies, nursing homes and drug and device manufacturers from a broad range of liabilities, including suits by physicians against those companies.
- **Republicans limit awards for meritorious claims.** Republicans cap non-economic awards for pain and suffering at \$250,000, and punitive damages at \$250,000 or twice economic damages, whichever is greater (awards for economic losses that could include lost current and future wages would not be limited).
- **Republicans impose hurdles on aggrieved patients.** Individuals would be required to file health care lawsuits no later than three years after the date of the injury or one year after discovering the alleged malpractice, whichever occurs first, but in no event can it be filed later than three years after an injury manifests itself. In addition, Republicans limit attorney contingency fees, which would potentially force injured persons, faced with medical bills and lost wages, to finance lawsuits they otherwise cannot afford --- especially if their injury has disabled them from working.

The Republican Leadership has reported a closed rule for the bill denying Democrats the opportunity to offer any amendments, including the Conyers/Dingell Democratic Substitute, which Democrats had asked to be made in order.

Therefore, Democrats are urged to VOTE NO on the previous question on the rule in order to allow consideration of Democratic amendments. If the previous question is not defeated, Democrats are urged to VOTE NO on the Rule.

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Office of the Democratic Whip

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If the unfair Republican Rule is adopted, Ranking Members Conyers and Dingell are expected to offer a motion to recommit, which would include key components of the Conyers/Dingell Democratic Substitute. Democrats' motion to recommit would seek to set strong sanctions to end frivolous lawsuits, and establish a commission to address the need for medical malpractice insurance reform and to improve patient access.

- **Democrats would end frivolous lawsuits not cap meritorious claims.** Democrats would require affidavits to be filed by qualified specialists before any medical malpractice lawsuit can be filed. In addition, Democrats would require all plaintiff attorneys who file a medical malpractice action to certify that the case is meritorious. Attorneys who erroneously file such a certificate would be subject to strict sanctions. These sanctions would include: requirement that attorneys pay court costs and attorneys fees, dismissal of the lawsuit, monetary fines, or disciplinary proceedings before the State bar association.
- **Democrats seek avenues to reform medical malpractice insurance practices.** Democrats would establish an independent advisory commission to explore the impact of the repeal of the federal anti-trust exemption for medical malpractice insurance companies. The commission would be tasked with exploring the repeal's effect on insurers' price fixing, competition increase, and reduction of health care providers' premiums.
- **Democrats seek options to improve patient-access.** Democrats would task the independent advisory commission with exploring the impact of HHS programs that would: award grants or contracts to geographic areas that have a shortage of health care providers as a result of dramatic increases in malpractice insurance premiums; and send physicians from the National Health Service Corps to trauma centers that are in danger of closing (or losing their trauma center status) due to dramatic increases in malpractice premiums.

Democrats are urged to VOTE YES on the Conyers/Dingell motion to recommit. If the motion to recommit fails, Democrats are urged to VOTE NO on Final Passage.

***** Democrats are advised that procedural votes may be requested to protest the unfair process imposed by Republicans in consideration of H.R. 5.**

REMINDER

- The Republican Leadership has announced that the voting time on 15-minute recorded votes will be strictly enforced.

DAILY QUOTE...

"Taking away people's legal rights to hold health professionals and institutions fully accountable will only further jeopardize patient safety."

- Frank Clemente, Director of Public Citizens' Congress Watch

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