

The Service to America award program recognizes career Federal employees for their significant contributions to the Nation. Recipients of the "Sammies" are among the best and brightest of our public servants. While we seldom give public recognition to their efforts, they devote their lives and careers to the cause of our national welfare. They are models to the rest of the Federal workforce and inspirations to us all.

Since joining the National Cancer Institute Center for Bioinformatics at NIH, Ms. Madhavan has overseen the development of the Rembrandt Project. Rembrandt (REpository for Molecular BRAin Neoplasia DaTa) is a database that brings together data from an NCI clinical study with a vast store of existing data on brain tumors. By bridging the gap between clinical and biological information, Rembrandt will facilitate the diagnosis and treatment of individual patients and will assist brain cancer researchers in their search for a cure.

Mr. Speaker, I offer my warmest congratulations to Ms. Madhavan and her team.

MEDICAL MALPRACTICE AND INSURANCE REFORM ACT OF 2005

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 20, 2005

Mr. CONYERS, Mr. Speaker, I am pleased to introduce the Medical Malpractice Insurance and Litigation Reform Act of 2005. In response to the issue of frivolous lawsuits, Title I of the bill provides for a series of measures designed to insure that the lawsuit itself is not frivolous and that the pleadings filed in connection with the suit are accurate and meritorious. Title I also provides for alternative dispute resolution designed to encourage resolution of medical malpractice actions outside of court.

The bill also responds to the real problems in the medical malpractice insurance market, namely higher prices driven by lack of competition and investment losses by insurers leading to a boom/bust cycle. In response to these issues, Title II insures that the antitrust laws apply to medical malpractice insurers, price comparisons can be easily obtained, and procedural checks are in place to insure that premium increases are warranted and can be challenged by health care providers.

Above and beyond these requirements, Title III of the legislation responds to concerns that medical malpractice is not available in certain parts of the country. As a result, this title would create monetary grants dispensed through the Health Resources and Services Administration to health care providers who choose to work in geographic areas with a shortage of one or more types of health providers.

In addition, the bill responds to the need to fully examine the recent and dramatic increases in medical malpractice insurance premiums. Title IV creates an Independent Advisory Commission on Medical Malpractice Insurance to evaluate the cause of the recent premium increase. Title V authorizes the Department of Health and Human Services to collect the data necessary to examine the medical malpractice insurance industry. The following is a more detailed description of the legislation:

"THE MEDICAL MALPRACTICE AND INSURANCE REFORM ACT OF 2005" SECTION-BY-SECTION ANALYSIS

Scope. The legislation narrowly defines "medical malpractice action" to cover "licensed physicians and health professionals" for only cases involving medical malpractice. These definitions are intended to include doctors, hospitals, nurses, and other health professionals who pay medical malpractice insurance premiums. See, Sec. 107(8).

The Republican legislation is broadly drafted to include HMOs, insurance companies, nursing homes, and drug and device manufacturers for a broad range of liabilities including suits by physicians against those companies. The full extent to which H.R. 534 protects the wrongdoings of these companies is still unknown.

TITLE I—REDUCING FRIVOLOUS LAWSUITS

Sec. 101—Statute of Limitations. This section limits the amount of time during which a patient can file a medical malpractice action to the later of three years from the date of injury or three years from the date the patient discovers (or through the use of reasonable diligence should have discovered) the injury. Children under the age of 18 have the later of three years from their eighteenth birthday or three years from the date the patient discovers (or through the use of reasonable diligence should have discovered) the injury.

The Republican legislation limits it to the earlier of three years from the date an injury "manifests" itself or one year from the date discovered, but in no event can it exceed three years. This makes it more akin to a statute of repose than a statute of limitations. H.R. 534 also establishes a statute of repose for children injured under the age of six that is the later of three years from the date of manifestation or prior to the minor's eighth birthday.

Sec. 102—Health Care Specialist Affidavit. This section requires an affidavit by a qualified specialist before any medical malpractice action may be filed. An extension may be granted for such an affidavit if at the time the claim is brought, the claimant has not been able to obtain medical records or other information necessary for the affidavit. A "Qualified Specialist" is a health care professional with knowledge of the relevant facts of the case, expertise in the specific area of practice, and in the case of an action against a physician, board certification in a speciality relating to the area of practice.

Although the Republicans claim their legislation would limit frivolous claims, H.R. 534 does nothing to ensure that the claims filed by plaintiffs are legitimate. H.R. 534 has no certification process prior to the filing of a medical malpractice lawsuit. H.R. 534 only restricts the rights of injured patients and physicians in meritorious lawsuits.

Sec. 103—Sanctions for Frivolous Actions and Pleadings. This section reduces the frivolous lawsuits by requiring that every document in a medical malpractice action be signed by at least one attorney of record. Any unsigned paper is stricken. Second, all plaintiff attorneys who file a medical malpractice action are required to certify that the case is meritorious. Attorneys who erroneously file such a certificate are subject to strict civil penalties. First time violators, the court shall require the attorney to pay costs and attorneys fees or administer other appropriate sanctions. Second time violators, the court shall also require the attorney to pay a monetary fine. Third time violators, the court shall also refer the attorney to the appropriate State bar association for disciplinary proceedings.

The Republican legislation does not have a provision that directly addresses the filing of frivolous lawsuits. H.R. 534 only restricts the rights of injured patients and physicians in meritorious lawsuits.

Sec. 104—Mandatory Mediation. This section establishes a mandatory alternative dispute resolution (ADR) system for medical malpractice cases. Participation in mediation shall be in lieu of any other ADR method required by law or by contractual arrangements by the parties. States also have the option to allow arbitration. Any party dissatisfied with the result reached through ADR will not be bound by this result and all statements, offers and communication made as part of ADR would be inadmissible as part of an adjudication. A similar approach is recommended by the Committee for Economic Development (CED), which suggests that defendants make and victims accept "early offers." The effect of the "early offer" program, according to the CED, is that defendants will reduce the likelihood of incurring litigation costs, and victims would obtain fair compensation without the delay, expense, or trauma of litigation.

The Republican legislation does not address alternative dispute resolution methods to reduce the number of medical malpractice actions that are litigated. The sole remedy of the Republican legislation is tort reform that will restrict the rights of those who have been legitimately wronged.

Sec. 105—Punitive Damages. This section limits the circumstances under which a claimant can seek punitive damages in a medical malpractice action. It also allocates 50% of any punitive damages that are awarded to a trust fund managed by the Department of Health and Human Services (HHS) through the Agency for Healthcare Research and Quality. The money in the trust fund must be used for activities that reduce medical errors and improve patient safety. The Secretary will promulgate regulations that will establish programs and procedures to carry out this objective. See also, Sec. 221-223.

The Republican legislation raises the evidentiary standard, provides an exemption for FDA approved drugs or devices, and caps punitive damages at the greater of twice the economic damages or \$250,000.

Sec. 106—Reduction in Premiums. This section requires medical malpractice insurance companies to annually project the savings that will result from Title I of the bill. Insurance companies must then develop and implement a plan to annually dedicate at least 50% of those savings to reduce the insurance premiums that medical professionals pay. Insurance companies must report these activities to HHS annually. The section provides for civil penalties for the noncompliance of insurance companies.

TITLE II—MEDICAL MALPRACTICE INSURANCE REFORM

Sec. 201—Prohibition on Anti-competitive Activities by Medical Malpractice Insurers. This section would repeal McCarran-Ferguson Act to ensure that insurers do not engage in price fixing. The Act, enacted in 1945, exempts all anti-competitive insurance industry practices, except boycotts, from the Federal antitrust laws. Over the years, even oversight of the insurance industry by the States, coupled with no possibility of Federal antitrust enforcement, have created an environment that fosters a wide range of anti-competitive practices.

Sec. 202—Medical Malpractice Insurance Price Comparison. This section creates an internet site at which health care providers could obtain the price charged for the type of coverage the provider seeks from any malpractice insurer licensed in the doctor's

state. This section specifies the availability of online forms and that all information will remain confidential.

The Republican bill does nothing to address the flaws apparent in the medical malpractice insurance marketplace and the regulation of that market. The sole remedy of the Republican legislation is tort reform that will restrict the rights of those who have been legitimately wronged.

Sec. 203—Procedural Requirements for Proposed Rate Increases. This section allows any health care professional to challenge a proposed rate increase of medical malpractice insurance in a State administrative proceeding. It also requires that before it implements any rate increase, an insurance provider submit to the appropriate state agency a description of and justification for the rate increase.

TITLE III—ENHANCING PATIENT ACCESS TO CARE THROUGH DIRECT ASSISTANCE

Sec. 301—Grants and Contracts Regarding Health Provider Shortages. This section authorizes the Secretary of Health and Human Services to award grants or contracts through the Health Resources and Services Administration (HRSA) to health care providers who choose to work in geographic areas that have a shortage of one or more types of health providers as a result of dramatic increases in malpractice insurance premiums.

Sec. 302—Health Professional Assignments to Trauma Centers. This section amends the Public Health Service Act to authorize the Secretary to 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.

The Republican legislation does not directly address the access to care issue caused by rising malpractice premiums. The sole remedy of the Republican legislation is tort reform that will restrict the rights of those who have been legitimately wronged.

TITLE IV—INDEPENDENT ADVISORY COMMISSION ON MEDICAL MALPRACTICE INSURANCE

Sec. 401–402—Independent Advisory Commission on Medical Malpractice Insurance. This section establishes the national Independent Advisory Commission on Medical Malpractice Insurance. The Commission must evaluate the causes and scope of the recent and dramatic increases in medical malpractice insurance premiums, formulate additional proposals to reduce those premiums, and make recommendations to avoid any such increases in the future. In formulating its proposals, the Commission must, at a minimum, consider a variety of enumerated factors.

The Republican legislation only addresses tort reform and does not examine other causes of malpractice premium costs.

Sec. 403—Report. This section requires the Commission to file an initial report with Congress within 180 days of enactment and to file annual reports until the Commission terminates.

Sec. 404—Membership. This section specifically establishes the number and type of commissioners that the Comptroller General of the United States must appoint to the Commission. Generally, the membership of the Commission will include individuals with national recognition for their expertise in health finance and economics, actuarial science, medical malpractice insurance, insurance regulation, health care law, health care policy, health care access, allopathic and osteopathic physicians, other providers of health care services, patient advocacy, and other related fields, who provide a mix of different professionals, broad geographic representations, and a balance between urban

and rural representatives. Members of the commission will be appointed for three year staggered terms.

Sec. 405—Director and Staff, Experts and Consultants. This section allows the Commission to hire personnel and contract services necessary to perform its duties.

Sec. 406—Powers. This section allows the Commission to secure from any department or agency information necessary to carry out its purpose. It also requires that the Commission be subject to a periodic audit by the Comptroller General.

Sec. 407—Authorization of Appropriations. This section authorizes that such sums be appropriated to the Commission for five fiscal years.

TITLE V—MEDICAL MALPRACTICE INSURANCE INFORMATION ADMINISTRATION

Sec. 501—Establishment. This section creates within the Department of Health and Human Services an administration that will collect and evaluate information on the medical malpractice insurance market. Such information includes the frequency of medical malpractice claims paid, the severity of such claims, the portion of claims paid as settlements, the portion of claims paid as a result of a trial, and the division in claims between economic and non-economic damages. The section also requires that insurance companies submit the above data to the administration. The administrator may compel submittal and there will be a civil money penalty for not submitting the data.

Sec. 502—Authorization of Appropriations. This section authorizes appropriations for the administration.

RECOGNIZING THE 25TH ANNIVERSARY OF THE POLISH SOLIDARITY MOVEMENT

SPEECH OF

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, July 18, 2005

Mr. DINGELL. Mr. Speaker, I rise today in recognition of the 25th anniversary of the Workers' Strikes in Poland. In commemorating these strikes, we are remembering the birth of a movement which led to the fall of communism in Poland and, later, Europe.

The strikes began as workers across Poland protested the nearly 80% rise in meat prices. In the northern city of Gdansk, workers protested in response to the dismissal of two workers on the grounds of political agitation. The Lenin Shipyard workers staged a sit-in and demanded the reinstatement of electrician Lech Walesa and crane operator Anna Walentynowich. The workers realized the power of their unity and chose to name their strike bulletin *Solidarność* or Solidarity. Soon after, the first independent trade-union faction emerged and the Solidarity movement was born.

In cooperation with intellectuals, the Gdansk Shipyard strikers created the famed list of 21 demands. The Solidarity Movement boasted members from almost all groups and social classes—all of whom opposed the Moscow-backed regime. This unity was a first in the history of Poland. In December of 1981 the Communist government of Poland implemented martial law in hopes of combating the Solidarity Movement's vast popularity.

Despite the best efforts of the communist government, another strike wave occurred in

1988. The regime decided it must try to share its power with the opposition. The elections of June of 1989 brought the Solidarity Movement to power and Poland was able to set up a non-communist government. The victory of the Poles served as an example to the rest of Europe and is credited with leading to the historic fall of the Berlin wall five months later.

When the Solidarity Party took power in 1989, the basic political transition and the implementation of a market economy posed many challenges. Furthermore, they faced the daunting task of overcoming the social mindset resulting from years of communist rule. Nonetheless, in January of 1990, the government sought to realize substantial reform goals. The conversion was not easy and the market-economy caused an economic crisis in 1992. However, true to their history, the Poles overcame this obstacle. We should all look to our great ally as a model of determination, resilience and loyalty.

Over 11 million Americans claim Polish ancestry, nearly 900,000 of whom live in my home state of Michigan. Polish-Americans, like me, are proud of our heritage and Poland has shown itself to be a true ally of the U.S., most recently in Iraq. They have supported us in our struggle against global terrorism, in Afghanistan and assumed a leading role in Iraq. Two-hundred Polish troops are currently serving in Bagram, Afghanistan and our alliance with Poland remains one of our vital relationships. Mr. Speaker, I ask that you and my colleagues join me in recognizing the 25th anniversary of a momentous event in the history of one of our strongest allies and greatest friends. The strikes in Poland will always be remembered for their important role in Polish democratization and, consequently, the end of the Cold War.

PERSONAL EXPLANATION

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 20, 2005

Mr. GALLEGLY. Mr. Speaker, on Thursday, July 14, 2005 I was unable to vote on several matters because I was testifying before the Los Angeles regional BRAC hearing on behalf of Naval Base Ventura County. Had I been present, I would have voted: "no" on the motion to instruct conferees on H.R. 6, the Energy Policy Act of 2005 (rollcall vote 373); "yes" on the motion to suspend the rules and pass H.R. 3100, the East Asia Security Act of 2005 (rollcall vote 374); "yes" on motion to suspend the rules and agree to H. Res. 356, Condemning in the strongest terms the terrorist attacks in London, England on July 7, 2005 (rollcall vote 375); "no" on Rohrabacher amendment to H.R. 2864, the Water Resources Development Act of 2005 (rollcall vote 376); "no" on the Flake amendment to H.R. 2864, the Water Resources Development Act of 2005 (rollcall vote 377); "yes" on passage of H.R. 2864, the Water Resources Development Act of 2005 (rollcall 378); and "yes" on motion to suspend the rules and agree to H. Con. Res. 191, Commemorating the 60th Anniversary of the conclusion of the War in the Pacific and honoring the veterans of both the Pacific and Atlantic theaters of the Second World War (rollcall 379).