



NATIONAL CONFERENCE *of* STATE LEGISLATURES

*The Forum for America's Ideas*

March 14, 2012

Honorable John Boehner  
Speaker  
U.S. House of Representatives  
Washington, DC 20515

Honorable Nancy Pelosi  
Minority Leader  
U.S. House of Representatives  
Washington, DC 20515

**Stephen Morris**  
*Senate President  
Kansas Senate  
President, NCSL*

**Michael P. Adams**  
*Director, Strategic Planning  
Virginia Senate  
Staff Chair, NCSL*

**William Pound**  
*Executive Director*

**RE: Medical Malpractice: H.R. 5/ H.R. 452**

Dear Speaker Boehner and Minority Leader Pelosi:

On behalf of the National Conference of State Legislatures (NCSL), we are writing to express strong, bipartisan opposition to attaching federal medical malpractice legislation, H.R. 5, the "Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act of 2011," to the bipartisan H.R. 452, the "Medicare Decisions Accountability Act of 2011."

Medical malpractice, product liability and other areas of tort reform are areas of law that are 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 product liability. Over the past several years, states have continued to revise and reform their medical malpractice laws and procedures. During the 2012 legislative sessions, 35 states have introduced over 350 pieces of legislation addressing medical malpractice concerns.

We believe the U.S. House of Representatives has not passed H.R. 5 because it has recognized the importance of state sovereignty in this area. NCSL's Deficit Reduction Task Force, working with the Congressional budget writing committee, has made clear its opposition of including federal medical malpractice legislation in any deficit reduction package. NCSL has also voiced its concerns regarding the preservation of state authority over medical malpractice to the U.S. House of Representatives Tenth Amendment Task Force.

NCSL has longstanding Medical Malpractice policy most recently 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 would undermine that diversity and disregard factors unique to each particular state.

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NCSL has periodically deliberated the potential federalization of medical malpractice. NCSL's studies have included assessing whether circumstances had developed or were so unique that only federal action could provide an adequate and workable remedy. We have 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 opposes the passage of H.R. 5 either as a stand-alone bill or as attached to any other piece of federal legislation.

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,



Senator Joni Cutler, South Dakota  
Co-Chair, NCSL  
Committee on Law and Criminal Justice



Representative Tommy Reynolds, Mississippi  
Co-Chair, NCSL  
Committee on Law and Criminal Justice

CC: Members of the U.S. House of Representatives