



NATIONAL CONFERENCE *of* STATE LEGISLATURES

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Executive Director

March 18, 2016

The Honorable Robert Goodlatte
Chairman, Judiciary Committee
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers
Ranking Member, Judiciary Committee
U.S. House of Representatives
B351 Rayburn House Office Building
Washington, DC 20515

Re: H.R. 4771, the Help Efficient, Accessible, Low-cost, Timely Healthcare Act of 2016”

Dear Chairman Goodlatte and Ranking Member Conyers:

On behalf of the National Conference of State Legislatures (NCSL), I write to express opposition to the consideration and markup of H.R. 4771, the “Help Efficient Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2016.” This bill will preempt state laws that have been in place for decades and address liability caps and other matters pertaining to medical malpractice claims.

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’s Medical Malpractice policy approved by three fourths of the states as recently as 2015 firmly states that:

“NCSL regards the regulation of medical professionals, products, and other civil tort actions as purely state matters, not meriting federal intervention or preemption of state laws. NCSL maintains that no comprehensive evidence exists demonstrating either that state medical malpractice laws, product liability laws or general tort laws have created a problem of such dimension that a federal solution is warranted or that federal legislation would achieve its stated goals.”

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The adoption of a one-size-fits-all approach to medical malpractice envisioned in H.R. 4771 would undermine the diversity found in the states and would disregard factors unique to each particular state.

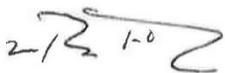
Federal medical malpractice legislation inappropriately seeks to preempt various areas of state law. All 50 states have statutes of limitations for medical malpractice suits. All 50 states have rules of civil procedure governing the admissibility of evidence and the use of expert witnesses. Many states have caps on noneconomic damages and limitations on attorney's fees in medical malpractice cases.

Over the years since 2005, when H.R. 5, which is identical to H.R. 4771, was first being considered by the U.S. House of Representatives, NCSL has periodically discussed and studied the issue of federal medical malpractice limits for states. Our initial review included assessing whether circumstances had developed or were so unique that only federal action could provide an adequate and workable remedy. We 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 states have this issue covered and 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 NCSL's concerns. For additional information, please contact Susan Parnas Frederick (202-624-3566) in NCSL's Washington, D.C. office.

Respectfully,

A handwritten signature in black ink, appearing to read "2/2 1-0" followed by a stylized flourish.

Senator Briggs Hopson, Mississippi
Chair, NCSL
Committee on Law, Criminal Justice and Public Safety

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