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MARKUP OF H.R. 5, HEALTH ACT OF 2011, AND H.R. 908, CHEMICAL FACILITY ANTI TERRORISM STANDARDS (CFATS) ACT

TUESDAY, MAY 10, 2011

House of Representatives,

Committee on Energy and Commerce,

Washington, D.C.

The committee met, pursuant to call, at 4:00 p.m., in Room 2123, Rayburn House Office Building, Hon. Fred Upton [chairman of the committee] presiding.

Present: Representatives Upton, Barton, Stearns, Pitts, Walden, Terry, Murphy, Burgess, Blackburn, Gingrey, Scalise, Harper, Lance, Olson, McKinley, Waxman, Dingell, Towns, Pallone, Green, Capps, Schakowsky, Gonzalez, Baldwin, and Christensen.

Staff Present: Gary Andres, Staff Director; Michael Beckerman, Deputy Staff Director; Jim Barnette, General Counsel; Mike Bloomquist, Deputy General Counsel; Dave McCarthy, Chief Counsel,

Environment/Economy; Clay Alspach, Counsel, Health; Howard Cohen, Chief Health Counsel; Ryan Long, Chief Counsel, Health; John O'Shea, Professional Staff Member, Health; Charlotte Baker, Press Secretary; Andrew Powaleny, Press Assistant; Anita Bradley, Senior Policy Advisor to Chairman Emeritus; Garrett Golding, Legislative Analyst, Energy; Debbee Keller, Press Secretary; Peter Kielty, Senior Legislative Analyst; Katie Novaria, Legislative Clerk; Heidi Stirrup, Health Policy Coordinator; Carly McWilliams, Legislative Clerk; Ruth Katz, Minority Chief Public Health Counsel; Rachel Sher, Minority Senior Counsel; Jacqueline Cohen, Minority Counsel; Kristin Amerling, Minority Chief Counsel and Oversight Staff Director; Stephen Cha, Minority Senior Professional Staff Member; Greg Dotson, Minority Energy and Environment Staff Director; Karen Lightfoot, Minority Communications Director, and Senior Policy Advisor; Caitlin Haberman, Minority Policy Analyst; and Jen Berenholz, Minority Chief Clerk.

The Chairman. The committee will come to order.

At the onset, just a programming note, we will only be conducting opening statements today on the two bills that we will be marking up tomorrow at 10:30.

Today, after Mr. Waxman and I offer our opening statements, I understand he is on his way, all members will be afforded the opportunity to offer their statements, and the chair will ask all members to keep their statements to 3 minutes.

With that, I recognize myself for 5 minutes.

Colleagues, in recent weeks, this committee has directly responded to the concerns of the American people with respect to two overriding issues: our national debt and the massive, and perhaps unconstitutional health care reform legislation passed in the last Congress. On the House floor, we have voted to cut more than $30 billion from future Federal spending by eliminating mandatory spending programs in the health care law. But our work there is not finished.

Today, however, we begin to replace President Obama's health care bill. We begin with an issue that the overwhelming majority of the American people agree with -- health care liability reform. For a decade now, Republicans on this committee have sought common sense, easy to understand reforms to America's completely irrational legal system in this area.

The medical liability system in this country is not a system at all. It is a fragmented patchwork of policies that jeopardize access to care and imposes added cost to the American people and their

government through Medicare and Medicaid. In States without reform, doctors are driven out of certain specialties. Trauma centers have been forced to close, and pregnant women have been forced to drive hours to find an obstetrician simply because these practice areas have greater liability risks.

States that have adopted comprehensive medical liability reform have witnessed a dramatic turnaround in both access to care as well as liability costs. Texas is a great example. Because Texas adopted comprehensive reform in 2003, it now has more obstetricians and emergency physicians and lower medical liability payments. Studies have shown that defensive medicine costs our country as much as $200 billion a year. It also costs patients access to the doctors they need. It is time to enact real, comprehensive reform so that we can finally have a medical liability system that works for our Nation's patients and doctors.

I was encouraged when President Obama included medical liability reform in this year's State of the Union address. The next day, Republicans on this committee wrote to President Obama promising to work with him on this important issue and asked him for his ideas. But now, 3 months later, we still haven't heard back; so it is time for the committee to act.

I have been more than a little amused in recent weeks as legislation has moved through the committee and off the House floor with bipartisan support that addresses the deficit and the Obama health care law. We have been accused of not having an alternative. Well,

I say to my friends on both sides of the aisle, be careful what you ask for: today is just the beginning.

Later this month, we will begin moving legislation to inject competition into the health care system by allowing Americans to shop for insurance across State lines based on the coverage that they need, not the geography of their home.

We held a hearing last week on the so-called doc fix, the sustainable growth rate for Medicare, which last year's bill didn't even attempt to deal with. We will. And more is on the way.

So I say to my colleagues on both sides of the aisle: stay tuned. And let me just say this as related to medical liability reform and remind my colleagues that Governor Dean, Howard Dean, said, and I want it say it was last year: Why did they fail to include medical liability reform as part of the President's plan?

Here is what he said, and I quote. This is the answer from a doctor and a politician. Here is why tort reform is not in the bill. "When you go to pass a really enormous bill like that, the more stuff you put in it, the more enemies you, right? And the reason that tort reform is not in the bill is because the people who wrote it did not want to take on the trial lawyers in addition to everyone else that they were taking on. And that is the plain and simple truth."

So today we move forward. I also would like to speak briefly about the other bill scheduled for a vote tomorrow in markup. It is legislation that protects our Nation's chemical facilities from terrorist threats.

The Department of Homeland Security has been operating the Chemical Facility Anti-Terrorism Standards, or CFATS, programs since 2007. Its mission is to foster coordination between owners and operators of chemical facilities and the Department in securing these facilities against the threat of terrorism acts. CFATS has proven to be effective in protecting our Nation's chemical facilities from terrorist threats. There is broad agreement in the regulated community and elsewhere that this program is working and that it should be reauthorized with no significant changes. It is my view that CFATS should be reauthorized in this committee instead of riding along on an appropriation bill. This committee has been regulating commerce and chemicals for decades, always balancing safety, security and the economy.

We may debate some amendments and work through some differing policy point of views, but at the end of the day, I hope that all members will be able to vote to send this bill to the full House for reauthorization.

Let's continue to meet our responsibilities to this House and the American people to prevent terrorism, protect jobs and grow the U.S. economy.

I would now recognize the ranking minority member, Mr. Waxman, for an opening statement.

Mr. Waxman. Thank you, Mr. Chairman.

We meet today on two bills, H.R. 5, addressing medical malpractice, and H.R. 908, regarding chemical security, and I regret

that neither bill reflects our working together on a bipartisan basis. Both are deeply flawed.

In our Federal system, it is the States that have jurisdiction over insurance, medical licensure, and medical malpractice. But H.R. 5 preempts virtually all of this. That is why the national conference of State legislatures has written to express its strong bipartisan opposition to H.R. 5. Not only does H.R. 5 preempt the States, it also fails to tackle the real issues involved in medical malpractice: reducing medical errors, delivering quality care, awarding appropriate and adequate compensation when an injury occurs, and reducing health care costs.

H.R. 5 has been before Congress for over a decade; that it has not been enacted into law under Democratic or Republican Congresses and Presidents is itself a verdict on its merits and efficacy.

In California, we adopted the Medical Injury Compensation Reform Act, or MICRA, in 1975. Supporters of H.R. 5 claim that their bill is based on that statute; but in fact, H.R. 5 is a significant departure from MICRA.

I believe strongly that the problems should be addressed at the State level. Indeed, I cannot understand why the party that claims to champion States' rights on virtually all legislation wants to nullify States' rights on medical malpractice and liability.

I particularly object to the inclusion of lawsuits related to FDA-approved drugs and medical devices in this bill. These cases are not part of the problem H.R. 5 supposedly addresses, and they do not

belong in any bill on "medical malpractice reform." I will offer an amendment to fix this major flaw.

I also object to the caps in H.R. 5, $250,000 is inadequate compensation for people who are going to live the rest of their lives disfigured and in pain. It is hardly a deterrent for the large companies and organizations H.R. 5 would shield from liability. The $250,000 figure is the one that we have in California. It was adopted in 1975, and it has not been increased ever since.

H.R. 5 forces us to choose between the current state of medical malpractice and policies which overturn centuries of State authority. That is a false choice. Instead, we should find evidence-based solutions which address physician concerns, improved care, reduced costs, and reinforce State leadership. That is what we did in the Affordable Care Act which authorized $50 million in grants to the States to develop alternatives to current tort litigation systems.

Let's experiment and learn, not dictate and close our eyes to injury and injustice.

With respect to H.R. 908, I had hoped that this would be an area where our committee could come together on a bipartisan solution; but despite our repeated overtures, we have not been able to take commonsense steps to ensure the Nation's chemical facilities are not vulnerable to terrorist attacks.

In 2006, Congress gave the Department of Homeland Security the authority to create the Chemical Facility Anti-Terrorism Standard program, or CFATS. It was done through a provision attached to an

appropriations bill, and was intended as a temporary fix until Congress could establish a comprehensive program. The CFATS program is a good start, and the Department of Homeland Security deserves credit for attempting to make an inadequate law work, but the program leaves too many chemical-laden facilities vulnerable to terrorism.

CFATS does not cover a range of facilities that could endanger thousands in the event of a worst-case chemical release, including chemical plants located on ports of Federal facilities. It also doesn't apply to drinking water facilities which are often in populated areas and contain large amounts of highly toxic chemicals. It allows chemical facilities to be exempted simply because one part of the plant is subject to regulation by the Nuclear Regulatory Commission. These are security gaps that we need to close.

CFATS also doesn't include key protections for workers who are on the front lines of preventing and responding to a potential terrorist attack. Our efforts to reach consensus have not succeeded. The rationale appears to be that if we don't do as the oil companies request, the Republican leadership will strip our committee of jurisdiction to address this serious problem. The logic is that in order to preserve jurisdiction, we must not exercise it.

This is an abdication of our responsibility to the American people. Our job is not to please the oil companies but to pass legislation that protects American families. In its current form, this bill does not do this.

Thank you, Mr. Chairman. I yield back the balance of my time.

The Chairman. I would recognize the Chairman Emeritus of the committee, Mr. Barton, for 3 minutes for an opening statement.

Mr. Barton. Thank you, Chairman Upton, for convening the markup on H.R. 5 and H.R. 908.

As you know, H.R. 5 is to fix our medical liability system. The current system is broken and needs to be fixed. High jury awards and the cost of defending against lawsuits, some of them frivolous, result in high medical liability premiums with the most devastating results for patients with regard to access to care.

The proven reforms contained in the HEALTH Act would help reduce costs while ensure that patients who have been injured due to negligence receive fair compensation. The key to success is balance. This bill, in my opinion, provides the right balance by promoting expedient resolutions to disputes, maintaining access for all to the courts, maximizing patient recovery of damage awards with unlimited compensation for economic damages, and limiting noneconomic damages to $250,000.

The bill before us would also provide a sliding scale cap on attorney's fees, collateral source rule reform with a ban on subrogation, periodic payment of future damages, and a 3-year from incident or 1 year from discovery statute of limitations. This is a good bill, and I hope the committee will move it expeditiously.

With regard to H.R. 908, we have been in a bipartisan agreement on the implementation and continuation of the chemical facility anti terrorism standards act as well, for the most part. When something

works, it works, Mr. Chairman. It is important to step back and acknowledge that some truly good progress has been made. There has been much give and take between the chemical industry and the Department of Homeland Security and this Congress with regards to process and implementation. It is important that we keep it simple, continue the program, extend the sunset date, allow for the appropriations to fund the program, and provide a stable environment for the industry to move forward with upgraded security measures. This is a good bill, and I hope we move it expeditiously also.

With that, I yield back.

The Chairman. The chair would recognize ranking member of the Health Subcommittee, Mr. Pallone, for 3 minutes.

Mr. Pallone. Thank you, Mr. Chairman.

I want to begin by expressing my great disappointment that you have chosen to move legislation through the House Energy and Commerce Full Committee without following regular order. Specifically today, we are marking up H.R. 5, a controversial historically partisan bill that transform the medical malpractice system without consideration by the Health Subcommittee. While the Health Subcommittee was able to weigh in during its hearing, it is important that members are given the opportunity to amend that bill at both the subcommittee and the full committee level. I strongly believe that the subcommittee process should play a critical role in the committee's efforts to make its best recommendations on a measure to the full House, and it is my hope that skipping regular order does not become common practice while

we move forward.

Let me mention my opposition to both bills before us today. The first, H.R. 5, is much too controversial and extreme in its current form. In fact, although it is described as a medical malpractice measure, H.R. 5 extends far beyond the field of medical liability, malpractice liability, extending new tort protections to nursing homes, pharmaceuticals device and insurance companies and others. It should be limited to medical malpractice.

I do understand that medical malpractice and liability is a very real problem for doctors in my home State and the country, but H.R. 5 is not the answer. Any true reform must take a balanced approach and include a mechanism to control the actual increase in insurance premiums. I don't believe that tort reform alone will accomplish that goal.

Finally, we can't continue to consider a low and arbitrary cap on non-economic damages. A cap of $250,000 is an unrealistic number, and that is why I will offer an amendment to raise the cap.

In terms of H.R. 908, I would like to express my opposition. It only extends the current Chemical Facility Anti-Terrorism, or CFATS program, but does not sufficiently protect the more than 100 million Americans who live in the danger zone of a chemical disaster.

In New Jersey, we have the unfortunate combination of both a large number of chemical facilities and a high population density, so the consequences of insufficient security are dire. The current interim statute enacted as a rider to the 2007 Homeland Security Appropriations

bill temporarily authorized CFATS to give Congress time to enact comprehensive legislation. In the 111th Congress, the House passed H.R. 2868. That bill provided a comprehensive security program to protect Americans living near these facilities; but, unfortunately, the Senate did not take it up. What else is new?

I feel that Republicans are ignoring important and necessary policy changes by simply passing an extension of current law. We must focus on solutions that will close dangerous caps in security, and I urge my colleagues to vote against both measures before us today.

Mr. Pitts. [Presiding.] The chair thanks the gentleman, and recognizes the gentleman from Florida, Mr. Stearns, for 3 minutes.

Mr. Stearns. Thank you, Mr. Chairman.

I am pleased to support the Energy and Commerce markup today, and I think the fact that 28 States already have in place caps in their own innovative ways to hold down flagrant lawsuits shows that the bill really represents the majority of this country's population in wanting to have timely health care costs without legal ramifications. So I support H.R. 5. I also support H.R. 908, the Chemical Facility Anti-Terrorism Standards, the CFATS act.

The HEALTH Act is very important, and the fact that it wasn't marked up in subcommittee doesn't mean that it doesn't have broad support across this country. I think everybody in this room and in this Congress believes that medical liability has raised the cost of health care in our country by simply forcing doctors to practice defensive medicine. This hurts the doctor-patient relationship as

physicians view every patient as a potential litigant. An analysis, in fact, by the Congressional Budget Office confirms this. They said that the comprehensive medical liability reform, which is in this bill, H.R. 5, will reduce the deficit by $62 billion over 10 years. That is a huge amount of money. And that is a savings to the government, and that does not include the savings to the private sector.

Now an important aspect about this, the ranking member, Mr. Waxman, is against the bill. But in his State, from 1975, they have had caps on noneconomic damage. I don't even think he supports his own State's cap. This bill has caps on punitive damages, but it does not have caps on unlimited economic damage, so it had tried to reach a compromise. So I am surprised that the ranking member would be vociferously against this bill.

So many States, as I have mentioned, have already done medical liability reform and have set limits and will continue to be able to operate under these limits because frankly, we don't upset those States. We let States like California continue to operate, those States that have limits greater or less than the Federal standard.

I will briefly mention the second piece of legislation, H.R. 908. This would extend the Department of Homeland Security's authority to implement the chemical facility anti terrorism standards program, CFATS, through September 30, 2017. This bill, when enacted, will allow time for full implementation and evaluation of CFATS before any changes to this important program are considered.

My colleagues, a need for annual reauthorization of the program

has created uncertainty for facilities regulated by CFATS. Without the assurance of long-term authorization of these regulations, companies can run the risk of investing in costly activities today that might not satisfy regulatory standards tomorrow.

Mr. Chairman, I encourage my colleagues to support both of these bills. I also compliment the subcommittee chairman, Mr. Pitts, for bringing this forward.

Mr. Pitts. The chair thanks the gentleman, and recognizes the ranking member emeritus, Mr. Dingell, for 3 minutes.

Mr. Dingell. Mr. Chairman, I thank you for your courtesy, and I am grateful for this opportunity to be heard. Today's markup feels a little like deja vu all over again.

The House has considered H.R. 5 or substantially identical versions of that legislation on four other occasions: in the 109th, 108th, and 107th Congresses this legislation passed the House; but it was never taken up by the Senate. I don't often have kind words for my friends in the Senate, but I am happy to note that they have had the wisdom not to take this bill up.

I am sure that all of my colleagues in this committee would agree that the medical malpractice system should be part of a broader discussion of our health care system, and that we ought to consider in its broadest forms what really needs to be done. But I would ask my colleagues, why are we continuing to waste time on a piece of legislation that has no future.

I believe that we need medical malpractice reform, but H.R. 5 is

a flawed attempt at medical malpractice reform. It provides special protections to drug and medical device companies. It broadly preempts State laws designed to protect consumers and patients. It limits the time period under which injured patients can file a claim in an unfair way, and it caps noneconomic damages at $250,000.

If my colleagues on the other side of the aisle are serious about wanting to reform medical malpractice liability, then we need to find a third way to resolve the question. Such a discussion is badly needed, and I will be here awaiting my colleagues to engage with me in a serious discussion on what we really ought to do with an honest expectation of accomplishing something.

When we worked on health insurance reform in the last Congress, I advocated for the inclusion of medical malpractice reform in the legislation. We did take small steps forward on that matter. The Affordable Care Act authorized $50 million for grants to the States to develop and implement alternatives to the current tort litigation system. Currently, the States and academia are working with the Department of Health and Human Services patient safety and medical liability initiative to research and test models for patient safety and medical liability reform. If my colleagues are serious about addressing medical malpractice reform, here I sit. I am ready to work with anybody who really wants to do something.

In the meantime, my colleagues should not decide to go it alone. I would urge my colleagues to vote against H.R. 5's attempt at reform because it is, unfortunately, flawed. Instead, I think we should move

forward on a bipartisan manner towards a careful, balanced, and targeted legislation that will serve both the interests of patients and physicians, not medical malpractice insurance companies.

I thank you for your kindness in recognizing me, Mr. Chairman.

The Chairman. [Presiding.] I thank my friend.

The chair would recognize Mr. Pitts for an opening statement.

Mr. Pitts. Thank you, Mr. Chairman.

I am pleased to support both bills in the Energy and Commerce Committee markup today.

The September 2010 issue of Health Affairs included an article titled "National Costs of the Medical Liability System" which estimated that medical liability costs, including defensive medicine, were $55.6 billion in the year 2008, or 2.4 percent of the total health care spending.

To protect themselves from lawsuits, many doctors practice what is known as defensive medicine. This is when doctors order additional or redundant tests or services to ensure they can defend themselves in court should they be sued.

A recent study of Pennsylvania orthopedic surgeons conducted by the Children's Hospital of Philadelphia found that nearly one fifth of medical images ordered were done for defensive purposes. And it is not just tests that are done for defensive purposes, a Massachusetts medical society study found that 13 percent of hospitalizations were done for defensive purposes. Not only does defensive medicine add cost to the system at large, but unnecessary tests and hospitalizations

jeopardize patient health.

According to the Kaiser Family Foundation, my home State of Pennsylvania ranks second behind New York in the total dollars paid out in malpractice claims at $295,459,500, and the average claims payment in Pennsylvania was higher than the national average. Pennsylvania has also paid more malpractice claims than any State except New York, California, and Florida with 767 paid claims in 2009. According to the Pennsylvania Department of Health, nearly 20 percent of the physicians who practice primary care say they will leave Pennsylvania in 5 years or less, and only one in three physicians who complete their medical degree in Pennsylvania plan to remain in the State to practice.

My home State consistently ranks as having one of the worst medical liability climates in the Nation. The high legal costs paid by Pennsylvania health care providers increase overall health care costs, limits access to medical care, and inhibits job growth.

The current medical liability system is not working for anyone, least of all, patients who need access to quality care.

So what can we do to protect those patients who have been injured by medical mistakes and rightly deserve compensation, and yet still make States like Pennsylvania affordable for providers to practice in and also dramatically reduce the practice of defensive medicine? We don't need more demonstration projects like the kind in PPACA. We have already had two very successful demonstration projects, California and Texas. H.R. 5 mirrors California's 1975 Medical Injury Compensation

Reform Act which has held the State's medical liability insurance premiums to an increase of only 261 percent from 1976 to 2009.

That might not sound impressive, but during that same period, the medical liability insurance premiums in the other 49 States increased by 945 percent.

H.R. 5 allows plaintiffs to recover the full amount of their economic loss and caps noneconomic damages at $250,000. Punitive damages would be limited to two times the amount of economic damages awarded or $250,000, whichever is greater. It would also limit attorneys' contingency fees so that awards go to injured plaintiffs, not trial attorneys, looking for the next multi-million dollar payout.

We need a medical liability system that punishes bad doctors and provides for hurt patients, not one that punishes every doctor and every patient. H.R. 5 is a balanced, thoughtful approach to this problem. I commend my friend, Dr. Gingrey, for introducing the bill yet again this Congress. I recommend support of H.R. 5.

I yield back.

The Chairman. I thank the gentleman. The chair recognizes Mr. Towns for an opening statement.

Mr. Towns. Thank you very much, Mr. Chairman, for convening today.

Regrettably, I must oppose both of these measures today in their current form, but I will focus my remarks and views on H.R. 5. Notably, this bill seeks to reform the medical malpractice system, among other things, setting a $250,000 cap on noneconomic damages.

Mr. Chairman, I believe that medical malpractice reform is most suitably left to the States and not the Federal Government. As it always has been, only States can adequately determine what methods may best reduce malpractice premiums for their constituents. But imposing a monetary cap at the Federal level, is not the way to go about it. Congress is picking one maximum amount that is meant to be sufficient to address every single instance of malpractice across the Nation regardless of the facts of the case, and most importantly, regardless of what part of the country it occurs in. $250,000 is simply not the same amount in New York City as it is in many other States around the Nation. Picking one number does not account for the variations in the cost-of-living. It does not account for differences in rent or food or Band-Aids or medical supplies or medical services. One number simply cannot do that. One size does not fit all.

Thankfully, the Patient Protection and Affordable Care Act provided a small investment of $50 million to States to test different methods of medical malpractice reform. After these pilots are completed, States are to report on their successes and their failures so that other States can learn from and adopt successful practices. We would be wise to hold off until the results of these pilots have concluded so that we can allowed States the opportunity to implement programs that may, in fact, be successful in reducing malpractice premiums.

Thank you again for convening this markup, Mr. Chairman. I look forward to our discussions tomorrow as we thoroughly examine these

bills and recognizing that one size does not fit all. On that note, I yield back the balance of my time.

The Chairman. The gentleman yields back. The chair recognizes Mr. Walden from Oregon for 3 minutes.

Mr. Walden. Thank you, Mr. Chairman.

We have a unique opportunity today to coming one step closer by achieving true health reform by finally addressing our Nation's broken medical liability system. I join our physicians in Oregon and across the country in thanking you, Mr. Chairman, and Dr. Gingrey and others on the committee for bringing H.R. 5, the HEALTH Act, before our committee.

In rural areas, like Oregon's nearly 70,000-square mile Second Congressional District, the need to practice defensive medicine is further exasperated by the current workforce shortage. Coincidentally, the types of providers most difficult to find in rural and underserved areas, such as obstetricians and specialists, are also most commonly susceptible to malpractice claims.

So I believe every good acting physician would agree that each patient should be entitled to fair and just recourse, but I am just as confident those same good acting physicians have a desire and interest in upholding the integrity of their profession by acting in their patient's best interests. In fact, the physician swears by an oath to do just that.

It is important to note that this bill would not eliminate a patient's ability to seek legal retribution by allowing an unlimited

amount of economic damages. But by implementing a cap on punitive damages, it protects patients' rights while also ensuring the provider's ability to practice good medicine, lower medical malpractice premiums, and increase overall access to care.

As the Health Subcommittee heard during this bill's hearing, certain physician groups oppose the Affordable Care Act's final passage simply because it did not meaningfully address medical liability reform. And in that hearing, Dr. Hollier, a Texas OB-GYN said: "We simply cannot build a reformed health system on top of a broken medical liability system."

We have, in fact, seen direct proof that States that have adopted comprehensive medical liability reform, like Texas and California, have seen remarkable improvements and access to OB-GYNs, particularly in rural areas. Dr. Hollier is absolutely correct, Mr. Chairman. Any reform in our health system must first fix our current broken medical liability system; and I, therefore, support this important piece of legislation.

I yield back the balance of my time.

The Chairman. The gentleman yields back.

The chairman recognizes the gentleman from Texas, Mr. Green, for 3 minutes for an opening statement.

Mr. Green. Thank you, Mr. Chairman, for holding a markup on H.R. 908 to reauthorize the CFATS program. This legislation is vitally important to the District I represent, which has the largest concentration of chemical-producing facilities in the U.S. Most of

the workers in these plants live in my district, and I strongly support ensuring the safety of our plants from terrorist attacks, but also support the safety of our workers and my constituents.

Due to the impact of this legislation on my district, I have been very involved in H.R. 908, and have been in contact with Chairman Shimkus over the last few weeks trying to come to an agreement on several provisions. We were able to come to an agreement on continuity of background checks, which is an issue of vital importance not only to the workers, but the industry. This provision will bring clarity to the CFATS program, and ensure workers who are employees of a company that own in waterside facilities would be able to go between the plants without additional background checks.

I have to say I am disappointed that the jurisdictional issues we have with the Homeland Security Committee has taken precedent over more moderate authorization. And I want to maintain Energy and Commerce's jurisdiction of CFATS by reservations about authorizing this program for 8 years instead of 7 or 5. To that point, I will be offering an amendment to reduce it to 5 years.

I also intend to offer an amendment to include workers in the development of site security plans. Workers have unmatched knowledge of the facilities at which they work. They also are the last line of defense and the first affected by an attack. It makes sense to include them in the development of site security plans.

These amendments pertain to issues that were important to me during the debate last year under H.R. 2868, which I supported when

it was passed out of this House.

H.R. 2868 was not perfect, and included a substantial compromise of permanently extending chemical and water security regulations while reducing duplicative regulatory standards, increasing worker protections, and providing important safeguards to chemical facilities and water systems.

If H.R. 2868 were before the committee today, I would support it. While I do not agree with everything we had in it, it was a far superior piece of legislation.

The Houston Chronicle had an editorial today on an inherently safer technology in H.R. 908, and I agree that companies should do all they can to reduce their risk. It makes sense for them to do so with a safety and business perspective; however, I recognize the current political reality in some provisions of that bill, namely, inherently safer technology, are not acceptable to the new majority.

So we are here today with an extension on the current law with a couple of compromises. The bill is not perfect, but I believe we need some surety in the program to continue to be funded. A year-to-year authorization that would be held by a political budget debate does not offer safety assurances to the industry or their employees, and their investments and safety are wise investments.

Overall, the safety of these facilities far outweighs any political debate we have here in Washington. While not entirely happy with H.R. 908, it offers continuity to the system and issues of concern to me, most notably the background checks.

Mr. Chairman, I also want to ask unanimous consent to put the remainder of my statement in the record and my opposition to H.R. 5. I think it would hurt what we already have in Texas to have a federalization of malpractice laws, and that is why I oppose it.

I yield back my time.

The Chairman. The chair recognizes the gentleman from Nebraska, Mr. Terry, for 3 minutes.

Mr. Terry. Thank you, Mr. Chairman.

No doubt there are additional costs in the system. There is over utilization, and finding the right policies to deal with that, wringing out the overutilization and the additional expenses not necessarily related to the quality of the health care itself is necessary, and most States have tried to do that by reforming their tort laws and medical malpractice reform. In fact, only a handful of States have yet to implement some sort of medical malpractice reform to do that.

Tort law is an area of law traditionally left completely to the States' discretion. Again, most States have already adopted some sort of medical liability protections within their State. If you are a true believer in the 10th Amendment, then why are we not allowing the States to continue to create their own laws and decide what is in their best interest for their residents? It is not the Federal Government's role to say that one States's laws are better than another's, or even mandate one State's belief on another. For example, the Texas or California model now has to be imposed on the other 48 States. If you consider yourself to be a true States' rights person, then why do we give the

States the latitude and ability to do all of it and take it away with the one-size-fits-all mandate from the Federal Government?

I have heard or been briefed that section 11 of H.R. 5 does protect the States' rights; but if you read it, it is extremely restrictive, and most States that have medical liability or medical malpractice liability reform laws will have this Federal law supersede it. Read section 11. It is a one size fits all.

It seems ironic to me that as someone who passionately opposed the nationalization of our health care based on the fact that this was extreme federalism and usurps States' rights that now, because it is politically expedient for us on this side of the aisle, that we are now engaging in that same philosophical conduct.

I look forward to offering amendments tomorrow to show how we are usurping States' rights.

I yield back.

The Chairman. The chair recognizes the gentlewoman from Illinois, Ms. Schakowsky, for 3 minutes.

Ms. Schakowsky. Thank you, Mr. Chairman.

While I oppose both bills that are before us this afternoon, I would like to focus my remarks on H.R. 5.

We do have a medical malpractice crisis in this country, but it is not that injured consumers are suing too much. In fact, the number of suits have declined. It is not that injured consumers are receiving exorbitant compensation. In fact, the size of settlements and awards have been stable, tracking the rate of medical inflation. The crisis

we are facing in America is that too many patients are the victims of medical errors, and too many good doctors are being overcharged by private insurers.

We haven't heard from medical malpractice victims, but they are the ones who should be front and center. We can't make this a fight between doctors and trial lawyers and lose sight of the fact that too many Americans will be affected by malpractice. Their lives and the lives of their families will never be the same. It is their interest that we must protect.

According to health affairs, one in three patients admitted to a hospital experiences an adverse event. They get the wrong prescription, the wrong surgical procedure, or acquire an infection. But this goes far beyond preventable medical injuries in hospitals. This legislation is so broadly drafted that it will apply to medical devices, pharmaceutical products, nursing homes, and for-profit health insurers. We haven't any assurances that this bill will reduce the incidents of medical malpractice. Nor has anyone given us any assurance that it will lower medical liability premiums. But one thing is certain, it will trample on States' rights and take away long-standing civil justice rights. Taking away patient's rights does not improve the quality of our health care system, it just leaves injured consumers without recourse.

I especially oppose arbitrary caps on non-economic damages and other restrictions on the rights of medical malpractice victims to seek accountability and compensation for their injuries. We are hearing

from the proponents of H.R. 5 that these caps are not harmful because economic costs, medical bills and lost wages are left uncapped. But what about injuries that are just as painful but less quantifiable -- the inability to bear children, the loss of a spouse, child or grandparent, excruciating pain, permanent and severe disfigurement? Noneconomic damages compensate injured victims for very real injuries, and those who suffer those injuries deserve their full and fair day in court.

H.R. 5 is an attack on victims who, for the rest of their lives, will suffer as a result of negligence and malpractice. We should not add to their pain by denying them their legal rights.

Finally, let me say I would have a lot more trust in a panel of my peers to decide my particular individual case than I do on lawmakers who are far from being doctors to set an arbitrary cap.

I yield back.

Dr. Gingrey. [Presiding.] The chair recognizes for 3 minutes for an opening statement, Dr. Burgess.

Dr. Burgess. I thank the gentleman for the recognition.

I certainly look forward to the markup of H.R. 5 tomorrow. In fact, while both bills are important, let me confine my remarks to H.R. 5.

For 25 years in north Texas, I served as a doctor, delivered over 3,000 babies, and handled my share of high risk births. Because of the nature of my profession, I wasn't immune to being named in nonmeritorious lawsuits. Although those claims were unfounded and

eventually dropped, my patients lost something in that transaction, certainly the benefit of my time and care lost because I was away from my practice defending my livelihood and defending my name. The current legal environment reduced my patient access, and that really is what this should be about.

Now, stop the presses: I do agree with President Obama in one of his statements in his State of the Union address, he said, "Medical malpractice reform is needed."

Mr. President, I agree. In fact, I sent the President a letter immediately after that State of the Union address, and I am still waiting to hear his response.

If the President is reluctant to act, if the President is reluctant to lead on this issue, this committee is only too happy to help.

Now, I have often spoken about the successful reforms we have had in Texas. Liability reforms that served as a catalyst to bring doctors to underserved regions, including those that had no access to physicians in the past. Texas is one of the largest and most diverse States in our union. In fact, I would remind my colleagues that 135 years ago, this spring, Texas was its own country. Yet our reforms have proven successful, and they have produced results across the board.

Today, the State Medical Board of Texas is challenged to keep up with the applications of physicians moving to our State from New Jersey and Pennsylvania who want to practice in Texas. These doctors share

a similar story, as I do, with millions of patients that know what works.

The legal environment in which doctors practice is lopsided to favor a very narrow special interest group -- those of trial lawyers. They prey on vulnerable patients and doctors, rarely in the pursuit of justice, but in the pursuit of material gain. In a country that has the highest quality of care in the world, it should never be easier to sue a doctor than it is to see a doctor.

And in Texas, in particular, we have counties that now have OB-GYNs, ER doctors, counties that had not had this type of physician in practice for a long, long time. In this country, we also have national medical insurance. It is called Medicare. It is called Medicaid. It is called SCHIP. That begs for a national solution.

But the bottom line is patients and doctors all across the country do need relief. Today, we put patients first. The House will act. The Senate will have to make their choice and we will have to live with their choice. Do they stand with patients or doctors; or do they stand with the President and narrow special interest groups?

I yield back the balance of my time.

Dr. Gingrey. The chair recognizes for a 3-minute opening statement, the gentlewoman from California, Mrs. Capps.

Mrs. Capps. Thank you, Mr. Chairman.

Today we are discussing two bills: one to extend a weak and insufficient program; and another, H.R. 5, which would stifle State innovation and revictimize those who have been harmed.

We know medical malpractice is a serious problem. That is why

health care reform included grants to States to develop innovative medical malpractice reform. H.R. 5, on the other hand, simply imposes a one-size-fits-all approach, circumventing States autonomy and innovation. It does nothing to achieve the important goals of protecting patients and medical professionals and reducing health care costs.

Instead, this bill simply limits the amount of money that those who were wrongfully harmed, the patients, can be justly awarded to compensate them for their injuries. This shifts the cost from the party at fault onto injured individuals, their families and taxpayers. And it does nothing to reduce the astounding number of costly and preventable medical errors that claim nearly 100,000 lives each year.

Study after study has shown that when doctors and hospitals focus on improving patient care and reducing medical errors, not only are patients' lives saved, but costs go down, too. These studies, many of which we heard about at our subcommittee hearing, are instructive in how to reduce the actual, not the hypothetical cost, of malpractice.

It is also important to note that this bill goes way beyond protecting doctors and patients. In fact, I am deeply concerned that H.R. 5 protects drug companies and HMOs from lawsuits, in many cases, in which they have clearly hurt people.

Lastly, I find it ironic that this majority, who for so long has championed State and local control, are supporting a bill that would impose a mandate from Washington with no flexibility in an area that has so traditionally been State law.

And I must point out additional hypocrisy of the majority which cried out endlessly about the need to stick to regular order during health care reform, has yet simply skipped the subcommittee process on this bill.

I am also concerned with the second bill our committee will consider today, H.R. 908. Across the United States, thousands of industrial facilities still use and store hazardous chemicals in quantities that put large numbers of Americans at risk for serious injury or death. Despite industry claims, Federal studies confirm that security at chemical facilities ranges from poor to nonexistent. Unfortunately, this legislation fails to require any disaster prevention at the highest risk chemical plants and exempts hundreds of hazardous refineries and water treatment plants.

Mr. Chairman, it is time to pass permanent chemical security regulations, and it is time that manufacturers move toward new, safer technologies and chemicals. Unfortunately, the bill before us today fails to protect communities from chemical terrorism. I urge my colleagues not to extend this current inadequate program, or to create another one through H.R. 5.

I yield back my time.

Dr. Gingrey. The chair recognizes the gentlewoman from Tennessee for 3 minutes for an opening statement, Mrs. Blackburn.

Mrs. Blackburn. Thank you, Mr. Chairman.

Every physician and health care professional will tell you that in order to truly reform the Nation's health care system, we must focus

on cost reduction, improved quality, and increased access for all Americans.

They will also tell you that true medical liability reform is a key component, a necessary component of this reform, and it is necessary to address it so that we do continue to ensure access to care.

It was unfortunate that such reform was not a component of the broader health care bill that was debated last Congress in what we all know and call ObamaCare. That was a lost opportunity.

Many of our States have taken the lead on this issue because they know that the lack of liability reform hurts patients and it impacts the patient's ability to receive care due to the enormous added cost incurred in the practice of defensive medicine, which has driven trial lawyers looking for easy cash to come on in and file a lawsuit on what they deem to be bad outcomes or adverse events. Any attempt to make health care available to the underserved and uninsured will be doomed to failure if the legal costs of practicing medicine are not addressed.

With reimbursement issues added to the high cost of liability insurance, physicians who are, many times, small business owners, must weigh the risk of taking new patients, particularly the uninsured if the cost of care exceeds the cost of reimbursement.

A physician in my district recently told me this: He said, without significant and real tort reform, no plan -- no plan -- to control increasing health care costs will ever succeed. I agree with him. I think it is appropriate that we are bringing forward H.R. 5. It begins our debate to address these issues. It is a key issue in

deciding how we are going to increase access and lower cost. I look forward to moving the bill through committee.

I yield back.

RPTS JOHNSON

DCMN ROSEN

[4:59 p.m.]

Dr. Gingrey. The chair recognizes the gentleman from Texas, Mr. Gonzalez, for 3 minutes for an opening statement.

Mr. Gonzalez. Thank you very much, Mr. Chairman. Sometimes we lose sight of some simple facts. These caps, these reductions, these limitations, do you know when they apply? They apply after a finder of fact in a meritorious lawsuit has found that a health care provider is guilty of negligence, and that the negligence was the proximate cause of an injury to the patient. Only then. First you prove negligence. What we are talking about here are lawsuits in which negligence is proven. And we forget about that. We just think this is going to apply across the board, and things are just going to happen naturally, and doctors that are not guilty of negligence will benefit somehow as a result of this law. That is not true. The victim is victimized again. That is what is happening.

And I know we referred to the Texas experiment as some sort of miracle. And I think there are aspects of it that you could point to. But I do know this. It has not reduced health care costs in Texas. Texas law didn't do that. Because costs have grown twice the national average since 2003. The Texas law does not reduce malpractice premiums for certain specialties, such as internists, which is 27 percent higher. It does not reduce the costs of health care insurance for consumers.

Since 2003, premiums for individuals increased by 114 percent and for families, 144 percent. And it does not improve access to care, contrary to what everyone is telling you, when you really look at Texas ranking 43 out of 50 States in physicians per capita. What does this bill actually do? I think it protects those individuals who are truly negligent and do not meet the standard of care that is required and expected by anyone. But why should health care providers be subjected to meaningful liability for their acts of negligence and even intentional torts in this law? I will tell you why. Because without liability, there is no accountability.

Without accountability, there is no responsibility. This will create a special class, immune from the consequences of their mistakes. I truly believe that good doctors and health care professionals don't want to protect colleagues that don't practice medicine competently or professionally, which is the true impact of H.R. 5. Thank you very much, Mr. Chairman. I yield back.

Dr. Gingrey. The chairman now recognizes himself, Dr. Gingrey, for an opening statement for 3 minutes, or 4 minutes, or 5 minutes. I want to, first of all, thank Chairman Upton, Subcommittee Chairman Pitts, for calling today's markup. Now I, along with Judiciary Committee Chairman Lamar Smith and my colleague from Georgia, Democratic Member David Scott, are the proud authors of H.R. 5, the HEALTH Act. Put simply, this country is on the verge of a medical liability crisis. We have, unfortunately, facilitated a culture, and Dr. Burgess said this earlier, where it is much easier to sue your doctor

than it is to see your doctor. That might sound trite, but it is a fact. Although this has become a reality for all physicians, it has disproportionately impacted my specialty of nearly 30 years, OB/GYN. The current truth that OB/GYNs face is that each of them will, on average, be sued three times during the course of their careers. And while over 50 percent of these cases are eventually dropped, dismissed, or settled without payment, 30 percent of ACOG fellows report increasing Cesarean delivery over traditional birth, and 26 percent have stopped performing or offering traditional births altogether over the fear of facing a lawsuit.

These statistics represent one of the largest cost drivers in health care today, known as defensive medicine, the ordering of tests and procedures in order to shield the medical provider from a lawsuit. This fear of litigation, according to a 2010 Mount Sinai School of Medicine study, has led 91 percent of physicians across all specialties to practice this thing known as defensive medicine.

Additionally, according to a 2008 PricewaterhouseCoopers study, defensive medicine costs $210 billion annually. H.R. 5 will help us accomplish the important goal of lowering health care costs. The nonpartisan CBO, Congressional Budget Office, has already scored this legislation, and I think very conservatively, as saving the Federal Government $62 billion over the next 10 years.

The benefits of H.R. 5 are not just economic. A study conducted by the Journal of the American Medical Association found that meaningful medical liability reform will help increase the overall

supply of physicians at a time when the current state of health care is threatening to drive many physicians, particularly those in these high risk specialties, out of practice. According to the Center for Delivery, Organization, and Markets Research, counties and States with reform had 2.2 percent more physicians, and rural counties had 3.2 percent more physicians per capita than similar areas without reform. Furthermore, H.R. 5 would ensure full economic and medical compensation for patients, while advancing the idea that patients should receive their fair share of awards. This legislation will mitigate the threat posed by those who are currently seeking to make a profit from the injuries of patients such as hedge funds, hard money investors, and yes, some unscrupulous ambulance chasers. H.R. 5 represents the kind of reform that is gaining bipartisan support.

Even President Obama acknowledged this during his State of the Union address when he stated, "still, I am willing to look at other ideas to bring down health care costs, including one that Republicans suggested last year, medical malpractice reform, to rein in frivolous lawsuits."

There is too much money being wasted on frivolous lawsuits and the practice of defensive medicine. In order to put a stop to this practice and turn our focus back to patients, I ask all my colleagues to support H.R. 5. I apologize for going over my time. I will now recognize the gentlewoman from Wisconsin for 3 minutes for her opening statement, Congresswoman Baldwin.

Ms. Baldwin. Thank you, Mr. Chairman. I will confine my opening

remarks to H.R. 5, and spend a little time talking about the situation in my State. Since the 1970s, Wisconsin has maintained a medical malpractice policy that has produced successful outcomes for both doctors and patients. With flexibility to think creatively, Wisconsin established a system in which health professionals are guaranteed access to affordable medical liability coverage, and injured patients and their families are guaranteed to receive reasonable monetary relief for injuries.

Wisconsin law requires physicians, hospitals, and other health care professionals to have medical liability insurance. This private health insurance pays claims of up to $1 million for each claim arising from an occurrence in a year, or up to $3 million for all claims arising from all occurrences in a year. For medical malpractice claims that exceed the limits of this primary medical liability insurance coverage, all physicians have access to the Injured Patients and Families Compensation Fund.

Physicians contribute to this fund on an annual basis. Notably, this fund typically makes more money in interest than it pays to injured patients. Let me just repeat that. This fund typically makes more money in interest per year than it pays to injured patients. As of June 30, 2010, the fund had assets of $855.1 million. Mr. Chairman, Wisconsin's medical malpractice laws have produced successful outcomes. Medical liability insurance premiums paid by Wisconsin doctors have been nearly the lowest in the Nation. And the number of medical negligence cases has decreased significantly since the laws

were enacted. The number of people per year who have been compensated for injuries or death caused by physician negligence have been nearly the lowest per capita in the Nation, and Wisconsin medical malpractice insurers have the lowest loss ratio of all States' medical malpractice insurers. But it is important to note that Wisconsin's medical malpractice laws are a solution that works for Wisconsin. It may not work in Texas, Michigan, or Pennsylvania. But the system seems to be working in Wisconsin.

So I urge my colleagues to oppose this bill and allow States like Wisconsin to continue to have the authority to establish laws that best meet each State's need. With my limited time left, I just want to note that the Clerk of the House sets aside the first 10 bills of the year for the signature bills of the majority party, 1 through 10. So far, this committee has deliberated over H.R. 3, that takes away women's rights, H.R. 5, that is taking away States' rights. These are things the new majority wants to be known for. And I would just like to point out that last fall, they were running on jobs. When are we going to see bills come through this committee that are focused on jobs and our economy? I yield back.

Dr. Gingrey. The chair recognizes for a 3-minute opening statement the gentleman from Pennsylvania, Dr. Murphy.

Mr. Murphy. Thank you, Mr. Chairman. The United States has been the world's biggest manufacturing Nation for over a century. But this year, in 2011, we lost that esteem to China. The chemical industry alone lost 90,000 jobs in the last 5 years. Today, however, it is

readying for a resurgence. American chemistry employers provide approximately 780,000 direct jobs in the United States. They account for more than one-tenth of U.S. exports in their $674 billion industry. Using the typical seven to one multiplier manufacturing employers use, they support over 5 million jobs. The success of these domestic chemical employers is essential to our Nation's economic recovery, and in meeting the President's stated goal of doubling exports every 5 years. Therefore, any Federal policy to keep our plants secure, families safe, and the public protected must also produce the regulatory certainty and stability needed so chemical employers can continue to safely grow and create jobs. Under the Chemical Facility Anti-Terrorism Standards, or CFATS, more than 4,000 chemical plants and refineries, and even hospitals and colleges, have made significant improvements towards keeping our communities safe.

In fact, since 9/11, the domestic chemical industry has spent an estimate $8 billion on plant security, and under the existing framework, will spend another $8 billion. A long term authorization of CFATS will give the industry the certainty needed to make continual capital investments and continue growing and succeeding. Now, we can control chemical plant security for the United States plants, but note we have no control over chemicals made outside the United States.

So here in the U.S., the safety of these facilities is nonnegotiable, and so is the ability of facility operators to keep their plants secure and manage their workforce. Plant operators need to be able to stay vigilant against all threats, and respond quickly to

information that would suggest a potential security risk. For example, CFATS facilities regularly perform criminal and terroristic background checks on workers. But when that background check was completed 10 or 20 years ago, safety and security dictate that facilities perform an updated check. Plant operators must retain this ability to ensure that workers are who they say they are, and their records indicating security risks are up to date. I urge my colleagues to oppose efforts that weaken the ability of plant operators to make personnel decisions about employees who could pose a potential risk. Plant owners are just as invested and committed into the safety of their plants as the community and the employees. We cannot allow a safety loophole that permits old, outdated security procedures on equipment or safety analysis that could weaken the protocols of the CFATS and ensure employers can't perform background checks on workers.

I am hopeful that we can work through any issue my colleagues on the other side of the aisle may have with background checks and employee I.D. cards. And I thank my colleagues, Gene Green, for working with me on this bill, as well as Chairman Shimkus and Chairman Upton, and hope that we can bring this measure to the full Energy and Commerce Committee for full consideration and passage.

Let's pass this much-needed legislation, and ensure a key part of our homeland security policy is kept in place, while also maintaining and growing jobs here at home. I yield back.

Dr. Gingrey. The chair recognizes for 3 minutes for his opening statement the gentleman from Louisiana, Mr. Scalise.

Mr. Scalise. Thank you, Mr. Chairman. I appreciate the hearing today, the markup we are going to be having tomorrow to deal with two important pieces of legislation. I want to start with H.R. 5. This is a bill brought by the acting chair. And it is an important bill in addressing the problems that we are already seeing from ObamaCare. And if you go back to this debate 2 years ago when we really started this debate on health care reform, I think most of us were in agreement about what the problem was. And if you talk to families across this country, if you talk to small businesses across this country, one of the biggest factors you hear and the problems they are experiencing with health care is the cost. Because while some people might have access to health care, if the cost is too high and every year we continue to see it rise, that becomes a big prohibitive factor from people being able to get that access.

So cost should have been one of the driving factors, as well as addressing the real problems in the health care system, like addressing the problems that there is currently discrimination against people with preexisting conditions. That is a real problem that needs to be fixed.

Now, we brought actual solutions to those problems during the debate last Congress. Unfortunately, they decided to go with this government takeover of health care, this one-size-fits-all coming down from Washington with over 2,500 pages of legislation. And one thing it didn't address is cost, the biggest problem you hear from people all across the country in the health care system. Their bill was actually scored to increase the cost of health care. That goes counter

to what people wanted to be addressed in this bill. It is one of the reasons why the bill is so unpopular. It is one of the many reasons why the entire bill ought to be repealed and replaced with real reforms. Well, H.R. 5 is one of those important steps to really reforming the problems in health care. It goes directly at the problem of cost. Not one real item was mentioned in their bill in ObamaCare to address these frivolous lawsuits that jack up the price of health care.

By some estimates, $200 billion per year of health care dollars that families spend are not on treating the patient for health care, it is on doctors trying to prevent frivolous lawsuits by running all these defensive medicine tests. Every doctor will tell you it happens. Yet there wasn't a page in their bill that addressed that problem. Two hundred billion dollars a year we can save families. You want to talk about jobs, as I talk to small business owners in my district one of the things they will tell you is one of the reasons they can't hire enough people is because of the high cost of health care. If we lowered the cost of health care by $200 billion per year, which this bill does, by doing real medical liability reform, you want to talk about a jobs bill, not only have you solved a major problem in health care, you don't have senior citizens having to go and have all these tests run on them that they know and their doctor knows has nothing to do with improving their health. It is all about preventing the frivolous lawsuit. We address that problem in this bill.

I think it is an important bill. Not only does it save families $200 billion a year, but it actually shaves over $60 billion off our

deficit over 10 years. So it is an important piece of legislation. I strongly support it. Also support H.R. 908, the CFATS extension, another important bill. And I thank you again, Mr. Chairman, for having this hearing and bringing these forward tomorrow. I yield back.

Dr. Gingrey. The chair recognizes the gentlewoman from the Virgin Islands for 3 minutes for her opening statement, Dr. Christensen.

Dr. Christensen. Thank you, Dr. Gingrey. As a physician who has, in addition to practicing medicine for over 21 years, has worked with defense attorneys and my fellow physicians on many malpractice cases, it pains me to have to oppose H.R. 5, a bill that so many physician organizations support. But I do so chiefly because it harms the victims of injury, patients for whom I swore to do no harm, and because I find it potentially unfair to women, children, and the poor, who often are minorities. With malpractice contributing so little to health care spending, it does nothing to reduce national health care costs. This bill looks more like an attempt to settle a score with lawyers than one to fix a problem which experts put at the feet of insurers. Furthermore, in their zeal to attack the Affordable Care Act, the sponsors in the majority fail to recognize that bill's significant provision that would reduce medical errors and increase patient safety, and the data that shows decreasing complaints and premiums where the practices included in that bill have already been in place.

Physicians want to provide the best of care for their patients,

and we help them to do that in the Affordable Care Act. This bill, H.R. 5, which has not gone anywhere in the prior four times it has been introduced, does not, chiefly because it is based upon false premises, sets limits that are unrealistic, does harm to an already harmed individual, and does not go far enough in making them whole, can discriminate against women and the poor, and does nothing to rein in costs or increase patient safety.

On H.R. 908, I am very pleased the committee is extending the authorization of the Chemical Facilities Anti-terrorism Standards Act, as it is important to the security of our Nation. That bill, however, falls far short of what is needed today: It fails to address a plethora of security, labor, and regulatory issues that must be adequately vetted before we move forward; it does not address existing security gaps; it does not address deficiencies in the authority of the Secretary of Homeland Security; it doesn't include reforms to ensure the involvement and protection of workers, or allow for citizen enforcement; and it doesn't protect whistleblowers.

It also doesn't encourage the sharing of information. That program is in need of an extension, but I will support the Democratic amendment in the nature of a substitute at the appropriate time.

Finally, let me say we have already wasted 4 months passing bills that are nothing but anti-Obama rhetoric. H.R. 5 would be more of the same. Let's improve the standards for chemical facility security, and spend our time better working to implement the Affordable Care Act in the best way possible, working to slow climate change, to increase jobs,

and to alleviate the many burdens the recession and high oil prices have put on the poor and the middle class in this country. Thank you. I yield back.

Dr. Gingrey. The chair recognizes the gentleman from Mississippi for 3 minutes for his opening statement, Mr. Harper.

Mr. Harper. Thank you, Mr. Chairman. The so called Affordable Care Act spends $1.445 trillion, reduces Medicare benefits $523 billion, and raises taxes $569 billion, all the while failing to implement meaningful medical liability reform. In 2004, under the leadership of Governor Haley Barbour, Mississippi enacted a comprehensive tort reform law that has significantly reshaped our medical liability system. As an example of how the environment has improved for health providers, one insurer who covers over 75 percent of the physicians in Mississippi has seen a cumulative 65.5 percent decrease in insurance premiums since 2005.

Let me say that again. Over 75 percent of Mississippi doctors saw their insurance rates drop 65.5 percent in the past 6 years. Mississippi has been a model for tort reform, and I believe that Congress would benefit from emulating the strides made in my home State. I want to thank my friend and colleague from Georgia, Dr. Gingrey, for putting forward this commonsense proposal that is designed to reduce the overall costs of health care by enacting true medical liability reform.

Additionally, H.R. 908, which would extend the Chemical Facility Anti-Terrorism Standards, is essential to ensuring that we are

protected from terrorist attacks at the many chemical facilities located across the United States. I was happy to be present last week when such an important bill passed through subcommittee without objection, and I am hopeful that it gains the same support at the full committee level. I ask that my colleagues join me in supporting H.R. 908. Thank you, and I yield the balance of my time.

Dr. Gingrey. The chair recognizes the gentleman from West Virginia for 3 minutes for his opening statement, Mr. McKinley.

Mr. McKinley. Thank you, Mr. Chairman, for holding this markup on H.R. 5 and H.R. 908. For more than 70 years now, West Virginia has been a premiere destination for the world's leading chemical companies, employing nearly 10,000 West Virginians, and contributing over $720 million a year in wages and salaries, and more than $1 billion in Federal and State revenues to the State's economy. I look forward to passing a clean version of H.R. 908 so that the men and women working in the chemical plants in my State will be protected from vulnerabilities and potential acts of terrorism.

As we markup the HEALTH Act, one of a series of jobs bills being promoted by the majority, we realized one of the glaring problems with ObamaCare. It failed to deal with the country's broken medical liability system. The failure to fix liability has then further jeopardized patient access in this country as health care costs continue to skyrocket. The medical liability system continues to place tremendous financial burdens on doctors, patients, health care providers, and our Federal Government. West Virginia faced this

problem head on in 2003. Because of the medical liability issues, doctors were fleeing the State or retiring early.

Graduating medical students could not be recruited. And on average, hospitals were losing 5 percent of their medical staff. In addition, liability insurance costs doubled and even tripled in some cases, and some insurance providers even stopped covering some specialties. As a result, the State legislature passed legislation to reform the medical liability system. Among other provisions, the bill capped noneconomic damages between $250,000 and $500,000. This and other reforms in the comprehensive bill ensured that patients had access to the care they need, while still providing protection and a means of recourse for medical liability. Moreover, the bill made West Virginia a place where physicians wanted to practice again.

Today, with different liability rules, doctors must practice defensive medicine to ensure they are not hit with frivolous lawsuits. In fact, more than 93 percent of doctors have admitted to practicing defensive medicine. And reinforcing what Chairman Upton said earlier, it is estimated that defensive medicine costs our health system $210 billion a year. This is one aspect of rising health care costs that we can do something about, and I hope we can. H.R. 5 provides a sensible solution to the medical liability problem. This bill will help to restore our health care costs, while still protecting patients. I look forward to seeing these bills pass this committee and the House, and it is my hope that Senator Reid and President Obama will do the right thing and take action on both of them as well. Thank you, Mr.

Chairman. I yield back my time.

Dr. Gingrey. The chair recognizes for 3 minutes for opening statement the gentleman from New Jersey, Mr. Lance.

Mr. Lance. Thank you very much, Mr. Chairman. When Congress was considering health care reform, President Obama stressed that we must bend the cost curve, essential to sustainability. Unfortunately, the Patient Protection and Affordable Care Act has failed to do so. The committee will be marking up H.R. 5, a bill that will help relieve a significant portion of health care costs by fixing a broken medical liability system. Excessive costs incurred by practicing defensive medicine are affecting all Americans, and costing the Federal Government billions of dollars in health expenditures.

In fact, according at that PricewaterhouseCoopers study, in 2008 the practice of defensive medicine resulted in $210 billion in additional health care costs. The medical liability system in place today has hurt patient access. Increasing costs and medical liability coverage has led to fewer surgeons and high-risk specialists. As a result, patients are forced to travel greater distances for key medical services, creating significant hardships for them and for their families.

In New Jersey, where I live, which has precious little medical liability reform, general surgeons experience medical liability insurance premiums that are nearly double those of general surgeons in California, whose landmark law is the basis for H.R. 5. The Congressional Budget Office has estimated that H.R. 5 could reduce the

deficit by as much as $62 billion over 10 years. H.R. 5 is an important step in bending back the health care cost curve, while ensuring patients retain access to critical care, and are able to recover all of their economic losses as a result of negligent care. In January, President Obama listed fundamental medical liability reform as a necessary step in addressing rising health care costs. I urge all of our colleagues to report favorably this bill so that we can start down the path of achieving that goal. Mr. Chairman, I yield back the balance of my time.

Dr. Gingrey. The chair recognizes the gentleman from Texas for 3 minutes for an opening statement, Mr. Olson.

Mr. Olson. Mr. Chairman, thank you for your leadership in bringing forward H.R. 5, comprehensive medical liability reform legislation. As my colleagues have mentioned, our Nation's medical liability system is broken. It has hurt patient access to care, has inflicted tremendous costs on our Nation. In fact, defensive medicine is estimated to cost our Nation up to $210 billion per year. But there is good news. My home State of Texas has been at the forefront of medical liability reform. Between 2000 and 2009, the Texas Medical Board saw an increase of roughly 60 percent, 60 percent in their new physician licensure applications.

Since 2003, when medical liability reform was enacted, Texas had 21,640 new physicians licensed in our State. That means more doctors to treat patients, especially in rural areas with limited access to health care. All major physician liability carriers in Texas have cut their rates, resulting in nearly all Texas physicians having their

premiums lowered by at least 30 percent, some well over 40 percent since 2004.

In my meetings with doctors at the Texas Medical Center, I have heard countless stories about the benefits doctors have seen in Texas from tort reform. One facility in the district that I represent is in Sugarland, Texas, the Kelsey-Seybold Clinic. They wrote to me sharing their story with Texas tort reform as a major step forward in the ability to address the value of health care. I am going to read from that letter right now. I quote, "In 2003, the Texas professional liability crisis was peaking. Kelsey-Seybold was a favorite target of lawsuits because of the size of our group. We could not obtain professional liability insurance that year at any price. We were forced to create a self-insurance program for this risk." Kelsey-Seybold was spending an average of $6 million per year in professional liability costs. After tort reform, their professional liability costs fell to $1 million per year. With that $5 million savings they generated, they invested in the installation of a comprehensive electronic medical records system.

This investment has allowed them to, and I quote again, "coordinate our care more effectively so that we can solve our patients' problems more efficiently, with measurably better outcomes."

My colleagues, this is just one example of the thousands of success stories coming out of Texas tort reform. Adopting comprehensive medical liability reform on a nationwide basis through Dr. Gingrey's bill, H.R. 5, will help improve the cost and quality of

American health care, and will save our Nation billions in defensive medicine costs. I urge swift adoption of this legislation, and thank the chairman and Mr. Gingrey for their leadership. I yield back my time.

Dr. Gingrey. The chair calls up H.R. 5, and asks the clerk to report.

The Clerk. H.R. 5, to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

Dr. Gingrey. Without objection, the first reading of the bill is dispensed with, and the bill will be open for amendment at any point. So ordered. For the information of Members, we are now on H.R. 5. We will recess the committee and reconvene at 10:30 a.m. tomorrow. I remind members that the chair will give priority recognition to amendments offered on a bipartisan basis. I look forward to seeing all of you tomorrow. The committee is now recessed.

[Whereupon, at 5:31 p.m., the committee was adjourned.]