

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
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Opening Statement of Henry A. Waxman
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Full Committee Markup on H.R. 5, the Help Efficient, Accessible, Low-cost, Timely
Healthcare (HEALTH) Act of 2011 and H.R. 908, the Full Implementation of the Chemical
Facility Anti-Terrorism Standards (CFATS) Act
May 10, 2011

Mr. Chairman, we meet today on two bills, H.R. 5, addressing medical malpractice, and H.R. 908, regarding chemical security. 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 pre-empts 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 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 this problem should be addressed at the state level. Indeed, I cannot understand why the party that champions states' rights on virtually all legislation wants to nullify states' rights on medical malpractice and liability.

I particularly object to the inclusion of lawsuits relating 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.

H.R. 5 forces us to choose between the current state of medical malpractice and policies which overturn centuries of state authority. That's a false choice. Instead, we should find evidence-based solutions which address physician concerns, improve care, reduce 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 common sense steps to ensure the nation's chemical facilities are not vulnerable to terrorist attack.

In 2006, Congress gave the Department of Homeland Security the authority to create the Chemical Facility Anti-Terrorism Standards 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 and 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.