wonderful example of how kids can play a part in their own and others' safety. And we also saw law enforcement officials that handled the case well.

Through cooperation, like what we saw in this case, cooperation of the media, the public, witnesses, and the family, we will bring more children home.

MONTANANS GATHER TO SUPPORT OUR TROOPS

(Mr. REHBERG asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. REHBERG. Mr. Speaker, I have been disturbed by the headlines depicting extremists protesting the disarmament of Saddam Hussein even before it begins. I sadly read about a group of anarchists trashing a 9–11 memorial in California, tearing up dozens of American flags. In doing so, these people send a caustic message to our young men and women in uniform who, instead, need our support.

I am proud of our troops. In my home State of Montana, our citizens admire these brave young people. Two weeks ago in Missoula, a large gathering of community leaders, families, and senior citizens gathered to show their support for the people in uniform who have volunteered to put their lives on the line for this country. Several days ago, a similar gathering in Kalispell turned out to show support for those who serve our country. Last weekend, more than 200 Montanans gathered in Billings, shouting ''USA'' and ''God Bless America.''

In each of these cases, Montanans gathered not to criticize our role in the Middle East, but to say, We love our country and we support our President. They gathered to tell our young men and women in uniform, We love you, we are proud of you, go with God, and may His grace surround you should you enter harm's way.

MEDICAL LIABILITY LIMITATION ACT

(Ms. SOLIS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. SOLIS. Mr. Speaker, today I rise in strong opposition to the so-called medical malpractice bill that we are going to be voting on today.

I have heard from the minority physicians in my area, and they are quite alarmed. They are quite alarmed because their insurance premiums keep skyrocketing. And I am talking about the State of California, where we had some reforms back in 1974 through a law called MICRA, which was supposed to bring down the cost of malpractice lawsuits. What happened there was not much.

We had also Proposition 103 that was passed to bring down insurance premiums. Guess what, folks? In California it helped slightly, but not enough.

□ 1015

In fact, in California, the rates are still 8 percent higher than other parts of the country. I want to call the Members' attention to the fact that the caps that we are going to be looking at in this proposal discriminate against children, seniors, and the unemployed.

I want to call attention to the case of Jessica Santillan, a Latina teenager, who died last month after doctors at Duke University Hospital confused her blood type during an organ transplant. Under this proposed bill, Jessica's family would only be allowed to recover $250,000 in damages. That is wrong. This is no small amount that can compensate for the suffering of the family. I urge Members to allow Congress to vote on the Conyers-Dingell alternative.

PROVIDING FOR CONSIDERATION OF H.R. 5, HELP EFFICIENT, ACCESSIBLE, LOW-COST, TIMELY HEALTHCARE (HEALTH) ACT OF 2003

Mr. REYNOLDS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 139 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 139

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (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. The bill shall be considered as read for amendment. In lieu of the amendments recommended by the Committees on the Judiciary and on Energy and Commerce now printed in the bill, the amendment in the nature of a substitute printed in the report of the Committee on Rules accompanying this resolution shall be considered as adopted. The previous question shall be considered as ordered on the bill, as amended, to final passage without intervening motion except: (1) two hours of debate on the bill, as amended, with 80 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce; and (2) one motion to recommit with or without instructions.

SEC. 2. House Resolution 126 is laid on the table.

The SPEAKER pro tempore (Mr. THORNBERRY). The gentleman from New York (Mr. REYNOLDS) is recognized for 1 hour.

Mr. REYNOLDS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Florida (Mr. HASTINGS), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

(Mr. REYNOLDS asked and was given permission to revise and extend his remarks.)

Mr. REYNOLDS. Mr. Speaker, House Resolution 139 is a closed rule providing 2 hours of debate for consideration of H.R. 5, Help Efficient, Accessible, Low-cost, Timely Healthcare Act, more commonly known as the HEALTH Act. The rule waives all points of order against consideration of the bill and provides one motion to recommit with or without instructions.

Mr. Speaker, my home State of New York has been designated by the American Medical Association as one of the 18 crisis States because of the staggering number of physicians that are unable to obtain or afford liability insurance. It is not just physicians that are feeling the crunch; hospitals and other providers have also reached their breaking point.

Take, for example, family-run skilled nursing facilities in my district that have not once had a claim brought against them, yet they have seen their liability insurance rates climb over 200 percent during the past 2 years alone. That is 200 percent in the last 2 years alone.

According to a study conducted by the American Hospital Association and the American Society of Risk Management, one-third of the hospitals experienced an increase of 100 percent or more in liability insurance premiums in 2002. Meanwhile, patients are the ones losing choices, access, and care.

Mr. Speaker, last September I stood on this floor to speak in favor of the HEALTH Act. Since that time, my home community of Erie County, New York, has lost 40 actively practicing physicians. Only 3 months into the current year, they are anticipating a loss of another 20 physicians. If we do not solve the problems facing physicians in this community and so many others across America, who will provide the health care services so vital to all of our constituents?

The fact is that physicians are limiting their patients, moving to States with lower insurance rates, or closing their practices altogether. The fact is that astronomical costs and unpredictability in the legal system are causing this alarming trend.

The effect? Doctors practice defensive medicine to avoid litigation and think twice about openly discussing and reporting possible errors. A study released by the Department of Health and Human Services last week emphasizes that bolstering predictability in the legal system will dramatically reduce the incentives for unnecessary lawsuits. Those who need care will get it faster and more reliably, and those who may need proper redress will get it faster and more reliably.

The HEALTH Act will provide that predictability, while at the same time halting the exodus of providers from the health care industry, stabilizing premiums, limiting astonishing attorney fees, and above all, improving patient care.

Just as important is what HEALTH Act will not do. It will not preempt any existing State laws that limit damages at a specific amount, and it will not establish any new causes of action.

Also, it will not prevent juries from awarding unlimited economic damages. This means that quantifiable lost wages, medical costs, pain-reducing medications, therapy and lifetime rehabilitation can all be recuperated as tangible economic damages. Patients that have been wrongly injured will not be denied access to substantial amounts in economic damages.

The HEALTH Act is modeled after legislation adopted by a Democratic legislature and a Democratic Governor in the State of California nearly 30 years ago. While insurance premiums increased over 500 percent nationwide, California's have risen only a third of that much, by 167 percent.

California's insurance market has stabilized, increasing patient access to care and saving more than $1 billion per year in liability premiums. Equally important, California doctors are not leaving the State.

By following California's lead to place modest limits on unreasonable economic damage awards, an estimated $60 billion to $108 billion could be saved in health care costs each year. The Congressional Budget Office calculated that medical liability insurance premiums would be lowered an average 25 to 30 percent from what they are now under current law. And CBO also predicts that reducing the occurrence of defensive medicine would save anywhere from $25 billion to $44 billion per year of taxpayers' money.

I want to thank the leadership of the Committee on Energy and Commerce and the Committee on the Judiciary for working so expeditiously to bring this important measure back to the floor and focusing our attention on health care, particularly for coupling the HEALTH Act this week with patient safety legislation. Physicians need an environment where they can both share and learn, while at the same time practicing medicine without the fear of burgeoning liability rates and unnecessary lawsuits.

Mr. Speaker, spiraling medical liability insurance rates have hemorrhaged in recent years. Today we have an opportunity to stop the bleeding and maximize healthy patient outcomes. I urge Congress to support this rule and the underlying legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I yield myself such time as I may consume.

(Mr. HASTINGS of Florida asked and was given permission to revise and extend his remarks.)

Mr. HASTINGS of Florida. Mr. Speaker, let me say to the gentleman from New York (Mr. REYNOLDS) that the gentleman and I handled this measure last fall when this bill was brought to the floor. It was a bad bill then, and it is a bad bill now. I also want to clear up something about so-called unnecessary lawsuits. There are penalties for lawyers who bring frivolous claims into any courtroom; thus, I theorize that the majority evidently does not understand that particular distinction.

Mr. Speaker, I rise today in strong opposition to this closed rule for H.R. 5. This legislation requires a full and open debate. The closed rule is abhorrent and cowardly. It denies the opportunity for free and fruitful discussion that would uncover all this legislation's deficiencies.

The current Committee on Rules chairman, the gentleman from California (Mr. DREIER), said in 1994 when a Member of the minority, and referring to the Democratic members of the Committee on Rules, ''But we should have a structure which allows Members to participate more than they do now, and that it is again underscoring Lord Acton's very famous line that power corrupts, and absolute power corrupts absolutely. The arrogance of power with which they prevent Members, rank-and-file Democrats and Republicans, from being able to offer amendments, that is what really creates the outrage here.''

That was the gentleman from California (Mr. DREIER), and outrage continues in the minority today. If the majority alleges that Democrats were wrong in utilizing the closed rule when we were in the majority, why not be the bigger party and end the practice? Why the political games, or is it simply more fun to be principled when it is convenient?

There is no question that medical liability insurance rates are out of control. Consequently, fine doctors, as well as other health care providers, often do not properly attend to patients. However, the underlying bill will not relieve doctors of high malpractice insurance premiums. I am focused on giving Americans quality health care, as all of my colleagues are, not increasing profits for the health insurance industry; and there are good proposals to correct the situation. H.R. 5 is not one of them.

Instead of protecting patients, H.R. 5 protects HMOs and big insurance companies. The so-called HEALTH Act of 2003 addresses the health of the health care industry and not that of physicians and patients. H.R. 5 is bad legislation; but like perennial flowers, its contents sprout every Congress, replenishing the coffers of its supporters. HMOs and big health insurers should not receive special treatment. They are not above the law. Nor should they be exempt from new legislation simply because they contributed millions of dollars in the last two election cycles.

H.R. 5 applies to medical malpractice, medical products, nursing homes, and health insurance claims because its supporters' true concern is not the suffering of patients or victims. Instead, H.R. 5 advocates want immunization from the consequences of irresponsible civil behavior.

The top priority in reforming America's health care system should be reducing the shameful number of preventable medical errors that kill nearly 100,000 hospital patients a year.

Wrong-doers must remain accountable. When a stay-at-home mom dies or a child dies or a senior citizen suffers irreparable harm, there is no economic loss because it is impossible to prove damages from loss of income. H.R. 5 takes away compensation for parents who lose children, husbands who lose wives, children who lose parents, and patients who lose limbs, eyesight and other very real losses that are not easily measured in terms of money.

Despite a wide consensus, skyrocketing premiums are not due to bad politics. The malpractice insurance market is having a predicament because of the insurance industry. The other side of the aisle claims that the lure of big wins prompts many to file frivolous lawsuits. But, in fact, victims are already at a disadvantage. Two-thirds of patients who file a claim do not get a dime. About 61 percent of cases are dismissed or dropped, and 32 percent are settled; and too many of them are on the courthouse steps when they could have been settled earlier. Only 7 percent of all cases go to trial.

□ 1030

Patients prevail in only one in five of the cases that are tried. These are pretty staggering odds against the victims.

The American people would know these truths if their Representatives could expose the selective use of data and statistics that the majority uses in supporting H.R. 5. One classic example would be the notion that in California, after 1975, premiums went down. Well, they did not go down until California reformed the insurance laws. It did not go down. It went up progressively for 12 years.

But under today's closed rule, the majority is committing the greatest form of political malpractice. When the majority has finished bullying its members into voting the party line today, the American people will not only be barred from seeking compensation when a doctor transplants an incorrect organ but they will realize that with closed rules as the order of business, they cannot even seek compensation in the People's House.

For example, if this bill were current law, no experienced trial lawyer would take the case of the young Mexican girl who lost her life at Duke University. The case would be complex, obviously, and expensive to put on, there would be no economic damages, and the maximum noneconomic award would be $250,000. H.R. 5 treats the health care insurance businesses as the victims, and that is unacceptable.

The consequences of an injury are highly subjective and affect different people in vastly different ways. Put another way, how much is my arm worth? How much is your leg worth? This one-size-fits-all solution contradicts the

promise of individualized justice and objectifies victims and the uniqueness of their suffering. Different States have different experiences with medical malpractice insurance and insurance remains a largely State-regulated industry. The $250,000 cap that must have been taken out of somebody's cap as a reason for going forward takes away juries' abilities in our States to determine the appropriate level of compensation for people who suffer grievous injuries at the hands of their health care providers. The majority does not trust the people to defend its political contributors.

Al Hunt of the Wall Street Journal quoted a Republican lawyer from Houston as asking, ''Why are juries okay to take a man's life on the criminal side but are not competent to put a dollar value on an innocent victim's life on the civil side?'' That is shameful. H.R. 5 is a health care immunity act that does not benefit physicians and victimizes patients.

When Democrats were in the majority, Republicans complained time after time that closed rules were unfair. On all of the radio infrastructure, we heard closed rules were unfair, unpatriotic and contrary to the goals of the framers. However, in more than 8 years that Republicans have been in the majority, closed rules are preferred and ruling with an iron fist is the practice. I am in strong opposition to this closed rule and the underlying bill.

Mr. Speaker, I reserve the balance of my time.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the debate has begun. We are going to have an hour on this rule. I believe after that we are going to have 2 hours of general debate. It really cuts right down through the center. As I talked about excessive court trial damage driving up the cost of patient health care, I listened to the other side say it is the insurance companies and the doctors that are the cause of so much of this. It will be a good debate. It will be a full hour here on this rule and it will be 2 hours of general debate, and then we are going to have an up or down on the HEALTH Act and we are going to find out whether it is passed and sent to the other body.

But I must say that over 60 percent of the doctors in the United States are insured by insurance companies that are owned and operated by other doctors and which operate primarily for their benefit. The idea that those companies would price-gouge the very physicians who own them, I think, is absurd.

Mr. Speaker, I yield 3 minutes to the gentleman from Florida (Mr. WELDON).

Mr. WELDON of Florida. I thank the gentleman for yielding me this time.

Mr. Speaker, I practiced defensive medicine for 15 years before I was elected to Congress. Defensive medicine is extremely costly. The way it works is very simple. The patient comes in. You think the patient has something. And then you think of all the other things that it could be and how you could be sued if you missed those things, so you order more and more tests. You may say, well, this is just one doctor speaking anecdotally, but actually this very issue was studied scientifically in California. They looked at the reforms put in place in California and its impact on charges in the Medicare plan. They discovered that over time after the cap on damages went into place and the threat of very, very excessive damages went away that charges for two diagnostic codes, the two codes they looked at were unstable angina and myocardial infarction, went down and there was no increase in morbidity and mortality. In other words, quality was maintained while charges went down.

This study was published in 1995 in the Journal of Economics. It was done by economics professors at Stanford University. They argued that the high cost of litigation cost the Medicare plan billions of dollars a year in unnecessary procedures and tests. They further went on to say that it cost, in 1995 dollars, our health care system $50 billion a year. Today that figure is estimated at over $100 billion a year.

Mr. Speaker, this is not just an issue of access. We are going to hear about access from the gentleman from Florida (Mr. KELLER). He is going to talk about the trauma facility in Orlando, Florida, being closed down because of this problem. This is not just an issue of high cost. This is an issue of the uninsured. As the costs go up because of the high cost of litigation, more and more people are pushed out of the insured market into the uninsured category. We all say here that we care about the uninsured, the people who cannot afford health care, but this is impacting them. This is impacting our competitiveness in the global marketplace because all these costs of litigation get transferred into the costs of health care that get transferred into the costs of our products and services as we compete in the global marketplace.

If we pass this bill and if the other body passes it, the President has said he would sign it, it is going to allow more people to get access to health care, it is going to reduce our costs through the Medicare plan, and we may ultimately be able to better afford more services through Medicare like prescription drugs. And, yes, it will help our businesses and industries to be more competitive in the global marketplace.

This is a good rule, it is a fair rule, and this is an extremely important bill. I encourage all my colleagues to vote ''yes.''

Mr. HASTINGS of Florida. Mr. Speaker, I yield myself 30 seconds.

In response to my good friend and colleague regarding the fairness and openness and the 1 hour of debate, 31 amendments were offered last night in the Committee on Rules and my good friend the gentleman from New York (Mr. REYNOLDS) and I were there. Not one, not one, was permitted. What is fair about that?

In response to Dr. WELDON's defensive medicine argument, some people claim that billions of dollars are being wasted on so-called defensive medicine. Our own Congressional Budget Office has concluded that the idea of defensive medicine is uncertain and hypothetical. You can find that on page 74 of House Report 108–32.

Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. FROST), the distinguished ranking member of the Committee on Rules.

(Mr. FROST asked and was given permission to revise and extend his remarks.)

Mr. FROST. I thank the gentleman for yielding me this time.

Mr. Speaker, we all agree that there is a problem in America's medical system, but Republicans are not taking a serious approach to this problem. They are just playing politics and risking the rights of patients in order to carry water for HMOs and insurance companies. We know this, Mr. Speaker, because Republican leaders have brought this bill to the floor under a closed rule.

Now, on this very important subject, let me quote from a statement made 9 years ago by the distinguished chairman of the Committee on Rules, the gentleman from California (Mr. DREIER), at a time that he was in the minority. He said, and I quote, ''I oppose closed rules, Mr. Speaker. I believe they are anathema to the concept of deliberative democracy.''

Mr. Speaker, if Republicans wanted to deal with medical malpractice in a serious and substantive way, would they be using a process that is, as the gentleman from California himself said, anathema to the concept of deliberative democracy? I do not think so. And would they be preventing the House from voting on Democrats' comprehensive medical malpractice reform plan? Certainly not. But that is exactly what Republican leaders are doing today. As a result, the only bill made in order by this rule today is the Republican one and it is a shocking attempt to protect insurance companies while attacking the rights of victims.

Make no mistake, Mr. Speaker, the Republican bill will not reduce doctors' premiums, but it will protect HMOs and insurance companies, and it will punish patients who suffer from medical mistakes, patients like 17-year-old Jesica Santillan, who died because of a tragic medical mistake in North Carolina earlier this year. Or patients like the 1-year-old baby who died in Dallas last August after a surgical error.

That is right, Mr. Speaker. Instead of reducing malpractice premiums, Republicans are reducing victims' rights. Instead of protecting patients, they are protecting the profits of HMOs and insurance companies. It is absolutely

outrageous, but that is what you get with this Republican Congress.

It did not have to be that way, Mr. Speaker. Democrats, led by the two most senior Members of the House, the gentleman from Michigan (Mr. DINGELL) and the gentleman from Michigan (Mr. CONYERS), offered a comprehensive plan to bring down doctors' insurance rates and protect patients. The Democratic plan combines tort reform and insurance reform. It cracks down on frivolous lawsuits. And, just as importantly, it forces insurance companies to pass on their savings to doctors. Without this rate rollback provision, Mr. Speaker, insurance companies can just pad their profit margins instead of passing the savings on. That is a lesson we learned in Texas when we passed tort reform. So the Texas legislature and then-Governor Bush agreed on a law that specifically required that insurance companies reduce doctors' premiums, and that is all we are trying to do here. But Republican leaders decided to protect insurance company profits while they were reducing patient protections. So they defeated our amendments in the Committee on Rules last night.

Mr. Speaker, doctors and patients deserve better than this. So I urge my colleagues to defeat the previous question. Then we can amend the rule to bring up the only comprehensive plan to reform medical malpractice, the Democratic substitute. And if Republicans succeed in passing this rule, I urge a ''no'' vote on the underlying bill. Do not let Republicans sacrifice victims' rights in order to protect HMO profits.

I would make one other point. Last night in the Committee on Rules when challenged by the gentleman from Michigan (Mr. DINGELL), the gentleman from California (Mr. DREIER), the chairman of the committee, explained why the committee was not going to grant an open rule, why they were going to grant a closed rule. What he said was, ''This is payback. This is payback for what you did when you were in the majority.''

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. FROST. I yield to the gentleman from California.

Mr. DREIER. I thank my friend for yielding. Would the gentleman state the quote again that I said? I did not hear it correctly.

Mr. FROST. Mr. Speaker, I was sitting next to the gentleman from California, and I believe that I heard him say that this was payback.

Mr. DREIER. I never said anything of the kind.

Mr. FROST. Mr. Chairman, I was sitting right next to you.

Mr. DREIER. I never said anything of the kind. I just would like the record to show that, Mr. Speaker.

I thank my friend for yielding.

Mr. FROST. All I can say is I was sitting next to the gentleman. I understand and I know what I heard last night.

Mr. Speaker, assuming that the Republicans are pursuing some sort of payback because they do not like what we did when we were in the majority, I would only point out that we rarely granted closed rules, and they normally were bills out of the Committee on Ways and Means. Bills of this nature, of this controversy, when we were in the majority, we permitted the minority to have a substitute on the floor, something which they have denied us today.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I have only served under the distinguished chairmanship of Chairman DREIER, but I am always pleased that in each rule that we make there is always a recommit. Looking back at history, one of the people that I think was a distinguished chairman of the Committee on Rules, Joe Moakley, I am not sure he always had a recommit in the legislation. I am not sure that former Speaker Tip O'Neill when he was a member of the Committee on Rules always voted that there would be a recommit. But I do believe that there has been a recommit in here. More importantly, I think it is important that this legislation was thoroughly vetted in two committees, the Committee on Energy and Commerce and the Committee on the Judiciary, and even passed by voice vote in the Committee on the Judiciary. Just weeks ago these same committees once again took testimony and the bill passed through the Committee on Energy and Commerce by voice vote.

□ 1045

The Committee on Rules last night took testimony for over 2 hours and reasonably provided 2 hours of general debate, in addition to the standard motion to recommit, and I believe we will have a full hour on this rule today.

Mr. Speaker, I yield 3 minutes to the gentleman from Kentucky (Mr. FLETCHER). The gentleman, a doctor, is an expert in this legislation.

Mr. FLETCHER. Mr. Speaker, I will have to say it is rather amazing that when the minority is wrong on policy, they focus on process.

Mr. Speaker, as a family physician, I have always tried to do what is best for patients, and as a Member of Congress I still try to do what is best for patients in Kentucky and all across America.

Mr. HOYER. Mr. Speaker, will the gentleman yield on that point?

Mr. FLETCHER. Not at this time. I have 3 minutes.

Mr. HOYER. We yielded on our side.

Mr. FLETCHER. Mr. Speaker, what is best for the patient? I believe that unlimited medical liability awards are bad for patients, because they cause malpractice insurance prices to climb, resulting in more expensive care, fewer doctors, and problems obtaining access to needed care.

H.R. 5, the HEALTH Act of 2003, actually ensures fair compensation for everyone. We need to keep in mind that everyone is entitled to full compensation for their losses, medical bills and wages under H.R. 5.

It is not unusual to hear stories of doctors moving from Kentucky to Indiana, where they have enacted comprehensive liability reform, to take advantage of lower costs of medical liability insurance.

Passing the HEALTH Act, which reasonably reforms our liability system, will hold premiums at a lower, more predictable rate. That will ensure patients are not left without their local physician, who may be otherwise driven out of their practice. And to say that this bill will not reduce frivolous lawsuits and reduce malpractice premiums is truly laughable. Lawsuits do not prevent injuries, they do not reduce medical errors, but they do create an atmosphere of fear, defensiveness and distrust in the doctor-patient relationship.

In fact, a recent study estimated that defensive medicine cost $163 per person per year in Kentucky. That means Kentucky spends about $655 million on unnecessary care due to fear of litigation.

Let me give you specific examples, too. Blue Grass Orthopedic Group in my district has never lost any of the handful of claims filed against its eight doctors. Yet their premiums, which were $222,000 last year, shot up to $635,000, nearly tripling in a single year. Why? Because personal injury lawyers, hoping to hit the jackpot, file frivolous lawsuits.

More than 70 percent of Kentucky physicians say their medical liability insurance premiums increased in 2002. Emergency physicians saw increases greater than 200 percent, general surgeons and orthopedists saw increases between 87 and 122 percent, and obstetricians and internists saw increases between 40 and 64 percent. Several saw several hundred percent increases in their premiums. In other words, this is just unsustainable.

It is estimated that for every obstetrician that leaves a practice in Kentucky, 140 women are left without their physician. That means that women during prenatal care will have to drive an extra 30 or 50 minutes to see a doctor. That also means during labor if that unborn child is in fetal distress, there is an extra 30 minutes of fetal distress, which could blankly rob that child of all their hopes and future of what they potentially could be.

As a family physician, I took an oath to do no harm. The only bill today that will help physicians keep that oath is one that ensures safe and timely access to care through reasonable, comprehensive and effective health care liability reform, and that is H.R. 5. I urge my colleagues to support this rule and vote yes on H.R. 5.

Mr. HASTINGS of Florida. Mr. Speaker, I yield myself 10 seconds.

Mr. Speaker, there is a recent study reported in USA Today of medical malpractice insurance that concluded that,

on average, doctors still spend less on malpractice insurance, 3.2 percent of their revenue, than on rent. I offer that for the gentleman from Kentucky (Mr. FLETCHER).

Mr. Speaker, I yield 3 minutes to my good friend, the gentleman from Maryland (Mr. HOYER), the distinguished Democratic whip.

Mr. HOYER. Mr. Speaker, I thank the gentleman for yielding.

I want to say to my friend from Kentucky, who says that we rise to focus on process, I tell my friend from Kentucky there is a reason for that, because your Committee on Rules does not have the courage to allow us to debate substance. It does not have the courage to allow us to offer a substitute and amendments to your bill so that we could discuss substance. Have courage on your side, that substance is what ought to be at risk here. We are prepared to debate it. Allow us to do so.

Mr. Speaker, once again today the Republican leadership is employing outrageous tactics that trample the rights of the minority and rig the rules of this debate.

Mr. FLETCHER. Mr. Speaker, will the gentleman yield?

Mr. HOYER. As long as the gentleman yielded to me.

Mr. Speaker, these tactics demean the People's House. Hear me. Hear me. These tactics demean the People's House, demean democracy, demean freedom, and they fly in the face of commitments by Republicans when they regained the majority to run an open and deliberative process.

These comments are on the record. Here is how Gerald Solomon, the former Republican Chair of the Committee on Rules, explained it in November of 1994 when you were just about to take power. This is a quote, on the record:

''The guiding principles will be openness and fairness. The Rules Committee will no longer rig the procedure to contrive a predetermined outcome. From now on,'' the Republicans said, ''the Rules Committee will clear the stage for debate and let the House work its will.''

The year before, Congressman Solomon remarked, ''Every time we deny an open amendment process on an important piece of legislation, we are disenfranchising the people and their representatives from the legislative process.''

Mr. Speaker, this side of the aisle represents at least 140 million people. This side of the aisle represents 140 million Americans, and you have shut them up today, and you shut them up last week, and you may be considering shutting us up next week. Not 204 or 205 Democrats, but 140 million Americans.

I submit that this is precisely what we are doing today under this closed rule, which is what Mr. Solomon said you would not do. But you do it this day, and you demean this House.

I would say to the gentleman from Kentucky (Mr. FLETCHER), yes, that is why we talk about process, because we want to show why we are not serving doctors this day; why in State after State after State that have capped recovery premiums have not gone down. Doctors will not be served by this legislation you offer, and you will not allow us an amendment to do something that will protect doctors, that will protect patients, that will protect injured people.

This is a travesty of democracy, and it is a travesty for people who are injured severely by the negligence of others.

Vote against the previous question, vote against this bill, vote for fairness and equity in this House.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we are going to continue on the debate of the issue of the day, which is medical liability. I must tell you, while I guess it is important to listen to some of the process, and half of this debate by the leadership of our House is on the process, I am hoping that we can continue to hear the debate that was at least opened by myself and my good friend from Florida who has a different view.

I look at it that we need to helm doctors and patients, and to make sure we can control the costs of malpractice insurance. I have listened to some of the debate on the other side that it is the doctors and insurance companies that are at fault.

It is an important debate. This is a debate that was heard 7 months ago in both the Committee on the Judiciary and the Committee on Energy and Commerce. The Committee on the Judiciary voted by voice vote to put the bill out. Only recently we have had those hearings again in the Committee on Energy and Commerce and the Committee on the Judiciary, and, in a bipartisan fashion, it was passed by a voice vote there.

Last night we took 2 hours of testimony. The Committee on Rules responded with a 2-hour debate, plus what will be a full hour of the resolution, now going forward here on the rule itself.

I look forward to the debate, I look forward to hearing it, and then I look forward to voting up or down on whether we are going to help patients or not.

Mr. Speaker, I yield 2 minutes to the gentlewoman from West Virginia (Mrs. CAPITO).

Mrs. CAPITO. Mr. Speaker, I would indeed like to debate the issue, I would like you all to live in my State of West Virginia over the last year. Our Trauma I Medical Center in the State's Capital, Charleston, West Virginia, closed. No specialist. It was reopened, but it was closed for 2 or 3 months.

In September of 2002, a young boy who had something lodged in his windpipe, his parents had to drive him 4 hours to get a specialist in Cincinnati, Ohio. Thank goodness it had a good ending, but it might not have.

In January, a group of Wheeling surgeons left the emergency room to illustrate the deep and devastating problem that West Virginia doctors are suffering with the high cost of medical liability. And, guess what happened? Our State legislature, which is predominantly Democrat, in probably the largest way of any State legislature, we have a Democratic Governor, they passed and signed the day before yesterday a medical liability bill that does in fact have caps on non-economic damages. Because, you know what? When your grandmother, when your mother, when your husband or wife cannot find medical care at a trauma center, cannot find an OB/GYN, when their general practitioner leaves to go to California, North Carolina, Georgia, that is a human problem. That is a health problem.

So the answer to this is the legislation that we are going to pass today. I proudly voted for it last year. I think it will help not only my State of West Virginia, but it will help every State in the Union.

We cannot retain and recruit physicians in the State of West Virginia because of this problem. We have had a brain drain because our older physicians are leaving, they are practicing defensive medicine, and they are afraid of the lawsuits that are pending in front of them. Sixty-three percent of them say they considered moving to another State, 41 percent are considering retiring early, and 30 percent are considering leaving the practice of medicine altogether.

Mr. Speaker, this is a devastating problem. Come to West Virginia and see. It is a quality of life issue, it is an economic issue.

Today I join with my colleagues to vote for H.R. 5, and I will be extremely happy to see national legislation.

Mr. HASTINGS of Florida. Mr. Speaker, I am pleased to yield 2¼ minutes to my good friend, the gentlewoman from New York (Ms. SLAUGHTER), who is an expert in this area, with a Master's of Public Health.

Ms. SLAUGHTER. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, this is one of the debates that has gone on for many years and it has always been characterized as a debate between physicians and lawyers, leaving out one of the major players in all of these problems, the insurance industry.

This health care act is wrongly named. It is the wrong prescription for curing any malady in medical malpractice insurance. The proponents want to claim jury awards for rising insurance premiums. But a study by Americans for Insurance Reform reported that rising insurance premiums are not tied to jury awards.

Let me for a moment talk about how an insurance company meets a lawsuit that is filed against it. The money that is asked for in that bill is set aside in a separate pot of money as though they

had lost the suit. Of course, only about one of nine of those cases is ever brought to court, but that large pot of money still exists over there for the insurance company, on which they pay a very low rate of taxes. They should be a major player here.

Wait until your doctors hear back home that what we have done here today, because I am sure it is going to pass, will not do a thing in the world about lowering their insurance premiums. There is no mention in here that insurance companies of any sort will have to give back money to the physicians or to lower their rates. They are probably not going to give up anything out of that large pot they have had all of these years, and which we have no right, because the Federal Government has no oversight over insurance, to see what is there.

One of the most egregious things in this legislation and this debate is we have been told over and over that 5 percent of the physicians in the United States are responsible for more than 55 percent of the lawsuits. Would you not think that the sensible thing to do would be to get rid of that 5 percent? If this law passes, the 5 percent still continued to create malpractice, have bad outcomes on their patients. The only difference after this bill is passed is that patients will have no recourse at all.

□ 1100

The caps are really extensive. There is no recourse. And in addition, one more thing I would say. Not only are the insurance companies protected, but also the people who manufacture medical devices, HMOs, and pharmaceutical companies. It is very far-reaching and will do nothing to lower premiums.

Mr. REYNOLDS. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. KELLER).

(Mr. KELLER asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. KELLER. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise today in strong support of H.R. 5, because there is absolutely a medical liability crisis in Florida which will, among other things, result in patients in Orlando with severe head injuries not having access to a doctor. Let me give one example of the crisis.

The Orlando Regional Medical Center is a large hospital located in the heart of my district in Orlando, Florida. It is home to the only level-1 trauma center in the central Florida area. It specializes in treating patients with severe head injuries. The trauma center was praised last month by the State of Florida as delivering patient care that is ''above and beyond'' that of other level-1 trauma centers. I personally toured this trauma center, and I can tell my colleagues it is a source of pride for many central Floridians.

Last week, Orlando Regional Medical Center announced that they were closing in April 2003 because the neurosurgeons in the Orlando area can no longer afford skyrocketing medical liability insurance premiums.

Now, how bad is the situation? Dr. Jonathan Greenberg, the chairman of the Department of Neurosurgery at ORMC, personally told me that the malpractice insurance premiums have risen five-fold over the past 2 years from $55,000 a year to $256,000 a year.

We do not have to guess what the consequences are when this sort of facility is closed down. Just last week, Mrs. Leanne Dyess testified before our Committee on the Judiciary. Her husband suffered one of these severe head injuries in a car accident. There were no longer any neurosurgeons in the area because they could not afford the liability insurance. As a result, it took 6 hours to airlift Mr. Dyess to a different location. It was too late. Mr. Dyess is now permanently brain damaged. He is unable to talk, unable to work, unable to provide for his family.

We must bring common sense back to the health care system so that patients with severe head injuries have access to trauma centers. We should care about each other more and sue each other less.

I ask my colleagues to vote ''yes'' on H.R. 5 and the rule. I will also include in the RECORD an article dated March 11, 2003 from Dr. Greenberg and published in the Orlando Sentinel.

[From the Orlando Sentinel, Mar. 11, 2003]

NEUROSURGEON: SAVE TRAUMA CENTER

(By Jonathan Greenberg, M.D.)

A human tragedy of immense proportions is unfolding in Central Florida, and my neurosurgical colleagues and I have been unable to prevent it.

Less than two weeks after a state trauma-site review lauded Orlando Regional Medical Center's Level I trauma center for its high level of patient care and dedication ''above and beyond'' that at other Level I centers, the ORMC administration was compelled to inform the state that it will go off-line as an adult Level I trauma center as of April 1 because of the lack of neurosurgical coverage.

Seven neurosurgeons resigned from the ORMC medical staff, citing the physical stress of on-call requirements, medical malpractice-insurance premiums, increased liability exposure in treating trauma patients and the adverse impact that on-call coverage has had on their private practices.

I cannot fault my neurosurgical colleagues for having taken this action. They have complained that they were being charged significantly increased malpractice-insurance premiums—or were going to be denied malpractice insurance altogether—for the privilege of getting up in the middle of the night to take care of critically ill head and spine-injured patients.

Three neurosurgeons have closed their practices and left the community. Trying to replace them has been almost impossible. What sane physician would move to a state known to be in the throes of a ''medical malpractice-insurance crisis,'' where insurance is either unobtainable or exorbitantly priced, and where there is a constant threat of frivolous but nonetheless disruptive lawsuits?

ORMC has lobbied vigorously for relief; we have demonstrated to increase public awareness and spoken with state representatives.

For those who denied that there was a ''physician drain'' or a problem with the tort system, who asserted that this was only an insurance-industry, stock-market-cyclical financial problem, who ignored the looming crisis, the end results of denial, deception, apathy and procrastination are clear.

As of April 1, Central Florida will have lost one of its most precious assets, the ORMC Level I trauma center. There will not be enough neurosurgeons left to fully man the on-call schedule.

We know that in the past many patients survived their injuries because they were brought to ORMC; they would not have survived elsewhere. After April 1, similarly injured patients may not survive. I am profoundly saddened by this prospect.

It will take more than an act of God to avert this catastrophe. It will take responsible action by the governor, the state Legislature, and county and regional leaders. Band-Aid solutions will not save a health-care system that is exsanguinating. ORMC has the only Level I trauma center in the state without sovereign immunity. Relief from predatory lawsuits and unaffordable insurance premiums and adequate compensation for extraordinary medical care will be necessary.

Mr. HASTINGS of Florida. Mr. Speaker, would the Chair announce the remaining time on both sides, please?

The SPEAKER pro tempore (Mr. THORNBERRY). The gentleman from Florida (Mr. HASTINGS) has 10¼ minutes remaining; the gentleman from New York (Mr. REYNOLDS) has 10½ minutes remaining.

Mr. HASTINGS of Florida. Mr. Speaker, I am pleased and privileged to yield 3 minutes to my good friend, the gentleman from Michigan (Mr. DINGELL), the dean of the House, who I think can speak to both substance and process.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Speaker, I say to my colleagues, vote down this iniquitous rule. It is unfair. It is demeaning. It strikes at the heart of the parliamentary practices that are the proud tradition of this body. It also tears at the throat of honorable and open and fair debate. It denies every Member, not just Democrats, the right to offer amendments to the bill. Mr. Speaker, 31 amendments were requested of the Committee on Rules last night; not a one was given. A substitute was given.

The chairman of the committee talks of the need to have a fair and open process. Well, we do not have a fair and open process. Therefore, vote down the rule, vote down the previous question. It is an outrage, and it is inconsistent with the tradition and practices of the House.

I would point out that in the rules, rule XVI, clause 6 begins, ''When an amendable proposition is under consideration, a motion to amend and a motion to amend that amendment shall be in order.'' It is in the rules. The Committee on Rules should read it.

We are not discussing the substance of the legislation. We hope to have a fair chance to do so. We hope to have a

fair chance to amend the basic proposition before this body. The Committee on Rules has not given it to us.

I went before the Committee last night and I asked, am I wasting my time and am I wasting your time by being here? The answer is, I was. I was not told that I was, but the simple fact of the matter was the decision had already been made. The process had already been carefully cooked so that no opportunity to amend the bill is before this body at this time.

We can talk about what it is that is wrong with this legislation and how the amendments would improve it. That is really not important. What is important is that the basic rights of the Members of this body, the basic prerogatives of the institution to perfect legislation before it has been denied by the majority, functioning through the organism of the Committee on Rules.

In 14 years as the chairman of the Committee on Commerce, never once did I go before the Committee on Rules to ask for anything other than an open rule so that all Members might have a fair chance to participate in the debate on the legislation and to offer amendments as the need would require, no matter how complex or controversial the legislation was. That is the way this institution should work.

This rule demeans this body. It demeans every Member here, and it demeans the Committee on Rules and those who have inflicted this outrage upon this body.

I say again, vote this rule down. It is wrong. It is arrogant. It is without justification. I note that it comes up on a day when this is the last item of business of the week and when this is the last item of business that will be done. Let us vote it down, and let us then go about the business of conducting the business of the House in a fashion which is consistent with the traditions of this great democratic institution.

Mr. REYNOLDS. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from California (Mr. DREIER), the chairman of the Committee on Rules.

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. Mr. Speaker, it is a great honor to be a Member of this institution, and it is an honor for me to have the opportunity to follow my very good friend, the gentleman from Michigan (Mr. DINGELL), the dean of the House.

As we have listened to the arguments that have been provided about the rights of the minority, I have to say that while the gentleman from Michigan (Mr. DINGELL) served for 14 years as chairman of the Committee on Commerce, I served for 14 years as a member of the minority in this institution. When we won the majority in 1994, I felt very strongly about something that had existed under the democratic rule in this place for 4 uninterrupted decades. I felt strongly about ensuring that the minority had the right to come forward with at least an opportunity, through an amendment and a motion to recommit, which was denied us on many occasions.

Now, last night when we had the testimony in the Committee on Rules, the gentleman from Michigan (Mr. DINGELL) told me that he came here in 1955, and our good friend, the gentleman from Michigan (Mr. CONYERS) came here in 1965, and they had never known of any instance whatsoever when the Democrats had denied the Republican minority the opportunity to consider at least an opportunity to amend through a recommittal motion.

I have to say that I have the greatest respect for the gentleman from Michigan (Mr. DINGELL), my friend; but I have a list right here of in the 100th Congress, 16 examples of where this was denied.

Now, this issue of payback has come up. Well, so is this payback now that we are imposing on the minority? Absolutely not. Because when we passed our opening day rules package, having served 14 years in the minority, I was very sensitive to make sure that we would guarantee the minority that right to offer a motion to recommit with an amendment, and that is exactly what is going to exist under this process.

Now, I believe that we should have as open and as fair a process as we can, and I stand here continuing to be committed to our goal of ensuring that the minority does have as many rights as possible, and I will continue to fight in behalf of that, because I believe in the Madisonian spirit of minority rights.

I also know that we have a responsibility to move our agenda. And we are doing that, while guaranteeing these minority rights.

Now, when we opened this process last night, I am very happy that my friend, the gentleman from Florida (Mr. HASTINGS), began by talking about the fact that we did meet his request to provide 2 hours. There will be a debate. There will be an opportunity for Members to voice their concern, regardless of what side of this issue they are on. I happen to think that it is very important for us to also recognize that the Committee on the Judiciary and the Committee on Energy and Commerce both had full markups with the exchange of ideas, and the people who have stood up to speak against this rule are people who in fact offered amendments through the committee process. The committee process has worked very effectively here.

We have come together with a package which I believe, through both committees, can, in fact, have an opportunity to be heard; and I urge my colleagues to vote in support of this rule and for the underlying legislation.

Mr. HASTINGS of Florida. Mr. Speaker, I would remind the distinguished chairman, my friend, that we did have 31 amendments last night; none of them have been allowed to come to the floor.

Mr. DREIER. Mr. Speaker, I thank the gentleman for reminding me.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 1½ minutes to the gentleman from Virginia (Mr. SCOTT), my very good friend.

(Mr. SCOTT of Virginia asked and was given permission to revise and extend his remarks and include extraneous material.)

Mr. SCOTT of Virginia. Mr. Speaker, this closed rule does a disservice to the legislative process. Medical malpractice is a very complicated issue, there are many different provisions, and we cannot possibly debate each one with a closed rule. The fact is that one-half of the medical malpractice premiums represent ½ of 1 percent of health care costs, and those costs have been going up at the same rate of health care inflation. California had medical malpractice reform, but the rates did not go down until there was insurance reform.

This bill does nothing to eliminate frivolous lawsuits, but it makes the bona fide lawsuits even more difficult to bring. The elimination of joint and several liability means that you have to chase each and every doctor for each and every portion of their liability. The young Mexican girl with the transplant, one would have to prove a separate case against each and every company, the transplant company, the hospital, and everybody else before she could get anything. She would probably use up the whole $250,000 cap before she could get anything.

The collateral source rule will shift the cost of malpractice onto the employer. If one has a self-insured employer, if one of their employees gets put in a malpractice-induced coma, the employer will have to pay the bill. This bill prohibits subrogation so that the employer cannot get the money back; the malpractice insurance company will not have to pay that hospital bill.

Mr. Speaker, we need to debate that and discuss it; but we cannot, because it is a closed rule.

I hereby attach to my statement, the additional dissenting views I offered to the Judiciary Committee report on H.R. 5.

ADDITIONAL DISSENTING VIEWS

In addition to the dissenting views, I would add the following:

1. In addition to the comments on the bill's elimination of joint and several liability, I would add that this new burden on the plaintiff is administratively unfair to the plaintiff. The apportionment of malpractice responsibility is routinely made in the health care field by apportionment of insurance coverage. Health care providers can and do decide in advance who will pay for what coverage. The plaintiff, on the other hand, is not in a position to apportion damages, because the plaintiff often has no idea what happened, much less who was responsible. The entire concept of res ipsa loquitur is based on the fact that some cases are so obviously the result of malpractice that the general burden of proof is eased for such victims. With the elimination of joint and several liability, and without knowing exactly what

happened, the plaintiff will have to make a separate case, including establishing a standard of care, violation of that standard and proximate cause for each conceivable participant in his care and always have the possibility of defendants pointing to an ''empty chair'' or an insolvent defendant at the trial. This burden comes with the costs of expert witnesses for each doctor, nurse and hospital even minimally involved in the most egregious and obvious cases. As the dissent mentions, any defendant can always seek contribution without the elimination of joint and several liability.

2. In addition to the comments in the dissent on the collateral source rule, I would add that there are three interested parties: the plaintiff, the health care insurance company and the defendant. Good arguments can be made for the plaintiff to benefit from the provisions he has made to pay his bills. Some may have saved money over the years, including a medical savings account, and others may have paid for insurance. Those persons who have invested in insurance should be able to benefit from their thrift. If one is not persuaded by that argument, and is offended by the plaintiff ''being paid twice'' for the same bill, then one could reasonably say that the health insurance carrier should be able to get its money back through subrogation, and charge a smaller premium based on the anticipation that some of their claims will not ultimately have to be paid, because a tortfeasor will be responsible. The last person of interest who should benefit from the plaintiff's insurance should be the tortfeasor. In fact the prohibition against subrogation in the bill creates the bizarre situation in which a self-insured small business could have an employee in a malpractice induced coma, and have to pay all of the hospital bills, notwithstanding the fact that the negligent doctor is fully insured.

3. Finally, one of the reasons why the ''average'' malpractice award is increasing is because smaller cases are not brought. The complexity of the cases makes it impossible to hire an attorney if the award is too small to generate a meaningful attorney's fee. This ''average'' will undoubtedly increase if this bill is enacted because of limitations on damages, limitations on attorney's fees, elimination of joint and several liability and elimination of collateral sources. A better measure of the impact malpractice litigation has on the health care system is the fact that all malpractice awards and settlements have been approximately ½ of 1 percent of the national health care costs and have been recently increasing at the same rate as the health care costs generally.

ROBERT C. SCOTT.

Mr. REYNOLDS. Mr. Speaker, I yield 2 minutes to the gentlewoman from Ohio (Ms. PRYCE), a member of the Committee on Rules and Chair of the Republican Conference.

Ms. PRYCE of Ohio. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, my home State of Ohio is one of a dozen States that is facing a real crisis in health care. Simply put, doctors are leaving and patients are suffering. One by one, facilities are closing their doors, retiring early, and not performing various procedures because, simply put, they cannot afford the insurance. The result is a pending perfect storm, where all of the converging factors meet to create utter and total chaos.

Among Ohio physicians surveyed last year, 96 percent expressed serious concerns about the impact of rising liability insurance. Seventy-two percent in high-risk specialties said insurance premiums have affected their willingness to perform procedures, and 34 percent have admitted that they have to order more tests, perform more procedures, and practice defensive medicine just to protect themselves. But as a result, health care costs soar. In Ohio alone, there is story upon story of doctors retiring early or leaving the State just because of liability premiums.

Take Brian Bachelder, who had to stop practicing obstetrics this year because he simply could not afford it. As a result, his patients, many of whom had trouble just paying for the gas to get to their appointment with him, will now have to travel 50 or 65 miles further for prenatal care. Or take Dr. Romeo Diaz, whose patients had to actually chip in and raise $40,000 to cover his increased premiums. All of this scrimping and saving for a doctor who had not had a malpractice claim filed in over 10 years.

America's health care system is quickly approaching the eye of a perfect storm, a world without doctors. They are becoming increasingly hard to find in so many places; and even worse, when you find one, they often cannot help. Their hands are tied.

Far too many Americans are unable to find a doctor to deliver a baby, to perform a surgery, or to provide trauma care necessary to save a loved one's life.

Mr. Speaker, Congress needs to act today and pass a medical liability reform plan that keeps our doctors practicing, alleviates patients' suffering, and restores medical justice to this system.

□ 1115

Mr. HASTINGS of Florida. Mr. Speaker, how much time is remaining on both sides?

The SPEAKER pro tempore (Mr. THORNBERRY). The gentleman from Florida (Mr. HASTINGS) has 5¾ minutes remaining. The gentleman from New York (Mr. REYNOLDS) has 5½ minutes remaining.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 1 minute to my good friend, the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, Nathaniel is in fact the face of the devastation of H.R. 5. In the name of God and country, this rule says to Nathaniel, 6 days old, he is brain damaged because physicians and nurses failed to diagnose jaundice. In this bill he would be denied under the capping of noneconomic damages that are capped. Nathaniel is the face of the horror of what happened in the Committee on Rules last night. There will be no response to our physician friends and doctor friends on the question of reducing premiums because they rejected my amendment that said 50 percent of the savings by insurance companies should be reinvested into physicians to lower their premiums.

They know that California did not have those premiums go down until California enacted insurance reform. This is an insurance giveaway bill. This is not going to bring doctors into rural and urban America.

Mr. Speaker, this rule should be voted down in the name of Nathaniel, now brain damaged. H.R. 5 is a devastation and a disgrace to this baby who lost the ability to live a good quality of life.

Mr. Speaker, I am disgusted by this closed rule and call on my colleagues to defeat the rule and the underlying bill. We have a health care crisis on our hands. We need to work together in a democratic fashion to address it: to improve access to care, to protect patients, to ensure that good physicians can afford to continue treating those patients, and to decrease frivolous lawsuits. The underlying bill does nothing to address any of those issues, and I and many of my colleagues came forth last night to present amendments that would have ensured that it did. Not a single one of those excellent ideas will be even considered today.

What in the name of God and Country is our Democracy coming to when on the Floor of the House of Representatives, there is not a single chance to debate and vote on one of many ideas that could save lives and rescue our floundering health care system?

I hate the idea of putting a price tag on a human life, or a value on pain and suffering. However, we all know that malpractice premiums are outrageously high in some regions, for some specialities of medicine. I understand that some physicians are actually going out of business because the cost of practicing is too high, and that we run the risk of decreasing access to healthcare if we do not find a way to decrease malpractice insurance premiums.

But it would be doubly tragic if we did compromise the ability of patients suffering from medical negligence from seeking recourse in our courts, and did not achieve any meaningful decrease in malpractice premiums. Therefore, I offered an amendment last night that would require that all malpractice insurance companies make a reasonable estimate each year of the amount of money they save each year through the reduction in claims brought about by this Act. Then they would need to ensure that at least 50% of those savings be passed down in the form of decreased premiums for the doctors they serve.

I shared this concept with doctors and medical associations down in Texas, and they were very enthusiastic, because this amendment would ensure that we do what, I am being told, this bill is supposed to do—lower premiums for doctors.

Without my provision, this bill could easily end up being nothing more than heartbreak for those dealing with loss, and a giant gift to insurance companies. Parents who lose a child due to a tragedy like the one in North Carolina recently where the wrong heart and lung were placed in a young girl—they don't lose any money—they lose a part of their souls. We are going to tell them that their child was only worth $250,000 in non-economic damages for all of their pain and suffering. We are being told that we are going to do this to such devastated families, in order to enable our doctors

to keep treating patients. However, the Rules Committee has decided to prevent us from voting on amendments that would ensure that this bill helps any doctor at all.

Without debate and votes, a Democracy is not a Democracy. I will vote against this Closed Rule, and encourage my colleagues who care about helping patients and good doctors to do the same.

Mr. REYNOLDS. Mr. Speaker, I yield 2½ minutes to the gentleman from Georgia (Mr. LINDER), a distinguished member of the Committee on Rules.

Mr. LINDER. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise in support of the rule and the underlying legislation, H.R. 5, the underlying medical malpractice reform bill. This rule gives the minority party a motion to recommit with or without instructions. This motion to recommit provides the minority with an opportunity to amend H.R. 5 as it sees fits, something the House Democrats often refused to give Republicans before 1995.

As a former dentist I understand the necessity for this particular form of tort law and how the reality of judicial adventurism is a prime cause of rising health care costs and reduced access in our country.

I absolutely believe that medical malpractice litigation has a substantive effect on health care quality and costs.

In a recent survey of Georgia doctors, 18 percent said they would stop providing high risk procedures to limit their liability; 33 percent of OB-GYNs and 20 percent of family practitioners said they will abandon high-risk procedures such as delivering babies. In addition, 11 percent of physicians will stop providing emergency room services.

The benefits of capping malpractice damages are staggering. In California it is estimated that MICRA has saved under those with high-risk specialties as much as $42,000 per year, not to mention the $6 billion per year of savings to patients in California. According to the U.S. Department of HHS, limits on noneconomic damages could yield taxpayers 25- to $44 billion per year in savings.

Our founders incorporated explicit protections for citizens in criminal trials in the sixth amendment. However, they foresaw the potential abuse in civil trials and thus remained explicitly silent on the rights of juries to operate in civil cases.

In Federalist 83 Alexander Hamilton went to great lengths to discuss the absence of constitutional protections in civil cases, going so far as to claim that he could not ''discern the inseparable connection between the existence of liberty and the trial by jury in civil cases.''

According to Hamilton, the genius of the constitution was not only its flexibility in handling the changing nature of the American judiciary but also its reliance on the legislature to prescribe the effective checks on such changes.

Abuse in our judicial system can be remedied by the implementation and power of trials by jury, but a balance must be struck between that idea and the notions of common sense and personal responsibility. Unfortunately, our current system does not strike that balance.

I urge, as such, my colleagues to join me in passing this rule and the underlying legislation.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts (Mr. DELAHUNT), who has studied this problem long-standing as an attorney.

Mr. DELAHUNT. Mr. Speaker, I thank the gentleman for yielding me time.

This is Linda McDougal, and like Nathaniel and many others she too would be a victim of the underlying bill H.R. 5. She received an unnecessary double mastectomy after doctors mixed up her results, her lab results, and erroneously told her she had breast cancer.

Under this bill her lifetime of pain and disfigurement would be worth $250,000 and not a penny more. I ask my friends, is that fair?

Well, if my friends have any doubts, I would suggest they ask their mother, their sister or their daughter.

Mr. REYNOLDS. Mr. Speaker, I yield 45 seconds to the gentleman from Nevada (Mr. PORTER).

(Mr. PORTER asked and was given permission to revise and extend his remarks.)

Mr. PORTER. Mr. Speaker, I rise in support of the HEALTH Act of 2003. This bill will be the first step towards curing the escalating medical liability costs.

The runaway litigation has forced a dozen States into near cardiac arrest, including my home State of Nevada. In Nevada medical liability costs have skyrocketed, forcing doctors to leave in droves. The trauma center in our top hospital had to shut its doors because there were not enough doctors to treat the patients. Just about every day you pick up the paper and you turn on the TV and there is another story about a pregnant woman or an emergency patient going into other States to have their babies delivered or emergency care treated. It is just one example.

In Las Vegas, Mr. Speaker, obstetrician Dr. Shelby Wilbourn packed up a 12-year practice and moved to Maine, where insurance rates are more affordable and doctors appear less likely to be sued.

Mr. Speaker, in order to remedy this, we must pass this legislation.

Mr. HASTINGS of Florida. Mr. Speaker, I would say to the gentleman from Nevada (Mr. PORTER), the gentlewoman from Nevada (Ms. BERKLEY), who is married to a physician, does not find that H.R. 5 is going to remedy her husband's problem.

Mr. Speaker, I yield 1 minute to the distinguished gentlewoman from California (Mrs. CAPPS), who is a registered nurse and has seen what we are talking about.

Mrs. CAPPS. Mr. Speaker, I rise in opposition to the rule and the underlying bill.

We should not be capping the awards for pain and suffering that an injured patient receives when they have been harmed by their doctor. This puts the burden of rising insurance rates onto the innocent patient rather than the insurance company.

Mr. Speaker, I offered an amendment to the Committee on Rules which was not made in order. My amendment would set caps in the bill of $250,000 or the total compensation package of the CEO of the insurance company representing the doctor in the case, whichever is highest.

It is not fair for insurance companies to pay their executives millions of dollars, give them bonuses, increase their pay when they are trying to deprive victims of their rightful compensation. In these days of Enron and MCI WorldCom, I believe that Congress should be siding with injured patients over corporate executives.

The Nation's largest medical malpractice insurance company pays their CEO $9.7 million, but even so they apparently cannot keep paying for the pain and suffering of patients their clients have injured and so they keep raising their rates. You have to wonder about priorities.

This is about Nathaniel and Linda. This amendment that I propose promotes corporate responsibility. It is a more fair approach, and I urge my colleagues to defeat this rule and the underlying bill.

Mr. REYNOLDS. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania (Mr. GREENWOOD), who is an expert on the Committee on Energy and Commerce on this issue.

Mr. GREENWOOD. Mr. Speaker, I thank the gentleman for yielding me time.

The gentlewoman from Texas (Ms. JACKSON-LEE) showed me a picture of Nathaniel, a young boy tragically brain damaged. I want my colleagues to understand that this bill of ours is modeled after California law. And in California law just last May under the same kind of law, a little boy who was brain damaged at a very young age because of malpractice was awarded $43.5 million. And our bill would do nothing to prevent this young man from getting what they need, and that is probably a lifetime of round-the-clock medical care, a lifetime of lost wages.

All that would be recoverable in full, as it should be, and on top of that at least a quarter of a million dollars in pain and suffering; and if the State from which the child comes wanted to, that State could raise that level to whatever it wants. We have a flexible cap. This is a question of balance. This is a question of balance. We have to figure out how do we properly pay for medical liability claims in a reasoned way that still allows us to retain our doctors and hospitals.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 1 minute to the gentlewoman from Nevada (Ms. BERKLEY), my friend, who is an attorney married to a physician, who has studied this problem actively and carefully over a period of time, coming from a State with dramatic problems.

(Ms. BERKLEY asked and was given permission to revise and extend her remarks.)

Ms. BERKLEY. Mr. Speaker, I fear we are doing a terrible disservice to our Nation's physicians and the patients who depend on them. We are deceiving them by passing a bill that does not ensure that doctors will actually benefit from these caps.

As a representative of southern Nevada I am all too familiar with the medical liability issue. Nevada has faced a serious medical malpractice crisis for years. Doctors cannot afford insurance premiums and they are threatening to leave the State. Some have and some are refusing to accept new patients.

In August of 2002, Nevada passed a carefully balanced tort reform bill which limited noneconomic damages to $350,000 and allowed for judicial discretion in particularly egregious cases. Nevada passed caps. But the medical insurance companies have refused and have failed to reduce their premiums.

This Congress cannot for a minute pretend that we have addressed the real problem of skyrocketing insurance rates if we limit our prescription to liability caps. We must also provide doctors with insurance reforms as well.

Medical liability reform is worthless if we ignore all of the evidence demonstrating that the current crisis is due more to insurance company miscues than liability claims. We must combine them both and I urge you to reject this rule.

Mr. Speaker, I rise in opposition to the rule.

As a Representative of southern Nevada, I am all too familiar with this medical liability issue. Nevada has faced a serious medical malpractice crisis for the last year. Doctors cannot afford insurance premiums and are threatening to leave the State. Some have or are refusing to accept new patients.

I convened discussion groups of doctors and lawyers at my home to try to understand the medical malpractice issue, and it's a regular conversation in my own home as my husband and I, a doctor and lawyer, have searched for effective solutions to this crisis.

Nevada's problem is not one of obscene awards and lawsuits, but of poor calculations and bad decisions on the part of insurers over the past couple of decades.

Nevada's problem is the result of artificially inflated profits, over saturation and price slashing by the insurance company and when Nevada was no longer profitable, St. Paul Insurance Co. withdrew from the market. When that happened, 60% of Nevada's doctors lost their insurance carrier and the remaining medical malpractice insurance companies raised their rates to unconscionable extremes.

In August of 2002, Nevada passed a carefully balanced tort reform bill which limited non-economic damages to $350,000 and allowed for judicial discretion in particularly egregious cases.

Nevada passed caps, but the medical insurance companies have refused and have failed to reduce their premiums.

The evidence demonstrates that judgements are not the full, or even a large measure of the problem. And therefore caps will have a very limited effect on solving this problem.

This Congress cannot—for a minute—pretend that we have addressed the very real problem of skyrocketing insurance rates if we limit our prescription to liability caps. We must also provide doctors with insurance reforms as well.

Medical liability reform is worthless if we ignore all the evidence demonstrating that the current crisis is due more to insurance company miscues than to liability claims.

It is fundamentally unfair and bad public policy to limit jury awards without directly addressing reform of the insurance industry. If this Congress is going to pass tort reform, it should be accompanied by insurance reform so that insurance companies will pass along the savings, and doctors become the direct beneficiaries of cap limitations.

Anything less will fail to solve the malpractice crisis in my State and in this Nation.

I urge my colleagues to vote against this Rule. We are doing a terrible disservice to our Nation's physicians and to the patients that depend on them. We are deceiving them by passing a bill that does not insure that the doctors will actually benefit from caps.

Mr. REYNOLDS. Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. The gentleman from New York has 1¼ minutes remaining. The gentleman from Florida (Mr. HASTINGS) has 2 minutes remaining.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. EDWARDS) and then I will be prepared to close.

Mr. EDWARDS. Mr. Speaker, I am deeply disappointed that the Republican House leadership refused last night to even let this House consider my amendment, a reasonable amendment, to exclude the $250,000 caps only in cases where someone is guilty of gross negligence.

I support cracking down on frivolous lawsuits and I even favor punishing attorneys who file them. But under the guise of stopping frivolous lawsuits, it is wrong for the Republican leadership to protect those guilty of gross negligence even when the consequence is the loss of a child.

Jeanella Aranda was a 1-year-old baby. Last August Jeanella died needlessly in Dallas, Texas, because the transplant liver team did not check the fact that the father's liver and blood type were not compatible. Had they checked they have would have found out little Jeanella's mother could have donated part of her liver and Jeanella would most likely be alive today.

Mr. Speaker, I hope every Member of this House will ask his or herself this question before voting on this awful unfair rule: Had Jeanella Aranda been your child, would you think it would be fair for politicians in Washington to decide how to hold responsible those involved in her death?

Mr. REYNOLDS. Mr. Speaker, I yield 30 seconds to the gentleman from California (Mr. COX).

Mr. COX. Mr. Speaker, everyone in this body knows why pregnant mothers cannot find doctors to deliver their babies, why emergency room and trama centers are closing and why physicians are leaving their practices. The health care liability crisis has been worsening every year since 1993, when I first introduced this legislation that we are considering today.

The national median malpractice awards has been increasing 43 percent a year. It is unsustainable. Today the average physician faces a new lawsuit every year. The opponents of this legislation are convinced that the best place to make split second medical decisions is in the courtroom. But this bill is about getting better health care in America for doctors and patients and all of the people who rely upon this system. It is high time for medical justice and high time to enact this legislation.

□ 1130

Mr. HASTINGS of Florida. Mr. Speaker, I yield myself the remaining time.

Mr. Speaker, if the previous question is defeated, I will offer an amendment to the rule. My amendment will allow the House to consider the Conyers-Dingell substitute to the medical malpractice bill. My amendment will give Members an opportunity to vote on this substitute which, unlike the majority, takes a comprehensive approach to rising medical malpractice insurance premiums. It takes steps to weed out frivolous lawsuits. It requires insurance companies to pass their savings on to health care providers, and it provides targeted assistance to the physicians and communities who need it most.

Let me make it clear that a ''no'' vote on the previous question will not stop consideration of this bill. A ''no'' vote will allow the House to consider and get a vote on the Conyers-Dingell substitute. However, a ''yes'' vote on the previous question will shut out any opportunity for a vote on the substitute. I urge a ''no'' vote on the previous question.

Mr. Speaker, I ask unanimous consent that the text of the amendment and a description be printed in the RECORD immediately prior to the vote on the previous question, on which I urge a ''no'' vote on the base rule.

The SPEAKER pro tempore (Mr. THORNBERRY). Is there objection to the request of the gentleman from Florida?

There was no objection.

The SPEAKER pro tempore. The time of the gentleman from Florida has expired.

Mr. REYNOLDS. Mr. Speaker, I yield myself the remaining time.

I hope my colleagues have had the opportunity to read the heart-wrenching testimony presented by Leanne

Dyess earlier this month before the Committee on the Judiciary. I hope their compassion will allow them to consider how it would feel if a similar tragedy befell someone they love simply because doctors had been pushed out of the area; and I hope they can recognize that, today, we have the opportunity to prevent such tragedies from happening to others.

The HEALTH Act is about patients getting the best possible care they can when and where they need it. Dollar signs do not cure people; doctors do. Let us make sure doctors and other providers all across the country remain open for business.

I urge a ''yes'' vote on the rule and the underlying legislation. A ''yes'' vote is a vote for patients.

Mr. CONYERS. Mr. Speaker, there is one word that best describes this closed rule: cowardly. This is a Republican leadership that fears a real debate on this cold hearted proposal that would rob victims of medical malpractice. They fear that too many of their own Members would vote for a democratic bill because it makes sense and would address the problem.

They have decided to dodge a clean vote on a real bill and bury real debate in procedural doubletalk. They have decided to let their Members hide behind parliamentary tricks.

The Republican leadership has shredded any semblance of fairness or open debate. Just last year, for the first time since 1910, this Republican leadership denied the Minority party a motion to recommit. Today, the two most senior members of the House of Representatives, who are also the two Ranking Democrats on the Committees of jurisdiction, are being denied the opportunity to offer the amendment of their choosing.

The Republican leadership's bill doesn't solve the problem of medical malpractice insurance rates skyrocketing. It has no insurance reform at all. Doctors who are being price gouged by insurance companies will not see one cent of savings from this bill.

The simple fact is that draconian caps on damages do not reduce insurance premiums. In a comparison of states that enacted severe tort restrictions in the mid-1980s and those that resisted enacting any tort reform, no correlation was found between tort reform and insurance rates.

Our bill takes away the antitrust exemption for medical malpractice insurance providers that has allowed those providers to collude to jack up rates for doctors.

The Republican leadership's bill does nothing about the deadly problem of medical malpractice that costs victims literally their life and limb. Between 44,000 and 98,000 people die each year because of medical negligence in hospitals and the Republican answer is to take away the rights of surviving family members and accountability for bad apple health care providers.

H.R. 5 does nothing about the fact that 5% of all doctors are responsible for 54% of malpractice claims paid. H.R. 5 does nothing to solve the problem that medical malpractice is the fifth leading cause of death in the country.

Our bill preserves accountability in the health care system.

The Republican leadership's bill does nothing about frivolous lawsuits, only hurts victims. All this bill does is take away compensation from the most seriously injured plaintiffs. These are the victims who have a case that has so much merit that a jury of their peers decides they deserve more than $250,000 in non-economic damages.

Our bill requires an attorney to file a certificate of merit that an action is not frivolous and, if that certificate is false, that attorney can be disbarred.

The Republican bill takes a chain saw to the health care system instead of a scalpel. It is no wonder they fear a fair and honest debate and a clean vote.

I urge Members to:

(1) Vote ''no'' on the Previous Question so that we can make in order a vote on Conyers-Dingell and other worthy Democratic amendments.

(2) If we are not successful in defeating the previous question, vote ''no'' on this one sided, anti-democratic rule.

The material previously referred to by Mr. HASTINGS of Florida is as follows:

PREVIOUS QUESTION FOR H. RES. 139—MEDICAL MALPRACTICE: H.R. 5—HELP EFFICIENT ACCESSIBLE, LOW-COST, TIMELY HEALTHCARE (HEALTH) ACT OF 2003

In the resolution strike ''and (2)'' and insert the following:

''(2) an amendment in the nature of a substitute consisting of the text of H.R. 1219 if offered by Representative Conyers or a designee, which shall be in order without intervention of any point of order, shall be considered as read, and shall be separately debatable for 60 minutes equally divided and controlled by the proponent and an opponent; and (3)''

CONYERS/DINGELL DEMOCRATIC SUBSTITUTE—H.R. 1219, ''THE MEDICAL MALPRACTICE AND INSURANCE REFORM ACT OF 2003''

SECTION-BY-SECTION ANALYSIS

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

Title I—Reducing frivolous lawsuits

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

SEC. 102.—Health Care Specialist Affidavit. This section requires an affidavit by a qualified specialist before any medical malpractice action may be filed. A ''Qualified Specialist'' is a health care professional with knowledge of the relevant facts of the case, expertise in the specific area of practice, and board certification in a specialty relating to the area of practice.

SEC. 103.—Mandatory Sanctions for Frivolous Actions and Pleadings. This section requires all plaintiff attorneys who file a medical malpractice action to certify that the case is meritorious. Attorneys who erroneously file such a certificate are subject to strict civil penalties. For first time violators, the court shall require the attorney to pay costs and attorneys fees or administer other appropriate sanctions. For second time violators, the court shall also require the attorney to pay a monetary fine. For third time violators, the court shall also refer the attorney to the appropriate State bar association for disciplinary proceedings.

SEC. 104.—Mandatory Mediation. This section establishes an alternative dispute resolution (ADR) system for medical malpractice cases. Participation in mediation shall be in lieu of any other ADR method required by law or by contractual arrangements by the parties. A similar approach is recommended by the Committee for Economic Development (CED), which suggests that defendants make and victims accept ''early offers.'' The effect of the ''early offer'' program, according to the CED, is that defendants will reduce the likelihood of incurring litigation costs, and victims would obtain fair compensation without the delay, expense or trauma of litigation.

SEC. 105.—Punitive Damages. This section limits the circumstances under which a claimant can seek punitive damages in a medical malpractice action. It also allocates 50 percent of any punitive damages that are awarded to a Patient Safety Fund managed by HHS. HHS will administer the Patient Safety Fund through the Agency for Healthcare Research and Quality. The Secretary will promulgate regulations that will establish programs and procedures to carry out this objective. See also, Sec. 221–223.

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

Title II—Medical malpractice insurance reform

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

SEC. 202.—Medical Malpractice Insurance Price Comparison. This section creates an internet site at which health care providers could obtain the price charged for the type of coverage the provider seeks from any malpractice insurer licensed in the doctor's state. This section specifies the availability of online forms and that all information will remain confidential.

Title III—Enhancing patient access to care through direct assistance

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

SEC. 302.—Health Professional Assignments to Trauma Centers. This section amends the Public Health Service Act to authorize the Secretary to send physicians from the National Health Service Corps to trauma centers that are in danger of closing (or losing

their trauma center status) due to dramatic increases in malpractice premiums.

Title IV—Independent advisory commission on medical malpractice insurance

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

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

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

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

(Prepared by the Democratic staffs of the Committee on the Judiciary and the Committee on Energy and Commerce.)

Mr. REYNOLDS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HASTINGS of Florida. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for electronic voting, if ordered, on the question of adoption of the resolution.

The vote was taken by electronic device, and there were—yeas 225, nays 201, not voting 8, as follows:

[Roll No. 61]

YEAS—225

Aderholt	Barton (TX)	Blackburn
Akin	Bass	Blunt
Bachus	Beauprez	Boehlert
Baker	Bereuter	Boehner
Ballenger	Biggert	Bonilla
Barrett (SC)	Bilirakis	Bonner
Bartlett (MD)	Bishop (UT)	Bono
Boozman	Hastings (WA)	Pickering
Bradley (NH)	Hayes	Pitts
Brady (TX)	Hayworth	Platts
Brown (SC)	Hefley	Pombo
Brown-Waite, Ginny	Hensarling	Porter
Burgess	Herger	Portman
Burns	Hobson	Pryce (OH)
Burr	Hoekstra	Putnam
Burton (IN)	Hostettler	Quinn
Buyer	Houghton	Radanovich
Calvert	Hulshof	Ramstad
Camp	Hunter	Regula
Cannon	Isakson	Rehberg
Cantor	Issa	Renzi
Capito	Istook	Reynolds
Carter	Janklow	Rogers (AL)
Castle	Jenkins	Rogers (KY)
Chabot	Johnson (CT)	Rogers (MI)
Chocola	Johnson, Sam	Rohrabacher
Coble	Jones (NC)	Ros-Lehtinen
Cole	Keller	Royce
Collins	Kelly	Ryan (WI)
Cox	Kennedy (MN)	Ryun (KS)
Crane	King (IA)	Saxton
Crenshaw	King (NY)	Schrock
Cubin	Kingston	Sensenbrenner
Culberson	Kirk	Sessions
Cunningham	Kline	Shadegg
Davis, Jo Ann	Knollenberg	Shaw
Davis, Tom	Kolbe	Shays
Deal (GA)	LaHood	Sherwood
DeLay	Latham	Shimkus
DeMint	LaTourette	Shuster
Diaz-Balart, L.	Leach	Simmons
Diaz-Balart, M.	Lewis (CA)	Simpson
Doolittle	Lewis (KY)	Smith (MI)
Dreier	Linder	Smith (NJ)
Duncan	LoBiondo	Smith (TX)
Dunn	Lucas (KY)	Souder
Ehlers	Lucas (OK)	Stearns
Emerson	Manzullo	Sullivan
English	McCotter	Sweeney
Everett	McCrery	Tancredo
Feeney	McHugh	Tauzin
Ferguson	McInnis	Taylor (NC)
Flake	McKeon	Terry
Fletcher	Mica	Thomas
Foley	Miller (FL)	Thornberry
Forbes	Miller (MI)	Tiahrt
Fossella	Miller, Gary	Tiberi
Franks (AZ)	Moran (KS)	Toomey
Frelinghuysen	Murphy	Turner (OH)
Gallegly	Musgrave	Upton
Garrett (NJ)	Myrick	Vitter
Gerlach	Nethercutt	Walden (OR)
Gibbons	Ney	Walsh
Gillmor	Northup	Wamp
Gingrey	Norwood	Weldon (FL)
Goode	Nunes	Weldon (PA)
Goodlatte	Nussle	Weller
Goss	Osborne	Whitfield
Granger	Ose	Wicker
Graves	Otter	Wilson (NM)
Green (WI)	Oxley	Wilson (SC)
Greenwood	Paul	Wolf
Gutknecht	Pearce	Young (AK)
Harris	Pence	Young (FL)
Hart	Peterson (PA)	
	Petri	

NAYS—201

Abercrombie	Carson (OK)	Etheridge
Ackerman	Case	Evans
Alexander	Clay	Farr
Allen	Clyburn	Fattah
Andrews	Conyers	Filner
Baca	Cooper	Ford
Baird	Costello	Frank (MA)
Baldwin	Cramer	Frost
Ballance	Crowley	Gonzalez
Becerra	Cummings	Gordon
Bell	Davis (AL)	Green (TX)
Berkley	Davis (CA)	Grijalva
Berman	Davis (FL)	Gutierrez
Berry	Davis (IL)	Hall
Bishop (GA)	Davis (TN)	Harman
Bishop (NY)	DeFazio	Hastings (FL)
Blumenauer	Delahunt	Hill
Boswell	DeLauro	Hinchey
Boucher	Deutsch	Hinojosa
Boyd	Dicks	Hoeffel
Brady (PA)	Dingell	Holden
Brown (OH)	Doggett	Holt
Brown, Corrine	Dooley (CA)	Honda
Capps	Doyle	Hooley (OR)
Capuano	Edwards	Hoyer
Cardin	Emanuel	Inslee
Cardoza	Engel	Israel
Carson (IN)	Eshoo	Jackson (IL)
Jackson-Lee (TX)	Meek (FL)	Sanchez, Loretta
Jefferson	Meeks (NY)	Sanders
John	Menendez	Sandlin
Johnson, E. B.	Michaud	Schakowsky
Jones (OH)	Millender-McDonald	Schiff
Kanjorski	Miller (NC)	Scott (GA)
Kaptur	Miller, George	Scott (VA)
Kennedy (RI)	Mollohan	Serrano
Kildee	Moore	Sherman
Kilpatrick	Moran (VA)	Skelton
Kind	Murtha	Slaughter
Kleczka	Nadler	Smith (WA)
Kucinich	Napolitano	Solis
Lampson	Neal (MA)	Spratt
Langevin	Oberstar	Stark
Lantos	Obey	Stenholm
Larsen (WA)	Olver	Strickland
Larson (CT)	Ortiz	Stupak
Lee	Owens	Tanner
Levin	Pallone	Tauscher
Lewis (GA)	Pascrell	Taylor (MS)
Lipinski	Pastor	Thompson (CA)
Lofgren	Payne	Thompson (MS)
Lowey	Pelosi	Tierney
Lynch	Peterson (MN)	Towns
Majette	Pomeroy	Turner (TX)
Maloney	Price (NC)	Udall (CO)
Markey	Rahall	Udall (NM)
Marshall	Rangel	Van Hollen
Matheson	Reyes	Velazquez
Matsui	Rodriguez	Visclosky
McCarthy (MO)	Ross	Waters
McCarthy (NY)	Rothman	Watson
McCollum	Roybal-Allard	Watt
McDermott	Ruppersberger	Waxman
McGovern	Ryan (OH)	Weiner
McIntyre	Sabo	Wexler
McNulty	Sanchez, Linda T.	Woolsey
Meehan		Wu
		Wynn

NOT VOTING—8

Combest	Gilchrest	Rush
DeGette	Hyde	Snyder
Gephardt	Johnson (IL)	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. THORNBERRY) (during the vote). Members have 2 minutes to record their votes.

□ 1154

Ms. WATSON, Messrs. SANDLIN, MATSUI, HINOJOSA, SHERMAN, KUCINICH, Mrs. JONES of Ohio, Messrs. RUPPERSBERGER, BALLANCE, DEUTSCH, OWENS, Ms. MAJETTE, and Mr. DAVIS of Florida changed their vote from ''yea'' to ''nay.''

Mr. PETRI and Mr. PAUL changed their vote from ''nay'' to ''yea.''

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. HASTINGS of Florida. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 225, noes 201, not voting 8, as follows:

[Roll No. 62]

AYES—225

Aderholt	Bartlett (MD)	Bilirakis
Akin	Barton (TX)	Bishop (UT)
Bachus	Bass	Blackburn
Baker	Beauprez	Blunt
Ballenger	Bereuter	Boehlert
Barrett (SC)	Biggert	Boehner

Bonilla
Bonner
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Isakson
Issa
Istook
Janklow
Jenkins
Johnson (CT)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—201

Abercrombie
Ackerman
Alexander
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Clay
Clyburn
Conyers
Cooper
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Hall
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lynch
Majette
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—8

Combest
DeGette
Gephardt
Gilchrest
Hyde
Johnson (IL)
McIntyre
Snyder

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. (Mr. THORNBERRY) (during the vote). Members are advised 2 minutes remain in this vote.

□ 1207

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Sherman Williams, one of his secretaries.

HELP EFFICIENT, ACCESSIBLE, LOW-COST TIMELY HEALTHCARE (HEALTH) ACT OF 2003

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 139, I call up the bill (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, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. SIMPSON). Pursuant to House Resolution 139, the bill is considered read for amendment.

The text of H.R. 5 is as follows:

H.R. 5

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act of 2003''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) EFFECT ON FEDERAL SPENDING.—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this Act to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of ''defensive medicine'' and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals;

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

SEC. 3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

The time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first. In no event shall the time for commencement of a health care lawsuit exceed 3 years after the date of manifestation of injury unless tolled for any of the following: