the caps in this bill will lower malpractice premiums. But more importantly, the case has not been made, and in my view cannot be made, that these caps are fair to victims like Linda McDougal.

There very well may be solutions that we in the Senate can develop to address the cost of medical malpractice insurance in this country and the effect on patient care that rising premiums are causing. And there certainly are things we can do to address the disturbing problem of medical error in this country. The Institute of Medicine estimates that between 44,000 and 98,000 adverse medical events occur in hospitals every year. Other studies suggest that those numbers may be a vast underestimate.

If we want to reduce malpractice insurance premiums we must address these problems as well as looking closely at the business practices of the insurance companies. What we shouldn't do is limit the recovery of victims of horrible injury to an arbitrarily low sum.

This is obviously a complicated issue. This is the kind of issue that needs to be explored in depth in our committees so that a consensus can emerge. It is certainly not the kind of issue that should be brought directly to the floor with such a great gulf between supporters and opponents. So I will vote no on cloture today on both S. 22 and S. 23, and I hope that these bills will go through the HELP Committee and the Judiciary Committee before we begin floor consideration of this important topic.

CLOTURE MOTION

The PRESIDING OFFICER (Mr. BURR). Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the standing rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to S. 22: A bill 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.

Bill Frist, Johnny Isakson, Sam Brownback, John Thune, Thad Cochran, Wayne Allard, John Ensign, Pat Roberts, Larry Craig, Ted Stevens, David Vitter, John McCain, Lamar Alexander, Norm Coleman, Judd Gregg, John Sununu, Craig Thomas.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 22, a bill to improve patient access to health care services and provide improved medical care by reducing excessive burden the liability system places on the health care delivery system, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from Montana (Mr. BURNS), the Senator from Oklahoma (Mr. COBURN), and the Senator from Arizona (Mr. MCCAIN).

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Illinois (Mr. DURBIN), the Senator from Vermont (Mr. JEFFORDS), the Senator from Illinois (Mr. OBAMA), the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

I also announce that the Senator from North Dakota (Mr. CONRAD) is absent due to illness in the family.

I further announce that, if present and voting, the Senator from Delaware (Mr. BIDEN) would vote ''nay.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 48, nays 42, as follows:

[Rollcall Vote No. 115 Leg.]

YEAS—48

Alexander	Dole	McConnell
Allard	Domenici	Murkowski
Allen	Ensign	Roberts
Bennett	Enzi	Santorum
Bond	Frist	Sessions
Bunning	Grassley	Smith
Burr	Gregg	Snowe
Chafee	Hagel	Specter
Chambliss	Hatch	Stevens
Cochran	Hutchison	Sununu
Coleman	Inhofe	Talent
Collins	Isakson	Thomas
Cornyn	Kyl	Thune
Craig	Lott	Vitter
DeMint	Lugar	Voinovich
DeWine	Martinez	Warner

NAYS—42

Akaka	Feinstein	Menendez
Baucus	Graham	Mikulski
Bayh	Harkin	Murray
Bingaman	Inouye	Nelson (FL)
Boxer	Johnson	Nelson (NE)
Byrd	Kennedy	Pryor
Cantwell	Kerry	Reed
Carper	Kohl	Reid
Clinton	Landrieu	Salazar
Crapo	Lautenberg	Sarbanes
Dayton	Leahy	Schumer
Dodd	Levin	Shelby
Dorgan	Lieberman	Stabenow
Feingold	Lincoln	Wyden

NOT VOTING—10

Biden	Conrad	Obama
Brownback	Durbin	Rockefeller
Burns	Jeffords	
Coburn	McCain	

The PRESIDING OFFICER. On this vote, the yeas are 48, the nays are 42. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

HEALTHY MOTHERS AND HEALTHY BABIES ACCESS TO CARE ACT—MOTION TO PROCEED—Resumed

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture on the motion to proceed to S. 23.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the standing rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to S. 23: A bill to improve women's access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the delivery of obstetrical and gynecological services.

Bill Frist, Johnny Isakson, Sam Brownback, John Thune, Thad Cochran, Wayne Allard, John Ensign, Pat Roberts, Larry Craig, Ted Stevens, David Vitter, John McCain, Lamar Alexander, Norm Coleman, Judd Gregg, John Sununu, Craig Thomas.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 23, a bill to improve women's access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the delivery of obstetrical and gynecological services, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from Montana (Mr. BURNS), and the Senator from Arizona (Mr. MCCAIN).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Vermont (Mr. JEFFORDS), and the Senator from West Virginia (Mr. ROCKERFELLER) are necessarily absent.

I also announce that the Senator from North Dakota (Mr. CONRAD) is absent due to illness in family.

I further announce that, if present and voting, the Senator from Delaware (Mr. BIDEN) would vote ''nay.''

The yeas and nays resulted—yeas 49, nays 44, as follows:

[Rollcall Vote No. 116 Leg.]

YEAS—49

Alexander	Dole	Murkowski
Allard	Domenici	Roberts
Allen	Ensign	Santorum
Bennett	Enzi	Sessions
Bond	Frist	Smith
Bunning	Grassley	Snowe
Burr	Gregg	Specter
Chafee	Hagel	Stevens
Chambliss	Hatch	Sununu
Coburn	Hutchison	Talent
Cochran	Inhofe	Thomas
Coleman	Isakson	Thune
Collins	Kyl	Vitter
Cornyn	Lott	Voinovich
Craig	Lugar	Warner
DeMint	Martinez	
DeWine	McConnell	

NAYS—44

Akaka	Crapo	Inouye
Baucus	Dayton	Johnson
Bayh	Dodd	Kennedy
Bingaman	Dorgan	Kerry
Boxer	Durbin	Kohl
Byrd	Feingold	Landrieu
Cantwell	Feinstein	Lautenberg
Carper	Graham	Leahy
Clinton	Harkin	Levin

Lieberman	Nelson (NE)	Sarbanes
Lincoln	Obama	Schumer
Menendez	Pryor	Shelby
Mikulski	Reed	Stabenow
Murray	Reid	Wyden
Nelson (FL)	Salazar	

NOT VOTING—7

Biden	Conrad	Rockefeller
Brownback	Jeffords	
Burns	McCain	

The PRESIDING OFFICER (Mr. VITTER). On this vote, the yeas are 49, the nays are 44. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. BYRD. Mr. President, last Wednesday, Senator ENSIGN introduced S. 22, the Medical Care Access Protection Act of 2006, a bill that would ''cap'' legal damages awarded to victims of medical malpractice. Senators SANTORUM and GREGG similarly, just last week, introduced S. 23, the Healthy Mothers and Healthy Babies Access to Care Act, a bill to limit legal damages in cases involving obstetrical and gynecological services.

Today I voted not to invoke cloture on the motions to proceed to these two bills, because there has been no debate of these particular measures in the 109th Congress. There have been no hearings scheduled or held on the bills this year, and their provisions raise questions to which West Virginians deserve complete and well-considered responses.

The situation in West Virginia today is not as it was several years ago, when the State legislature enacted medical liability tort reform. At that time, there was a perceived crisis based on the escalating costs of medical insurance premiums, and there were serious concerns that doctors and other health care providers may have been leaving the State to avoid the expenses they incurred in protecting themselves from legal liability. Today, however, even the West Virginia State Medical Association, a strong supporter of medical liability reform, advises that, based on the significant changes passed by the West Virginia State Legislature in 2003, the State has ''already seen positive results with recent decreases in insurance premiums and an increase in the ability to recruit physicians to the state.''

Based on the acknowledged success of West Virginia's legislative enactments in this area, it would be irresponsible, if not downright foolhardy, to enact S. 22 and S. 23 with little examination and no recent debate, particularly when the provisions of these bills would explicitly preempt certain State laws. In addition, the bills shorten the time during which patients can bring cases; they limit punitive damages; they exempt from product liability lawsuits health care providers who have prescribed drugs or devices approved by the FDA; and they generally revamp our Nation's medical liability system in the wink of an eye, though the bills' provisions have been subject to little, if any, serious scrutiny.

Based on the changes that have occurred in our medical liability system since 2003, legislation of this importance requires careful consideration by the Senate's relevant committees of jurisdiction. To give such important provisions such short shrift, particularly in this changed environment, would do a tremendous disservice to medical providers and patients throughout both West Virginia and the Nation.

Mr. KOHL. Today the Senate once again considered medical liability reform bills—S. 22 and S. 23—both of which would impose an arbitrary cap on the amount of noneconomic damages—pain and suffering awards—an injured patient can receive in a medical malpractice lawsuit.

This is not the first time the Senate has dealt with such legislation. In years past, there were real problems with skyrocketing premiums that insurance companies were charging doctors. Even then, imposing damage caps was the wrong approach to address the issue and remains just as wrong today. A so-called reform based on arbitrarily capping pain and suffering awards is not a panacea. Studies show that passing a Federal medical malpractice law with damage caps will likely have no impact on runaway insurance premiums. Further, there is no promise that any savings insurance companies realize from such a law would be passed on to doctors.

Moreover, we find that medical malpractice premiums have leveled off or are no longer increasing in both States with and without caps on noneconomic damages. A reasonable person could question why we are even considering this legislation when it appears the problem is abating. Nonetheless, some insist against all evidence that we need to pass these bills to save the health care system. Just as I have opposed similar damage cap bills in the past, I will oppose both S. 22 and S. 23.

Wisconsin has thoroughly addressed this issue with great success. As a result, we do not have a medical liability insurance crisis like some other States. Wisconsin has a noneconomic cap and a system that works for doctors and patients alike. Specifically, Wisconsin limits the amount of liability insurance a medical professional must obtain, and beyond that, Wisconsin's Patient Compensation Fund ensures that injured patients are fully reimbursed for their damages. I oppose doing anything to upset the delicate balance the State has found.

Though neither S. 22 nor S. 23 would preempt Wisconsin's damage caps, Wisconsin law would be overturned in several other areas. For example, Wisconsin law grants children the right to sue, better ensures that victims fully recover their damages from defendants, and does not limit attorney fees as much as the Federal proposal. I will not support a Federal solution that undoes Wisconsin's law.

To be sure, the larger issue of medical liability reform deserves a serious debate instead of the resurfacing of a one-sided solution. We might want to look to Wisconsin as a model.

Mr. CHAFEE. Mr. President, today I voted in favor of invoking cloture on S. 22, the Medical Care Access Protection Act of 2006, and S. 23, the Healthy Mothers and Healthy Babies Access to Care Act. I have concerns about various aspects of the legislation including the specific levels of the proposed damage caps. However, I do believe that reform of the medical malpractice system should be considered by the Senate to discourage frivolous lawsuits and to ensure that individuals are able to access affordable health care. For these reasons, I voted to invoke cloture on both of these bills in an effort to move this important debate forward.

The PRESIDING OFFICER. The Senator from Wyoming.

MORNING BUSINESS

Mr. ENZI. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

SMALL BUSINESS HEALTH PLANS

Mr. ENZI. Mr. President, I rise today to support action on health care this week. There is a bill that will be voted on tomorrow morning that I think is extremely critical to the health of the Nation.

As chairman of the Committee on Health, Education, Labor, and Pensions, I can attest that access to affordable health care is the No. 1 issue for working families who contact my committee. I do need to explain where we are in this process.

We have a bill that made it out of committee to provide for small business health plans. There has been unanimous consent requested to proceed to the debate. That was denied. That is just the right to debate the bill, but it was denied. So a cloture motion was put in, and we will vote on that cloture motion tomorrow. That will be the 3 days after the cloture motion was filed. So that is a 3-day delay that we already have in solving small business health plan problems.

Tomorrow morning we will vote at 10. I can't imagine anybody voting against better health for people who work in small businesses. I am anticipating that we will get 60 votes. When we get 60 votes, we still will not get to debate the bill. We will have 30 hours of debate on that cloture vote before we will get to offer any amendments. Thirty hours. That could easily be 3 days. It could easily be Thursday before we get to offer the first amendment. I hope the other side will help to get cloture so that we can proceed to the debate. Then I hope that they would agree to shorten that time significantly so we could actually get to amendments and debate the bill.