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.