

time after the break. I point out that the National Association of Insurance Commissioners study shows that in 2000—the latest year for which data is available—the total insurance industry profits, as a per average premium for medical malpractice insurance, were twice as high as overall casualty and property insurance profits. In fact, malpractice insurance was a very lucrative area for the industry, averaging a 12 percent profit. Over a 10-year period, their premiums went up 1.9 percent, and they are making 12 percent on that.

This is about the insurance industry; it is not about the doctors. We will have more to say about this. This is a lucrative aspect of the insurance industry—everyone knows it—and they just want to cash in on this opportunity at the present time.

Mr. President, I see our leader on his feet at this time in anticipation of a consent agreement, so I withhold further comments.

Mr. REID. Mr. President, I ask unanimous consent that the time from 2:15 p.m. this afternoon until 2:45 p.m. be equally divided between Senators KENNEDY and MCCONNELL or their designees and that at 2:45 p.m. Senator REID of Nevada or his designee be recognized to move to table Senator MCCONNELL's amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. The hour of 12:55 p.m. having arrived, the Senate stands in recess until the hour of 2:15 p.m. today.

Thereupon, the Senate, at 12:55 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mrs. CARNAHAN).

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001—Continued

AMENDMENT NO. 4326

The PRESIDING OFFICER. Who yields time?

The Senator from Kentucky.

Mr. MCCONNELL. Madam President, it is my understanding that I have 15 minutes remaining.

The PRESIDING OFFICER. The Senator is correct.

Mr. MCCONNELL. Madam President, I yield 5 minutes to the Senator from Tennessee who, as we all know, is the only physician in the Senate.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. I thank the Chair.

Madam President, I rise in support of the McConnell amendment on medical malpractice to the Greater Access to Affordable Pharmaceuticals Act. It goes to the heart, I believe, of an issue that has reached crisis proportions in the United States.

Much of the argument and debate on Friday and a little bit yesterday and today centered on how best to frame this debate. Our opponents to the McConnell amendment have tried to frame this as a debate focused on corrupt insurance companies and HMOs.

What is absolutely critical for my colleagues and the American people to understand is that this debate is not about insurance companies. This debate is about patients, patients who are suffering today and, even more important, unless we act on this crisis, will be hurt in the future.

It is about patients versus skyrocketing medical liability insurance premiums that, in large part, are driven by the current medical liability system. This amendment strikes right at the heart of that problem.

Why is this debate important? I go back to patients. How do patients suffer because of these skyrocketing insurance premiums? They suffer in two ways: No. 1, lack of access to health care. If in the future you are a patient, you will see a decrease in access when you want to go to a physician, such as an obstetrician or a neurosurgeon or an orthopedic surgeon. They have all seen these skyrocketing premiums, and these doctors are not going to be there. Why? Because they happen to live in Mississippi where their premiums are \$50,000 or \$100,000 or in Florida where an obstetrician premium might be \$150,000 or \$200,000. They might decide, A, to pack it up and leave and go to another State or, B, to stop practicing or, C—and this is what we see happening all over the country—to stop delivering babies. If your doctor delivered your first baby and you want him to deliver your second baby, you had better call far in advance. Because of these skyrocketing premiums, many physicians are leaving that specialty.

In addition we saw what happened in Nevada where the trauma surgeons basically said, we cannot stay in business, we cannot keep delivering these services, because malpractice premiums are too high. They were actually forced to close down shop for a period of time. Thank goodness it was just for a few days.

I mention the impact on doctors because this is important. For example, if one is an obstetrician and he pays \$200,000 a year for his insurance premiums, as in Florida, and he delivers 100 babies, which is the average for an obstetrician in Florida delivers, that means for every baby the doctor delivers there is a \$2,000 tax or premium.

Now, one might say that this is the worry of the doctor. Well, the doctor can leave. He can switch specialties. He can relocate or retire, early retirement, none of which is very satisfactory. But if a doctor is going to stay in practice, ultimately the doctor is going to pass the cost on to the patient. Who else will pay it? It has to be passed on to the patient.

Americans are watching this debate and they hear the ranting and raving

against the bad insurance companies. Let's go back to the effect of the problem, which is on that individual patient. Then let's look at the root cause, which is this runaway tort liability system, which this amendment takes the first step at fixing.

Patients are hurting in two ways. First, they suffer from a lack of access to care. Specialist are leaving areas, and doctors are refusing to deliver babies.

The second way patients suffer is the overall cost of defensive medicine. Ask your physician right now: Do you practice defensive medicine? According to a recent Harris poll, 76 percent, or three-fourths, of physicians believe concern for medical liability litigation has hurt their ability to provide quality care in recent years. Eighty percent of physicians say they ordered more tests than they thought were medically necessary because they worried about malpractice liability. It is called defensive medicine. It is something the consumer does not see, the patient does not see, but America pays for it. How much? Fifteen, 20, 30, 40, 50—about \$50 billion.

I close by stating my strong support for the McConnell amendment and look forward to continued debate during the course of this afternoon.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I yield 7 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I thank the Senator from Massachusetts for yielding the time.

I readily acknowledge the expertise of Senator FRIST. He is a widely respected heart surgeon. He certainly is a man who understands the practice of medicine, unlike anyone else in the Senate. I do not come as an expert on the practice of medicine. If I have any expertise, it is in trial practice because before I was elected to Congress, I was a trial attorney. I made my living defending doctors and hospitals. I understood medical malpractice then, but as I read this amendment I am troubled.

Let me acknowledge first, yes, there is a national problem with medical malpractice insurance across America. It costs too much in many areas, and we are finding that in many parts of the country doctors cannot afford to continue to practice because of the cost of premiums. But the answer from Senator MCCONNELL on the Republican side is to suggest that the reason the premiums are so high is because of jury verdicts.

They overlook the obvious. Let me point to a source of information not considered liberal in nature, the Wall Street Journal, which on June 24 of this year published an article. I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the Record, as follows: