

(Mr. ANDREWS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Indiana (Ms. CARSON) is recognized for 5 minutes.

(Ms. CARSON of Indiana addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

STUDENT LOAN DEFERMENT FOR ACTIVE RESERVISTS AND NATIONAL GUARD

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. RYAN) is recognized for 5 minutes.

Mr. RYAN of Ohio. Madam Speaker, I rise to discuss the legislation that I introduced yesterday, the Active Reservists and National Guard Student Loan Relief Act of 2003. The purpose of this act is to ease the financial burden shouldered by our many Reservists and members of our National Guard who have been called to active duty.

Right now, there are approximately 180,000 Reserves and National Guard members deployed in the United States and abroad. My legislation is a promise to the members of the National Guard and Reserves that their student loans will be taken care of while they are called to protect and fight for our country.

For members of the Reserves and the National Guard, being called to active duty often means a drastic cut in pay. This legislation will not eliminate that burden, but it will reduce the financial obligations placed on these brave men and women during their time of active service.

The legislation is quite straightforward. Specifically, it assists members of the National Guard and Reserves who have been called to active duty in two ways. It allows those members to defer their student loans while on active duty, and it subsidizes the accruing interest on those student loans which have been deferred.

The act effectively gives eligible servicemembers the same status that they had when they were students; and this will ensure that they do not return to student loans, after serving their country, that are larger than when they were called to serve. This is critically important legislation because it helps our Nation's men and women who have left their jobs, often in higher salaries, to serve in this time of crisis.

One example is a gentleman, first lieutenant from Pittsburgh, Pennsylvania, who has \$50,000 in student loans. He has a master's degree in information systems, and he was called to active duty on January 2, 2003, for 1 year of service. This particular piece of legislation would save this gentleman approximately \$2,600 this year in total interest. When we talk about families

who have student loans, mortgages, car payments, this \$2,600 will provide some peace of mind, while they are also taking a cut in pay, to hopefully allow them to focus on their duties abroad.

Congress must support our men and women who have been called to active service. This is a benefit that our troops enjoyed under the first President Bush during Operation Desert Storm, and it should be promised to our troops today and for the future. I urge Members to support this legislation, and thank the strong bipartisan support that we have already received.

MEDICAL MALPRACTICE INSURANCE CRISIS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, the gentleman from New Jersey (Mr. PALLONE) is recognized for 60 minutes as the designee of the minority leader.

Mr. PALLONE. Madam Speaker, I am here tonight to talk about the medical malpractice insurance crisis which we face in New Jersey and in many States around the country. My concern is that the legislation, H.R. 5, which the Republican leadership intends to bring to the floor of the House of Representatives tomorrow, will not solve the problem in any way and in fact is another example of politics as usual where the Republican leadership, in this case with the support of the President, are bringing up a bill that they realize has no chance of passage. It may pass here and then it will go over to the other body and fail because it was not done on a bipartisan basis; it was not done in an effort to try to bring the parties together and put together something that would actually accomplish the purpose of bringing malpractice premiums down. Rather, it is sort of a bone to special interests.

In other words, it is something that is being put out so the Republicans can say and the Republican leadership can tell the doctor groups, the hospital groups, the HMOs, the drug companies, the medical device companies that somehow they are doing something to help them when in reality they are not because it is not a bill that will ultimately pass.

I want to talk a little bit about the crisis because it is real. In my home State of New Jersey, we have major problems with increasing malpractice premiums. Some of the doctors actually went out on strike about a month ago because of their concerns; and it continues to be a problem, particularly with certain specialty doctors. But in many cases, it is an across-the-board problem in New Jersey.

What is happening now with this Republican bill, H.R. 5, is it is essentially a one-size-fits-all approach that does not look at the actual underlying issue of health care and medical malpractice. It is really designed to put a cap on jury awards at \$250,000, the theory being if you do not allow large jury

awards, that will bring down the cost of malpractice insurance premiums. There is no evidence that is true.

The Republican leadership often cites the State of California as an example of where that kind of cap, a \$250,000 cap, was put into place; but we know when the cap was put into place in California, premiums did not go down. The only time when premiums went down in California was when there was an initiative passed by the voters that actually addressed the cause and said that premiums could not rise a certain amount. That did accomplish bringing the premiums down because they were not allowed to increase significantly. But the \$250,000 cap did not accomplish that.

There are many factors that contribute to the malpractice crisis in New Jersey and elsewhere. There is the changing face of health care in our Nation, namely an increase in high-risk procedures with inherently bad outcomes. There are also the recent problems we have seen in the health care market, namely a shift to managed care, to HMOs which have increasingly created bad outcomes. In addition, bad accounting or bad business judgment on the part of insurance companies has to be taken into consideration when discussing dramatic rises in medical malpractice premiums.

Now, wherever there has been success in trying to reduce premiums for malpractice insurance, it is because there has been some kind of combination of maybe some tort reform, but also linked to trying to actually address directly the effort to reduce the premiums themselves. As I said, in California the premium increases were actually capped.

In my home State of New Jersey a few years ago in the 1970s when we had a problem with rising malpractice insurance premiums, we set up a reinsurance fund which basically said that the insurance companies had to pay a certain amount of money into a fund, and that money would be used to reduce premium costs when there was a crisis.

I actually proposed this in the Committee on Energy and Commerce in the subcommittee that has jurisdiction over this issue. Last week when we had a markup, I proposed H.R. 485, the Federal Medical Malpractice Insurance Stabilization Act, that would create a national reinsurance fund just like we had in New Jersey. The proposal mandates that the Secretary of Health and Human Services establish a program where insurance companies pay into a Federal fund. In time of crisis, these funds are made available to the companies in an effort to provide stability in the marketplace for medical malpractice coverage.

I mention this not because it is the cure-all, but when I tried to raise it in the subcommittee, the Republicans said it was not germane. They would not allow it to be considered as an amendment. Why? Because they have this one-size-fits-all philosophy. They

want to cap damage awards by the jury, and they do not want to deal with caps on premium costs that would actually bring down the cost of malpractice insurance.

I have a lot of issues that I want to talk about in the context of this malpractice reform issue, but I wanted to give an example because I think it is important when we are on the floor and we talk about legislation, we do not just talk about it in an abstract way; we give specific examples of what it means.

I want to give some specific examples in New Jersey, two examples of people who would be negatively impacted by the Republican proposal that is coming up tomorrow, in particular because of the way the language in that bill caps punitive damages, noneconomic damages, at \$250,000; and also the way it designs and limits liability for punitive damages. It is a good way for me to illustrate the problems with that legislation because what would happen in this legislation is many people that have serious injuries or have even died, there would be very little recovery. The cap on the \$250,000 essentially is a huge limitation on some of these people and their families that would suffer a great deal if this legislation were passed. So let me give Members two examples.

One example is Jersey City, New Jersey, a Vietnam veteran who was also a merchant marine barge captain was diagnosed with a carcinoid benign bleeding tumor in his left lung which required that the lung be removed. The diagnosing physician was part of a practice group that also included other doctors, including a surgeon who was set to perform the operation, although that surgeon had no contact with the patient prior to the surgery. The physician mistakenly removed the healthy right lung of the patient rather than the diseased left lung. They could not then also remove the patient's remaining functioning lung which contained the tumor.

Madam Speaker, after this error was discovered with this New Jerseyan, the physicians in this case allegedly altered the medical records and told the patient that after beginning surgery, they determined that they needed to remove the other lung because of a previously undiagnosed disease. However, the Vietnam veteran later learned that the pathology report on the removed lung revealed it was a completely healthy lung. Due to the extraordinary alleged coverup attempted by the defendants and their efforts in seeking to convince the patient that it was actually a good thing that they had removed the wrong lung, the plaintiff added a count to his complaint for punitive damages, not just for compensatory damages.

Today, Madam Speaker, this Jersey City Vietnam veteran requires oxygen 24 hours a day and has a host of medical problems as a result of the operation. Meanwhile, the tumor in his re-

maining lung will likely continue to grow. If it becomes cancerous, there is little that can be done to treat it. His lawsuit is pending.

What would H.R. 5 that the Republicans have brought up do? H.R. 5 would harm this Vietnam veteran in two ways. First, it would virtually eliminate meaningful economic compensation, limiting it to just \$250,000, as we discussed. This is a small amount to compensate a man who has been an active professional and who now must have oxygen tanks with him at all times for the rest of his life.

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Moreover, he has to live in fear that the tumor that his physicians failed to remove will become cancerous and metastasize, spreading cancer throughout his body, or will perhaps rupture, possibly drowning him in his own blood.

Secondly, if you look at H.R. 5, which we are going to consider tomorrow, the Republican bill, it sets standards for the award of punitive damages that would protect the kind of after-the-fact concealment of injury that is alleged in this case. So he cannot even sue because they tried to cover up the malpractice. Because in the bill, punitive damages would not be available unless the physician acted with malice specifically to injure the patient, which was not the case, or deliberately failed to avoid injuring the patient, which was not the case, because in this case the conduct for which punitive damages are claimed is not the malpractice or even the injury itself but the cover-up of the malpractice and the harm and the doctors' deliberate deceit of their patient and as a result removing this healthy lung.

You can see how in this case, this patient basically would not be able to recover what is needed. I am going to give another example later, but I see one of my colleagues is here. I do not want to prolong this, but I do want to say one other thing about this bill which I think is so important. I had an amendment. In fact, the Committee on Rules is considering it now, although I doubt that they will allow it because I am sure the Republican majority is not going to allow these various amendments since they have the one-size-fits-all bill and that is what they want. But what the committee did and what the bill does that we are going to consider tomorrow is it not only limit damages and claims, if you will, for malpractice against a physician or a hospital, which is what the crisis is all about in New Jersey and I am sure my friend from Massachusetts would agree, the people that are concerned about malpractice are physicians and hospitals. They are the ones who have the premiums that are going up and that is where the crisis is. But this bill is not limited to doctors or even hospitals. It limits the liability or the claims, if you will, that can be recovered from HMOs, from drug manufacturers and even from medical device manufacturer-

The most egregious aspect of it is with regard to the HMOs. Because, Madam Speaker, as I think you know, we here in this House over the last few years have tried to pass a patients' bill of rights that would essentially say that if a decision was made by your HMO to deny you care, that you can appeal either through an administrative procedure or go to court and sue the HMO because they denied you the care that you were supposed to have. A number of the courts now in about 12 States, including the Federal Second Circuit Court in New York which covers a number of States, have now said that a person can sue an HMO. What this bill does tomorrow that we are going to be considering is take away your ability to sue the HMO in certain circumstances. It limits it considerably. So while we in Congress have been trying, or at least articulating the fact that we would like to expand people's ability to appeal a denial of a decision with regard to an HMO that really negatively hurt them or impacted their health, this bill would do the opposite. This would take away whatever rights people now have to sue their HMO or to recover from an HMO when they make a mistake through denial of care.

It is incredible for me to think that not only is this not going to work effectively to reduce premiums for malpractice, not only is this going to limit the ability of many victims, as I used my New Jersey example, to sue or to collect damages when they have been seriously injured, but the bill even goes beyond the issue at hand, which is rising premiums for doctors and hospitals and lets off HMOs and drug companies and medical device companies, basically in my opinion special interests who are helping the Republican leadership and so now they have to get some kind of compensation for what they do.

I see my colleague from Massachusetts is here. I yield to him at this time.

Mr. TIERNEY. I thank the gentleman from New Jersey and ask that he stay nearby because I want to have a conversation with him if I can eventually on this.

I have had some very interesting conversations with constituents in my office for a period of time now about this issue, ever since the bill was filed. Primarily the concept was that people come in and they are upset because of what they think are the consequences of this bill from whatever perspective they come.

Consumer groups come in on behalf of patients and talk about how unjust it is for the limitations that it puts on patients. Lawyers come in because they are concerned. They, of course, believe that they are doing the right thing in representing victims of malpractice. They believe that part of what they do that is noble and right is that they try to get people recovery so that they can continue on with their lives in some sort of respectable manner after some consequence or some

disaster has happened to them. And doctors come in because they think that the bill may be helpful to them because they do not want to bear the unlimited exposure to lawsuit damages and do not want their premiums rising through the roof. So we have those three groups sort of pitting against themselves, or some combination. But when you sit people down and talk to them, it is really easy to see that this bill is not about doctors, it is not about lawyers, it is not about patients, it is about insurance companies. It is about insurance companies and those others that you mentioned at the end of your remarks who somehow managed to get into a bill that they are billing as being a limitation on premiums for malpractice but managed to sneak in there immunity for themselves and total absolution from any liability for their malfeasance or their mistakes or their negligence or their wrongful acts even if they are deliberate. The fact of the matter is that that does not serve the American public at all. It does not serve any of those other three groups that we talked about.

I have any number, as I am sure you do, a number of friends that are doctors, physicians in different fields, ranging from those that have a very high risk factor to those that have a very small risk factor. There is not a one of them that when I engage them in conversation that does not have compassion for their patient. When you say to someone, as I did just the other day to a doctor, this particular doctor deals with people with cerebral palsy, an absolutely dedicated physician. I said to him, if one of your patients by virtue of your mistake was injured at a very young age and the consequences were that they were going to have this disaster for the rest of their lives, do you think that \$250,000 would fairly compensate them?

They say, well, no, of course not.

I ask if they realize that in this bill that is the limitation that is put on that. And that women that get injured that may not be working, may be bringing up a family in a household, they do not have economic earnings from which they can then generate a recovery but they have the rest of their lives to go forward when they may then have to go out and try and earn a living and they may be stopped from doing that, do you think for someone in that consequence, that \$250,000 is enough?

Well, of course not, was the answer. And right on down the line, example after example. I came in late, but I know you were giving some examples earlier.

Their answer back to me was, why don't you engage and try to do something that is reasonable? If you don't think \$250,000 is reasonable, why don't you engage them in that? I tell them that the simple fact of the matter is that this is not about a conversation. We are more than willing to sit down and talk about what is fair and what is

just. The problem is that the insurance industry and the HMOs and the others that are driving this piece of legislation and I think using the doctors as a tool in this by trying to get them to believe that their premiums will go down when they will not, and history shows that they have not and studies indicate that they are not intended to by this bill, that they try to get them involved in that instead of realizing that this is all about the insurance industry, all about the HMOs, all about those other manufacturers that want to be absolved from liability and they do not want a discussion. They want to try to generate the heat high enough so that you are either for it or against it. There seems to be a lot of that going on around here these days. They make a bill very difficult and absolutely without any compromise.

You will find out that when the bill comes to the floor tomorrow, they will not be asking for amendments to make it better or to improve it. They will not be asking for any prolonged debate to talk about all the aspects of this, not just premiums but how do we protect doctors from unlimited liability, how do we protect patients to make sure they get their just due without putting doctors out of business. None of that will be open for debate. It will simply be a vehicle for people to make a case, perhaps in the next election in 2004 or whatever or to show themselves to their benefactors that they are out there waving the flag on their behalf. That is unfair. It is unfair to patients, it is unfair to doctors, it is unfair to lawyers and it is unfair to the American public at large.

The fact of the matter is that if you couch it in terms that this is all about keeping premiums down, it is something interesting to note that in California, where this is supposedly the model for this whole program, in the 1970s when they put in a cap on recovery, the fact of the matter is premiums did not go down. The next 4 years they went up considerably, and since that point in time, they have been pretty much running the average of around the rest of the country. So that is a fallacy. In Florida, when the Florida legislation said to the insurance industry, well, then if we are going to pass a bill like this, you have to certify to us that premiums will go down, the insurance industry said, no, we won't do that. In Nevada the same thing happened out there where they talked about enacting severe damage caps. The insurance industry came out and said very clearly that they would still not lower premiums. The studies indicate and history indicates that the insurance industry makes its money primarily not from premiums so much as from the investment of those premiums into other vehicles, whether they are bonds and to a lesser extent stocks and other vehicles and generate income from that. When the market is down, as it is now, and they are not paying off as they are, when it goes down, then they have to

jack up the premiums to get the profits to which they think they need to go on with their company. Then they have to tell somebody that it is not about insurance companies and profit because they know that will not be extremely profitable because everybody wants people to have a profit but they do not want necessarily to be gouged. So they cannot go out and tell people that we just want to get a higher profit and we are going to do anything, we are not going to take any decrease in our profits, but instead we are going to go out and get the doctors, they cannot say that. They turn around and they say, you know what the problem is here? The people that are subject to malpractice, the people that have lost something in their lives, they are the problem. They are getting too high a recovery. Obviously because they are represented by lawyers helping them get that recovery, then lawyers are bad people, too.

The fact of the matter is many times these are complicated cases. Something happens, and if a doctor makes a mistake, it is complicated, and it is difficult sometimes to find out just where that mistake occurred, which part of the process, which doctor or other health care person was involved in that. A suit might be filed to find out, to discover where that was. Then the people that are not involved are let out or the person who is responsible, their insurance company gets engaged in the situation. You would hope that this is a system we have structured to give that person a fair recompense for their injuries. That is the way that it is supposed to work.

The problem is of course that now they are putting up there, they are saying that this whole idea of somebody recovering is where the culprit is. There has not been any great increase in huge recoveries across this country. They cannot point to statistics showing that all of a sudden we have had a spike in incredibly high recoveries for people. And those few high recoveries are generally knocked down by appeals courts to a much more realistic number. It just happens that there was something in the course of that case that the jury got upset with, whether it was somebody trying to cover up something that was done or an insurance company failing to pay off on time, or something that caused them to get an award up there and courts generally ratchet that back.

But if we are not going to proceed on the basis that we have done in the past of having a system where somebody who through no fault of their own is seriously injured, looks to the person who was negligent, to the person who conducted the malpractice for a contribution, which they then in return insure against, then we have to find out what else it is that we are going to put in place for a system. If we think that we want somebody else to decide other than a jury as to what somebody's fair recovery is, then let us hear what it is.

Let us have a debate about that. Who should replace a jury of your peers in deciding that? If you think there should be a cap on the amount of money that people recover, let us have some experts as well as the general public engaged in the debate about what would a fair amount be, because you certainly need to take care of these people. We have decided as a society that the innocent part of that should not be the one that suffers the burden and goes without having any ability to sustain the rest of their lives. We have decided that we have to try and share that blame by making the person who has been negligent responsible and letting them insure for it.

Society has to have a replacement. We can complain about the system that we have all we want, but we should be having a debate instead about what changes in it we are going to make if we think that parts in it are not working. As I said in the beginning of my remarks, I have great sympathy for the doctors who feel they have to practice defensively, for the doctors who feel that their exposure is unlimited, for the doctors who insurance companies abuse by raising their premiums on the false pretense that it is the situation where people are getting too much for their injury. We have to sit down with people and say, what else are we going to put in place, how else are we going to make these decisions in a fair way so that people get fairly compensated for their injuries and so that we understand that doctors have to remain in practice and they have to remain in practice without the fear of being put out of business either financially or because they were constantly engaged in litigation.

I do not hear that kind of conversation coming from the other side of the aisle, from the majority. I frankly do not hear anybody saying we are going to sit down and try to iron this out. Did it go to committee? It went to committee, but people should not feel that there was an open dialogue in committee, that there was any deliberation and honest debate and suggestions about what changes might be made. It went to committee so that the majority who put forward the bill could ram it through on a straight party line vote and get it to the next level so we could do the same thing so that they would have some talking points to go back to their benefactors with and to campaign against and say like, oh my God, other people that don't vote for this bill want to put the doctors out of business, and we are the ones who want to save the doctors when in fact the premiums will not go down a stitch, the insurance companies will not allow the bill to be amended to put a requirement that if the recoveries go down, the premiums go down, and the fact of the matter really is it is all about the insurance companies, the HMOs and the others that are going to be shielded from liability and it is

not about the doctors, not about the lawyers and, shamefully, it is least about the people that are really the ones that we should be focusing on here, the people that are injured through malpractice.

The best thing these insurance companies could do, one of the best things they could do is help doctors put in place some way to police those 5 percent of the medical profession that are responsible for 54 percent of the claims. It seems to me and I think others that that is one area to look at that would take care of a large part of the problem of legal actions and a large part of the problem with that small percentage of the premium increase that may be attributable to claims.

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My recollection of reports and data shows that it is about half a percentage point on those premiums. But that would make sense. Find ways to hold accountable that 5 percent of doctors that have 54 percent of the claims, and make sure they are either reeducated so they are no longer guilty of malpractice, or move them out of the profession to someplace else where they are happy, to a less risky end of the business.

Then let us make sure we take a look at the insurance companies. If they are going to jack up prices every time their investment returns go down, then we have to look at the company industry and say something is wrong here. Doctors should not be subjected to these spikes in premiums just because the economy has gone down and that is where you invested all of your eggs, and now you are suffering a loss and you want to maintain your high profits, you are not satisfied with a lesser profit. Then we have to find a way to deal with that through insurance regulation.

Short of that, and if they are going to insist on putting that bill through, we would at least hope they would have provided some discussion about what is a fair amount; and \$250,000, even by doctors accounts, is not a fair amount of a cap. We would have had some discussion about what are we going to do about policing those 5 percent of the medical profession that create 54 percent of the incidents that end up in lawsuits. And we would have done something with the fact of trying to work our way around so that doctors did not feel they were subject to legal suit in order for people to get discovery as to who is responsible, find some way earlier in the process for the facts to be known so that people could move forward, and have a good public debate about this so that everybody's interests were resolved.

That is not happening, my colleague from New Jersey, you know that very well; and I would just say to you that I would be happy to have a conversation with you on it if you want, but I think you would agree that we could have done a much better job sitting

down as a full House, with a full complement of the committee, with all three parties, the Independents, the Republicans and the Democrats, and people representing the consumers, patients, the doctors, and the insurance companies, and talked about what is needed to be done in order for this to really be done correctly.

I think it is shameful we started out with this yelling and screaming contest, that it is all or nothing, there cannot be any reasonable conversation. Doctors feel they are put in the position of, gee, in order to save ourselves, we have to go along with this low cap, and we have to go along with the provisions of the bill that effectively make it difficult for people injured to even find legal representation, because it is going to be so expensive to proceed on that suit; and there will not be any compensation because the amounts have been capped and lawyers will not come on, and they will be without a lawyer.

Only one in eight people that are subject to malpractice now file a claim anyway, and I guess the insurance companies would like to collect those premiums from the doctors and have that one in eight number be even less. Their profits would be that much higher, but society would not benefit from it. People that were injured would still have to go through their lives with those egregious situations and without help; and I think that we should focus on making the situation better, not having a political battle here that does not allow for debate.

Mr. PALLONE. I want to thank my colleague from Massachusetts for bringing up the reality of what is happening here politically. I know neither one of us wants to talk about politics. We would rather talk with the substance of this issue and what could be done to bring premiums down, because that is where the crisis is.

But what is happening with the Republican leadership, and even the President on this, is totally political. I mean, I have to tell you, I will just give you the background in the Committee on Energy and Commerce. This came up just before the election, I think it was sometime in October, that the Republican leadership on the Committee on Energy and Commerce decided to bring this up. There may have been a hearing, I do not even remember if there was; if there was, maybe there was one. And they quickly brought this up in the committee, wanted to bring to the floor, just before the election in October, just to make the political point that they were trying to accomplish something.

Mr. TIERNEY. If the gentleman will yield, I think you take it back a step further. If you remember the debates about the Patients' Bill of Rights, where doctors and consumer-patients, consumer groups and others were together on this issue, understood that we needed to have protections against HMOs and the like, needed to be able to

file an appeal to an egregious situation, I think a lot of it stemmed from the insurance companies and HMOs at that point in time saying we have to get back the equation here, and the way we will do it is we will improve our financial situation, and we will try to drive a wedge between those patients and their doctors.

Where they finally have come together and have focused the light on us and we are losing ground on the Patients' Bill of Rights, we have to again drive that wedge, and the way we will do it is by telling doctors that their premiums are going up, because patients that are subject to malpractice are getting too much compensation for their injuries, which they cannot justify and cannot move in that direction.

It is shameful. As I say, the doctors, in my view, are good people with the right mind, the right heart on this thing. When you sit down and talk with them, they understand that they are being used.

Their first comment always is, well, why do the Members of Congress not talk about what would be the right amount, if any amount, to talk about fair compensation? Why do they not talk about what should have to happen before a claim is filed? Why do they not talk about reining in the insurance companies?

I said we are perfectly willing, but conversation needs two parties, and there is one party here. We are listening. We would be more than willing to talk. The other side is not willing to have anybody listen, and they are only willing to ram things through; and unfortunately, that is what you are going to see tomorrow, and I do not think anybody is going to be served by it.

Hopefully, the other body in this institution will have the wisdom to stop that and force it back; and then maybe, maybe if there is enough pressure from other groups, we can have a conversation trying to improve the situation for everybody's benefit.

Mr. PALLONE. The gentleman is right on point. Let me tell you how much on point you are. Not only was this same bill essentially rammed in just a few weeks before the election through the committee, but, of course, it had to be the first order of business when we came back.

When we on the Committee on Energy and Commerce asked the Republican leadership on the committee to sit down with us and talk about a bipartisan bill that did not just deal with capping damages at \$250,000, but actually dealt with all different aspects of the crisis, reinsurance, giving money, capping premiums or whatever, essentially what we were told, informally, was well, we cannot do that now. We cannot sit down. We have to bring this to the floor fast. Then it will go over to the Senate, and, do not worry, it will not pass there. Then we will sit down and talk with you about what we are really going to do.

This is essentially what we were told. This came in the subcommittee. Two

weeks ago there was a hearing on Thursday. It was marked up in the subcommittee last Tuesday, it was voted out of the full committee last Thursday, and it was brought to the floor. Everybody understood that this had to go to the floor and there was not any opportunity to talk about what really could be accomplished, and we had to pass it in the House as a political measure for the reasons you said; and then when it gets to the Senate, okay, they will not pass it, we will have to sit down and talk.

This is the politics of it. There is no question about it.

Mr. TIERNEY. I just want to thank the gentleman for taking the time this evening to allow for some debate, probably much more than we will get tomorrow on this, so we could have a full discourse on what is going on and what the content of the bill is and what the effects are going to be on people. I think tomorrow we will hear a lot of the standard positions that people are taking, one side or another.

This discourse hopefully allowed us to broaden that out a little bit and talk about some the specifics. I thank the gentleman again for taking the time to do it and showing his leadership.

Mr. PALLONE. I appreciate the gentleman coming down.

Let me say another thing. This bill is primarily based, this bill that we are going to vote on tomorrow, is primarily based on the notion that damages, punitive and noneconomic damages, have to be capped at \$250,000. What I have said over and over again to the Republican leadership in our committee, in the Committee on Energy and Commerce, is where is this magic \$250,000 figure coming from? I hear over and over again, I guess because it was used in California, but there is absolutely no reason to believe that \$250,000 is somehow some magical term to cap damages.

I think there are many on the Democratic side of the aisle, including myself, that do not have a philosophical problem with a cap on damages, but \$250,000 is too low. Why is it not \$1 million? Why is it not \$1.5 million? Nobody on the Republican side of the aisle will give us an answer for that. They just insist that it has to be \$250,000.

As my colleague from Massachusetts said, any effort to deal with this issue, other than capping damages, the Republicans completely reject. They say that the only thing we are really trying to do here is tort reform. We are not trying to deal with lowering premiums or addressing premium costs, other than through the vehicle of capping damages and tort reform. That is it.

Now, I just wanted to use another example, if I could, Madam Speaker, of how this legislation, this Republican bill that is coming up tomorrow, would be unfair to specific individuals.

I have another example in my home State in Newark, New Jersey, which is

New Jersey's largest city, of a 12-year-old in Newark. I would just like to run through the case, explain what the case is, and why H.R. 5 would be very damaging.

This is a 12-year-old 8th grader who developed flu-like symptoms in September 2001. His mother took him to their family doctor, who gave him a prescription for antibiotics. When he showed no improvement, the boy and his mother returned and a different doctor changed the prescription. The boy seemed to be getting worse, continued vomiting and became dehydrated.

After 2 more weeks, his mother took her son to the emergency room. A blood test revealed there was something seriously wrong. Further testing determined that he had leukemia. However, he was informed he had a 95 percent chance of complete recovery.

Madam Speaker, the boy's pediatric oncologist prepared him for four chemotherapy protocols. After three administrations of the chemotherapy protocol, his progress chart noted that his leukemia was considered in remission.

The 12-year-old Newark boy went in for the final chemotherapy treatment at that point. The order for this administration should have been for one 60 milligram dose of a drug called doxorubicin. Instead, the written order called for three doses instead of one, and the chemistry department at the hospital reviewed the protocol but did not notice the overdose.

After the third dose, the boy had a violent reaction. The head oncology nurse reviewed the chart and said, "There has been a terrible mistake," and called the doctor. The doctor said, "Oh, no, how could this have happened?"

The boy's mother was informed that her son had received a massive overdose and he would be very sick. The most serious problem, she was informed, would be an overproduction of mucous throughout his body.

Now, Madam Speaker, the boy's health deteriorated, forcing him to stay in the hospital. He developed inflammation and ulceration of the linings of his mouth, throat and gastrointestinal tract. He experienced cardiac dysfunction, began vomiting blood and finally had swelling all over his body.

He transferred to a different hospital that began aggressive bone marrow transplants, but, unfortunately, too much damage had been done; and in April of last year this young boy died of severe adult respiratory distress syndrome, ARDS, caused by excessive mucous in the lungs.

Again, I use the example, because I want to show what the impact would be with H.R. 5, the Republican bill that we are going to consider tomorrow. The impact of this legislation would be very severe.

Being a 12-year-old, he did not have any income. The total amount of his economic loss would be the cost of medical treatment for his cancer treatment. The total available amount of

noneconomic damages, compensation to his mother for the poisoning of her son, for his lingering, painful death, and her for permanent loss, would be capped at \$250,000.

Now, again, what is the magical \$250,000? Where does it come from? I do not know. Nobody will give me an answer.

I have had some people who I consider somewhat heartless say to me, well, you know, a boy dies, a young person dies, a minor dies. Why should we pay the parents any more than \$250,000? In other words, they were not dependent on him economically. He did not have a wife, he did not have children, he did not have a job. He was too young for all that. But I think that is a very heartless approach.

It also begs the question of the fact that if there is very little penalty and very little consequence of negligence or medical mistakes, then one could argue that there is not much of an incentive to not keep making them on the part of the hospital or certain physicians maybe that should not be out there practicing.

I do not say that because I think that most doctors make mistakes or are negligent. I certainly do not. But there always are some, like in every profession, that do.

One of the reasons we have punitive damages and that we do not have a cap is because we want to make sure that there is a certain amount of punishment, so that people do not continue to practice and they are more cautious and do not make these mistakes. Otherwise, why would the mistakes not continue to be made?

I have other examples, Madam Speaker; but before I get to some of the other examples, I want to talk a little bit about the fact that this bill goes beyond just malpractice premiums, insurance premiums, for doctors and hospitals, and deals with drug companies and deals with HMOs and deals with medical device manufacturers, because I think the fact that this Republican leadership legislation goes way beyond the order of the day, way beyond the issue of premiums for doctors and hospitals is a strong indication, maybe the strongest indication, that it is really nothing but special interest legislation designed to help some friends of the Republican leadership.

I offered an amendment in committee, which is also being considered in the Committee on Rules, and was, of course, voted down in committee strictly on partisan lines and probably the same will happen in the Committee on Rules. I cannot imagine that we would be able to consider it tomorrow. But basically it would have struck the provisions in the bill that deal with the issue other than doctor and hospital premium costs.

I just want to talk a little bit about the amendment, because I think, again, it brings forth why this bill is really not meant to accomplish the goal of addressing the malpractice crisis.

□ 1900

The amendment that I proposed strikes the language that includes liability protections on punitive and noneconomic damages for these industries; in other words, medical device manufacturers, HMOs, drug companies, and other health insurance companies. These are industries outside the scope of medical practitioners and, therefore, medical malpractice.

The limitations in the bill on liability covering defective medical products, dangerous prescription drugs, and claims against HMOs and health insurance companies I think are appalling, Madam Speaker. Shielding all of these additional industries from liability has no effect on medical malpractice insurance premiums which only affect doctors and hospitals and would only harm the current product liability system.

What H.R. 5 does, as written, is to leave victims with little recourse. These additional protections, the ones that I mentioned that go outside of the doctors and the hospitals, render victims completely unable to hold pharmaceutical companies, makers of defective medical products, and insurance companies accountable, even when they are proven negligent. Even if they are proven negligent, one cannot recover, other than based on a small amount.

In essence, what the bill does that we are going to be considering tomorrow is really a bill designed to reduce the consequences of the mistakes and wrongdoing of large corporations at the expense of victims of those harmful actions.

So here we are. Traditionally in our system, in our Anglo-American jurisprudence system that we are so proud of, it has lasted over 1,000 years, the effort was to protect the victim. Now, what we are doing with this bill is protecting the large corporations who do not need any protection. It is certainly not in the circumstances that are delineated here.

But the worst aspect of it, Madam Speaker, in my opinion, is with regard to HMOs. Because as I said, on a bipartisan basis, there were different bills; there was a Democratic bill and there was a Republican bill and the Republican bill passed and it was not, in my opinion, as good as the Democratic bill. But the bottom line is there were efforts on both sides of the aisle in the last 4 years in this body to try to deal with HMOs and reform HMOs so that patients had some rights. If they were denied care, they could go to some sort of a board or commission, administrative appeal, or they could go to court to overturn a wrongful decision that denied them care or caused them damages.

But what H.R. 5 does that we are going to consider tomorrow is it preempts State law and it amends Federal law far beyond, again, relating to doctors and hospitals, and it says that it applies to any "health care lawsuit brought in a Federal or State court."

Now, that is where we get to the HMOs. Eleven States have laws that provide that HMOs may be held liable for refusing to authorize payment for appropriate care. These laws would be completely preempted by H.R. 5 if it passes and becomes law. And, in particular, what is happening is the courts in the States and even at the Federal level are expanding victims' rights because Congress has not acted. We never passed, Madam Speaker, the Patients' Bill of Rights. It passed in the House, but it never passed in the Senate. It was never signed by the President. So in the absence of having Federal law that would protect patients who are in an HMO, States have passed laws and now the courts have even stepped in and said that one can sue and seek grievances for HMO action.

In fact, one of the most important Federal courts, the United States Court of Appeals for the Second Circuit, which covers New York, Vermont, and Connecticut, recently held that Americans can sue HMOs and other insurers for injuries resulting from their cost-minimizing decisions. Now, this ruling, if it is upheld by the Supreme Court, would essentially make the Patients' Bill of Rights the law of the land. We would not even have to pass it. It would essentially make the Patients' Bill of Rights apply to the entire country. But these kinds of lawsuits, the Second Circuit opinion, State law, either enacted by the legislature or by the State courts, would all be preempted and severely limited by H.R. 5.

To me, to hear my colleagues on the Republican side spend the last 2 or 3 years saying that they want to protect patients' rights in HMOs and then have them vote on this tomorrow, which I am sure is going to be voted on by most of my Republican colleagues, that would take away all of those rights or at least severely limit them I think is just incredibly hypocritical. Even the President, the President said that he supported the Patients' Bill of Rights too and now he is saying that he favors this malpractice bill, which would essentially limit one's ability to sue and take action against an HMO. I really do not understand where my Republican colleagues are coming from on this.

Now, I just wanted to mention, there is a Democratic substitute to H.R. 5, which hopefully the Committee on Rules will put it in order but if they do not, I guess we can do it on a motion to recommit tomorrow so we would have some opportunity to bring it up. Basically what the Democratic substitute does is the opposite of most of the negative aspects of H.R. 5 that I talked about tonight. It tries to look at the malpractice issue in a much broader context, not only for tort reform dealing with lawsuits and damages, but also for insurance reform. In fact, it has a commission that would evaluate the cause and the scope of the recent and dramatic increases of medical malpractice insurance premiums and, most

importantly, actually establishes a grant program, if you will. It is similar, I suppose, to the kind of reinsurance program that I mentioned where grants could actually be given to States or, in certain circumstances, where premiums go up. I really maintain that the only way that we are going to reduce premiums is not through any kind of a cap on damages in court, but rather by addressing it directly, by either having a reinsurance program that gives money back to the States or to the insurance companies so that the premiums go down, or providing some sort of grant program to reduce premiums. Again, it was the capping of premiums in California that made the difference, not the \$250,000 in damages.

I see the gentleman from Texas is here, and I would like to yield to him at this time. I thank the gentleman for coming down.

Mr. SANDLIN. Madam Speaker, I thank the gentleman from New Jersey (Mr. PALLONE) for yielding time and I thank him for his important efforts in this regard.

We can say that H.R. 5 was filed in that it calls attention to a very serious problem we are facing in the United States of America, and that problem is that the insurance carriers are absolutely gouging America's physicians and hospitals and other health care providers. The irony is that H.R. 5, while calling attention to that problem, does absolutely nothing to solve the problem.

We hear much coming from the other side about frivolous lawsuits. There is not a Member of this House that supports frivolous lawsuits and, in fact, if the other side was interested in getting rid of frivolous lawsuits, they would have put something in this legislation to take care of it. The Democrats support putting in specific provisions that say, if a suit and a claim has absolutely no basis in fact, no basis in law, no reasonable extension of law, that suit should be dismissed, the plaintiffs should pay the costs, and the plaintiff and the plaintiff's attorney should be sanctioned by the court for filing a suit without merit, period. If the other side was that interested in getting rid of frivolous lawsuits, they would have that in their legislation. However, they have ignored that.

Also, I think it is quite unusual that the claim is: Malpractice premiums are skyrocketing; we have to do something to help the doctors. Madam Speaker, the only people that are not at the table in this debate, the only people that are not affected by this law, the only people who are not subjected to any restrictions by H.R. 5, and that is the insurance carriers. The insurance carriers will get everything they want. It is a great payday for them, because they want a cap of \$250,000 to limit what they will pay to aggrieved parties. However, they will not agree, they will not discuss, they will not even consider the possibility of lowering premiums.

That is absolutely outrageous. This is not a debate between doctors and lawyers; this should be doctors, lawyers, patients, consumers, pointing the finger at the insurance companies and saying, if you want this relief, you have to do something when you get it. But we know they are not going to do it. Do we know why we know? We know because we look at history. Historically, in the States that have caps their premiums are higher than in the States without caps. Now, go figure. That is because when the insurance carriers know that they have a limit, it is *carte blanche*. When they lost money, as the gentleman from New Jersey mentioned, in the stock market, they have a way for the government to help them get that money back or a quasi-government function; they just send a letter to our doctors. They send a letter and they say, you need to pay us more money.

Now, oftentimes we will hear folks on the other side of the aisle talk about MICRA in California. MICRA has not been a success, and MICRA is not what limited the cost of malpractice premiums in the State of California. MICRA was passed in 1975. Rates continued to go up. Doctors continued to have problems. Do we know what happened? In 1988, the voters of California, who do not support MICRA by the way, the voters of California passed Proposition 103. Proposition 103 was not malpractice reform. Proposition 103 did not say we have to limit what families get for the death of their children. Proposition 103 said we are going to regulate insurance and we are going to roll back the rates 20 percent.

Well, it is no surprise when we say we are going to roll back the rates 20 percent that rates go down. That is what it was designed to do. That is what happened in California. That is the only thing that has been a success. MICRA has had nothing to do with it. Do not be misled in this House either. MICRA is not H.R. 5. There are many, many significant differences between MICRA and H.R. 5. MICRA limits only, and puts a cap only on personal injury damages as a result of malpractice. The Health Act protects HMOs, it protects manufacturers of defective products, it protects; in fact, anyone engaged in any stretch of the imagination in the health care industry will be protected from civil rights violation claims, anti-fraud violation claims, anti-consumer claims. You name it, they are protected. It is just payola to the carriers and the HMOs.

The HMOs did not get the protection they wanted in the Patients' Bill of Rights. They have not gotten that deal done yet. So now they are back. Now they are back. Let us make no mistake about it: \$250,000 is not pain and suffering. Madam Speaker, \$250,000 is what the other side says that you get for the loss of your child. How much is the loss of your child worth? How much is the loss of a limb worth? How much is going blind worth? I do not know, but

my friends on the other side somehow looked into a ball and they said, we know how much it is worth. If your child is dead, like Miss Santillan, that is worth \$250,000 minus the cost and attorneys fees, thank you very much, next case. We have case after case after case.

I yield now to the gentleman from New Jersey, because he might want to talk about some of these specific cases that I know he has some information about, or maybe the gentlewoman from Texas (Ms. JACKSON-LEE) has some information she would like to share.

Mr. PALLONE. Madam Speaker, I will yield to the gentlewoman from Texas, but I think what the gentleman said in particular about the fact that this amount of damages, the \$250,000 has no basis in fact. During the Committee on Commerce hearing last week, I asked many times, where does the \$250,000 come from? What is it based on? The reply: the California statute. And that was passed years ago. So we can argue that just based on inflation alone, that that is no longer relevant. But then again, the Republicans just want to move ahead, steamroll it, and they are just not really interested in the reality of this and what really matters to the victims. So I appreciate the gentleman's comments.

I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Madam Speaker, I thank the distinguished gentleman from New Jersey. I am also delighted to join my good friend, the gentleman from Texas (Mr. SANDLIN), and I appreciate his leadership on this issue. Both of our committees have been working intently, the Committee on Commerce and the Committee on the Judiciary have been working very, very hard on this legislation. I think we have had the same quest and the same theme; that is, to strike at the misinterpretation by our physicians and hospitals, our friends that believe that H.R. 5 is going to solve their premium problem. That is really the crux of this legislation. It really is not insurance legislation which really should be relegated to the States.

It is interesting that my good friends would share their States rights positions over and over again when we go to the floor to talk about problems that should be solved by the national government, and then my good friends on the other side of the aisle are constantly chiding at the idea of rights to the States, rights to the States, the 10th amendment. But clearly, H.R. 5 abrogates, usurps, takes away, preempts States' jurisdiction on this question dealing with protecting victims and helping doctors.

So I want to say to my good friends across the Nation, and particularly my friends in Texas, that this legislation does nothing for you as it relates to those high premiums on your insurance.

My neighbor is the President of the National Medical Association. I realize

the pain of knowing that a doctor has had to close his or her practice because they have been shocked, shocked or shot, or hit with a premium increase of \$10,000, \$50,000, \$100,000.

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What this legislation does, H.R. 5, and I am glad the gentleman from New Jersey (Mr. PALLONE) has gathered us for this Special Order to be able to say, it does not hit the point of the premiums. It hits at the time of the decision. So what you are doing is undermining juries when victims have been adjudged to have been a victim. This does not have anything to do with frivolous lawsuits; 61 percent of the cases are dismissed. This says when children like Nathaniel come into the courthouse, Nathaniel is blind and paralyzed because physicians that he went to and a nurse that he went to noticed that he was not eating and that he was jaundiced, he was yellow, and failed to diagnose what Nathaniel had. Did not tell his parents, You needed to hospitalize him, after seeing a number of pediatricians.

So we now have a little boy who has no income, no way to discern what his income might have been. He has no income to be able to have you assess what he needs to care for him for the rest of his life because he has never worked. And you are going to suggest that if he went to a court and got a judgment that he should have a cap on noneconomic damages and, likewise, he should have a cap on punitive damages?

Madam Speaker, this does not make any sense. And so I have offered amendments that would induce the insurance companies to take their profits, put them back into the physicians and reduce the premiums by 50 percent. Fifty percent of the savings go to the doctor. And I would move to strike the noneconomic damages, move to strike the limits on the cap on punitive damages, and I also asked that 2 percent of the savings would go to help our doctors who are alcohol and drug dependent only, a few just like there were only a few percentage of our doctors who, in fact, perpetrate these acts that would warrant such severe litigation.

We want good health care in rural and urban America, suburban America. H.R. 5 does nothing but blow up HMOs and insurance companies. It does not do anything. I encourage my insurance companies, my friends, the pharmaceuticals, physicians, doctors, let us sit down and get at the core of the problem, the small percentage of these doctors that need help, the American Medical Association can do with us and work with us to do that. The national association can do that. Let us work together to ensure that we have good patient care, a good Patients' Bill of Rights, good strong Medicare and Medicaid, and good strong resources for our doctors to do the job that they need.

I am delighted the gentleman from New Jersey (Mr. PALLONE) gave me this

opportunity. I just want to hold this sheet of California up to make sure that everyone really knows that their medical malpractice legislation did nothing. They had to actually do insurance reform much later to actually get the doctors' premiums down. My understanding is the California Medical Association is not supporting this legislation because they saw what happened in their State.

So I would hope that tomorrow we would be of good sense and good mind and defeat this legislation on the floor on behalf of our doctors and our hospitals and our patients.

Mr. PALLONE. Madam Speaker, I appreciate the gentlewoman for coming down. I know she was up in the Committee on Rules trying to get one of her amendments that she described passed. I doubt they will pass it because they are doing everything on a partisan basis.

We only have maybe a minute or two left. I just wanted to thank the gentlewoman for bringing up the fact that traditionally when you are dealing with insurance regulation it is done by the States. It is tremendously unprecedented to take an issue that has primarily been dealt with by the States where there are State laws on medical malpractice and tort reform and all of the sudden put it under this huge Federal rubric and think we are going to solve all these problems. Particularly when something is so complex like this, the States are traditionally the laboratories where we see what can be done to make things work and maybe the Federal Government copies it later if it works.

That I think is just another indication that this is just being for special interests. This is just being done by the Republicans tomorrow for politics because they want to take this one-size-fits-all solution, knowing it is never going to pass the Senate, knowing it is never going to become law, just so they can say to the drug companies and to the HMOs and to the doctors, we have done something to try to deal with your problem. Not even caring whether or not it is actually going to accomplish the goal because otherwise they would wait and see what is working in the States or they would wait and they would take a more comprehensive view before we moved ahead with Federal legislation.

I think that was a very good point the gentlewoman made, and it is one of the points that we need to continue to make.

We are not going to win this one tomorrow, but we have to bring up the debate. If what happens is that it does go over to the Senate and then we are allowed to sit down as Democrats and Republicans and come up with a solution that goes beyond just a cap on damages, then so be it. I welcome that opportunity. I do not understand why we have to wait for it to pass the House to do that. But hopefully that opportunity will be there, and we will be up

front making sure we can come up with a solution.

Ms. JACKSON-LEE of Texas. Just for a moment, I know our time is ending. I think the statement we are making on the floor tonight, and I will be an eternal optimist, one, that we get 2 hours of debate and an open rule and the gentleman's amendments are allowed in and mine are allowed in, because this is such a historic and important decision that the Congress will be making in the backdrop of the number of young men and women who are now on the frontlines fighting for our freedom. It could be one of their relatives that would be subjected to this; but the point should be made, as I close, that we are not against doctors. We are not against hospitals, my friends. We are trying to help you make this legislation right.

MEDICAL LIABILITY REFORM

The SPEAKER pro tempore (Mrs. MUSGRAVE). Under the Speaker's announced policy of January 7, 2003, the gentleman from Georgia (Mr. GINGREY) is recognized for 60 minutes as the designee of the majority leader.

Mr. GINGREY. Madam Speaker, I rise tonight and will take my time to describe the crisis that we face in this country regarding access to health care; and make no mistake about it, this is truly a crisis. When you have doctors unable to go to emergency rooms to provide emergency care, particularly for patients who have sustained automobile accident and head injuries; when you have OB-GYN physicians, as I am, stopping their programs at the most experienced states of their career because of the fear of litigation, you have patients who are in most need of those skills being the least likely to get them.

This crisis also extends to the facts that fewer and fewer of our best and brightest are choosing medicine as a career. The application rates to our medical schools are down significantly over the last several years. What is causing this? We hear from the other side and a lot of things are mentioned, insurance companies, of course, are being blamed for gouging physicians and for gouging the public. But I suggest to you, Madam Speaker, that that clearly is not the case.

Let me just give you a few statistics and share with you what has happened in my State, not just my own district, the 11th, but in the entire State of Georgia. MAG Mutual, Medical Association of Georgia Mutual Insurance Company, a doctor-owned insurance provider states that premiums for malpractice insurance are rising at rates of 30 to 40 percent a year. The Georgia Medical Association reports 20 percent of State doctors are curtailing the scope of their practices with some 11 percent actually refusing to performing emergency surgery.

Recently, the Georgia Board for Physicians Workforce released an access-