

Lynch Syndrome, a patient must meet the Amsterdam Criteria II—three relatives must have Lynch Syndrome associated cancers, two must be directly related to the third, and one must be under the age of 50.

In the U.S. alone, there are approximately 600,000 people who are carriers of Lynch Syndrome mutation, yet only five percent of those carriers have been diagnosed. In comparison to the general population, in a lifetime, people affected by Lynch Syndrome are up to eighty-two percent more susceptible to Colon Cancer, up to sixty percent more prone to Endometrial Cancer, eleven to nineteen percent more disposed to Stomach Cancer, nine to twelve percent more vulnerable to Ovarian Cancer, and the list continues.

While researchers have not been able to determine a cure for Lynch Syndrome, there are still various ways to manage and treat this condition. Through screenings and medical management programs, polyps and growths can be detected and removed before becoming life-threatening. In addition to annual colonoscopies, EGDs, endometrial samplings, urinalyses, dermatological examinations, pathological testing of all colorectal tumors in accordance with NCCN guidelines, and abdominal hysterectomies, Lynch Syndrome can be effectively managed.

Mr. Speaker, I urge my colleagues to join me in recognizing today as Lynch Syndrome Awareness Day. Although researchers have yet to find a cure, hopefully, through our support and recognition more people will become educated about this extremely life-threatening disease and a cure will shortly be on its way.

PROTECTING ACCESS TO HEALTHCARE ACT

SPEECH OF

HON. SHEILA JACKSON LEE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 21, 2012

The House in Committee of the Whole House on the state of the Union had under consideration the bill (H.R. 5) to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system:

Ms. JACKSON LEE of Texas. Mr. Chair, today we again are considering H.R. 5, the "Help Accessible, Efficient, Low-cost, Timely Healthcare (HEALTH) Act." This bill is intended to change what some of my colleagues on the right believe to be a broken medical malpractice liability system.

Quite paradoxically, many supporters of H.R. 5 are vocal opponents of the recently passed health-related federal law, the Affordable Care Act, whose anniversary we celebrate here tonight. It must be stated that many Americans celebrate with us and dine in good health—thankful that this Congress came together to pass health care 2 years ago.

Foes of healthcare reform claim that the Commerce Clause of the U.S. Constitution, which gives the Federal Government some authority over states, was abused to pass the healthcare law. Under the rules of this Congress, House sponsors of any bill must explain Congress' constitutional authority to pass it.

Rather ironically, H.R. 5's sponsor, Representative PHIL GINGREY (R-GA), cites the

Commerce Clause as he tries to enact sweeping legislation that would completely overhaul State tort law and undermine hundreds of years of precedent.

Yet, for my colleague, Mr. GINGREY, his statement represents a complete reversal from his position on the Affordable Care Act, which he has called "the government takeover of our healthcare system."

Which might explain why my colleague Mr. WOODALL from Georgia submitted an 11th hour amendment during the Rules Committee Hearing on the rule for H.R. 5, striking the Commerce Clause mention from this bill.

The Woodall Amendment struck almost two pages from their bill—and reading it I can see why. It reads:

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

This sounds strikingly similar to the arguments being advanced against the Affordable Healthcare Act. You cannot have your cake and eat it too. Either health care affects interstate commerce or it doesn't. Which is of course the impetus for the amendment offered by my colleague from Georgia. What a dilemma to find oneself in? Trying to gut the Affordable Healthcare Act, but using the precise argument supporting Congress' power to regulate.

While the U.S. Constitution and Supreme Court interpretations do not identify a constitutional right to health care for those who cannot afford it, Congress has enacted numerous statutes, such as Medicare, Medicaid, and the Children's Health Insurance Program, that establish and define specific statutory rights of individuals to receive health care services from the government.

As a major component of many health care entitlement statutes, Congress has provided funding to pay for the health services provided under law.

The Commerce Clause of the U.S. Constitution empowers Congress "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The Supreme Court developed an expansive view of the Commerce Clause relatively early in the history of judicial review.

This power has been cited as the constitutional basis for a significant portion of the laws passed by the Congress over the last 50 years, and it currently represents one of the broadest bases for the exercise of congressional powers.

The Supreme Court accords considerable deference to a legislative decision by Congress that a particular health care spending program provides for the general welfare.

If enacted, H.R. 5 would, among other things, cap the noneconomic damages that a plaintiff in a health care lawsuit could recover. It would also preempt existing State laws on proportionate liability, allow courts to reduce contingent fees, and abolish the collateral source rule.

Studies and empirical research have shown that caps diminish access to the courts for low wage earners, like the elderly, children and women. In fact, the American Bar Association has studied this issue for over 30 years.

If economic damages are minor and noneconomic damages are capped, attorneys are less likely to represent these potential plaintiffs. And frankly Mr. Speaker, many of these plaintiffs are not very likely to be able to afford access to legal services. The equal scales of justice would be tipped.

Those affected by caps on damages are the patients who have been most severely injured by the negligence of others. These patients should not be told that, due to an arbitrary limit, they will be deprived of the compensation determined by a fair and impartial jury.

The courts already possess and exercise their powers of remittitur to set aside excessive verdicts, and that is the appropriate solution rather than an arbitrary cap. Let the courts and judges do their jobs and judge.

While the system may need some tweaks to help control ballooning medical malpractice insurance premiums paid by doctors, it is imperative that as we make changes, we are careful not to remove incentive for doctors to perform their duties at the highest standard. We must not leave victims of malpractice without viable recourse.

The bill before us today is not new; in fact, it was first introduced in 2005. As written, the HEALTH Act would severely limit the ability of injured patients and their families to hold health care and medical products providers accountable.

The bill is so broadly drafted that it would also limit remedies against the for-profit nursing home, insurance and pharmaceutical industries, and even against doctors who commit intentional torts, such as sexual abuse.

Let's take a look at the collateral source rule which is the common-law rule that allows an injured party to recover damages from the defendant even if he is also entitled to receive them from a third party. Common third parties, that is, collateral sources, include a health insurance company, an employer, or the government.

To abolish the collateral source rule would be to allow or require courts to reduce damages by amounts a plaintiff receives or is entitled to receive from collateral sources.

But there is a reason that the common law adopted it: it is preferable for the victim rather than the wrongdoer to profit from the victim's prudence, for example buying health insurance or the good fortune in having some other collateral source available.

One commentator has also noted that, when the collateral source is the government, and the benefit it provides are future services, such as physical therapy, there is no guarantee that it will provide such services for as long as they are needed, as government programs may be cut back.

Moreover, I don't many people willing to literally give an arm or leg for cash, but accidents happen due to negligence. Awards serve to educate the public but also serve the added purpose of providing a disincentive for bad actors.

There are a number of reasons why this bill is flawed though, and not just the collateral source rule. Its scope is extremely broad and encompasses much more than necessary to simply protect doctors from high insurance premiums. It contains a sweeping preemption of state law. It reduces the statute of limitations on malpractice claims.

It severely restricts contingency fees, discouraging lawyers from taking on malpractices

cases. And it essentially strips victims of the right to bring a claim against drug and medical device manufacturers.

According to a November 2010 study by the Office of Inspector General of the U.S. Department of Health and Human Services about 1 in 7 patients experience a medical error, 44 percent of which are preventable.

These errors cost Medicare \$4.4 billion annually. U.S. Dept. of HHS, Office of the Inspector General, "Adverse Events in Hospitals: National Incidence Among Medicare Beneficiaries" (November 2010.)

AMENDMENT: EXEMPTION FOR IRREVERSIBLE INJURY

Because this bill is so overbroad, I introduced an amendment in the Rules Committee Hearing on H.R. 5, with my colleagues, Congressmen QUIGLEY and HANK JOHNSON, which would have helped to close the wide gaps created by this bill.

My amendment carved out an exemption for healthcare lawsuits for serious and irreversible injury. This would have exempted victims of malpractice that resulted in irreversible injury, including loss of limbs and loss of reproductive ability, from the \$250,000 cap that H.R. 5 imposes on non-economic damages.

As individuals who are blessed to have all of our limbs and use of all of our senses, it is difficult to understand how challenging day-to-day life can be for someone who lacks these things.

However, it is nearly impossible to imagine the stress and challenges faced by someone who has suffered irreversible bodily injury because of the negligence of another.

Imagine going to the hospital for minor pain and leaving with no limbs because of thoughtless mistakes made by the trained experts who are supposed to take care of you.

For Connie Spears, a Texas woman from Judiciary Chairman SMITH's district, this exact nightmare is a reality. As a patient who had dealt with blood clots in the past, and had a filter installed in one of her heart's main arteries, Ms. Spears went into a San Antonio hospital complaining of leg pain. She was made to wait, eventually treated, and was discharged.

However, three days later, when her legs were the color of a cabernet and she was delirious, she called 911. When Spears, who was rendered unconscious, was treated at a different hospital, they determined that the filter in her artery was severely clotted and had caused tissue death in her legs, as well as kidney failure. Weeks later, Connie Spears regained consciousness, and learned that doctors had to amputate not one, but both of her legs in order to save her life.

As a result of negligence by the emergency room doctors who initially treated Ms. Spears, she lost her legs, and nearly her life. To make matters worse, when she attempted to seek the aid of a lawyer to handle her case, she was unable to find an attorney to represent her. She was repeatedly told, "You have a great case, but not in Texas."

In 2003, state lawmakers in Texas passed tort reform laws, similar to the one proposed today, that make it extremely difficult for patients to win damages in any health care setting, but especially emergency rooms. It caps damages at \$250,000, like H.R. 5, and requires patients to prove that emergency room doctors acted with "willful and wanton" negligence—a near impossible standard to prove. A plaintiff would essentially have to show the

medical professional or company had a vendetta against them to recover.

This nightmare has also become a reality for Jennifer McCreedy, a San Antonio single mother who fell and severely injured her ankle and sought treatment at an emergency room. Despite the severity of the break, the bone in her ankle was never set, a common practice done to prevent excess swelling, and she was not seen by an orthopedic surgeon. She was sent home and told to wait until the swelling went down.

However, the swelling did not go down, and a surgery that should have only taken one hour, took four. Because of the swelling, the surgeon had to slice her Achilles tendon, and wounds that refused to heal required grafts.

To date, Ms. McCreedy has endured five surgeries and has been rendered permanently disabled, curbing her ability to work and provide for her family. As a result of the negligence of those emergency room doctors, Ms. McCreedy went from a hard working, financially secure mother and homeowner, to dodging creditors and nearly losing her home to foreclosure.

For victims of malpractice who have suffered irreversible injury, like Connie Spears and Jennifer McCreedy, it is impossible to put a price tag on the stress and pain and suffering they have already endured.

Furthermore, it is outrageous that we would attempt to pass a law that puts a cap on the future challenges they are sure to face. It is inhuman to neglect the emotional price paid by victims of egregious acts that result in such serious, irreparable harm.

We should not deprive patients who have suffered injury as a result of one of these drugs or devices of the right to receive compensation from the manufacturer or distributor of such.

As we strive to become a healthier, more competitive nation, we need all the outstanding doctors, nurses and other health care providers we can get. They must be unconstrained by excessive health care liability premiums. We also need our nation's students to be excited and encouraged to enter the life sciences without the fear of being crushed under the weight of excessive liability premiums.

Placing caps on medical liability recovery does not necessarily lead to lower liability insurance premiums for doctors and health care providers. In fact, there is evidence that insurance companies have raised premiums in states like my home State of Texas and in California which use medical liability caps to reap an unearned profit at a time when health care lawsuits and the damages from those lawsuits were declining.

If it is the intention of this House to pass legislation that will reform the system of medical malpractice liability in a sensible manner, then it is imperative that we strongly consider the amendments offered by myself and my Democratic colleagues last night.

Let's not send a flawed bill to the Senate.

Again, I would like to thank the Chairman and Ranking Member for their work on these bills—though I hold out hope that Members of the Judiciary Committee and this body could come together for the good of the American people.

IN RECOGNITION OF THE THIRD ANNUAL 2012 HARLEM FINE ARTS SHOW

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 22, 2012

Mr. RANGEL. Mr. Speaker, I rise today in celebration of National Black History Month to recognize the prestigious Third Annual 2012 Harlem Fine Arts Show at Harlem's historic cathedral, The Riverside Church. The Harlem Fine Arts Show, HFAS, is one of the nation's largest and most prominent collections of works, paintings, photographs and sculptures by both established and emerging African American artists from around the world. The HFAS always takes place during National Black History Month and this year's exhibition kicked-off with a Diversity Prep Youth Day/ Fine Arts Exhibit and Opening Preview Reception on Friday, February 3, with exhibitions on Saturday, February 4 and Sunday, February 5.

Created by Dion Clarke, the Harlem Fine Arts Show was built upon the tradition of the long-established Black Fine Arts Show, which for fourteen years was the premiere show for exhibiting modern and contemporary art and highlighting some of the most diverse and exciting contemporary popular art. As stated by Mr. Clark, "Our event is one of the largest collections of African American art ever assembled for a fine arts show, representing more than 100 artists—a dramatic reminder during Black History Month of the tremendous contribution of African and Caribbean American artists to the global fine arts landscape."

This year's theme, "A Global Celebration" shines a spotlight on artists around the world. The HFAS will feature the art produced by African Americans within our community and from around the world illustrating shared ancestries, injustices, and shared pride. Our Afrocentric art provides a deep sense of connection between generations of Americans and events they may have only heard about. The art of our people demonstrates the struggle, the pain, and the hardships we have endured, and celebrates the joy, the accomplishments and achievements of our past, present and future.

The three day global celebration will showcase the explosion of culture that began with the Harlem Renaissance in the early nineteen hundreds and will include contemporary artist exhibitors and nationally renowned regional galleries. The Harlem Fine Arts Show is pleased to have John Martin, a seasoned exhibition designer of the JP Martin Group, bring together the artwork of some of the most accomplished and influential American artists of African and Hispanic descent.

The renowned photography of James Van Der Zee (June 29, 1886–May 15, 1983), a prominent documentarian of Harlem, New York from 1915 to 1960, will be among the featured artists who also include:

Hérolt Alvares, a Haitian artist born without arms due to a congenital birth defect who began painting at the age of eight, who teaches art to disabled children at St. Vincent's Center for Handicapped Children in Port-au-Prince, Haiti.

Stacey Brown, a visual artist whose creations on glass are inspired by his background in graphic design, with flowing shapes and