

JULY 25, 2002.

*Resolved*, That the House insist upon its amendment to the amendment of the Senate to the bill (H.R. 4546) entitled "An Act to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

*Ordered*, That the following Members be the managers of the conference on the part of the House:

From the Committee on Armed Services, for consideration of the House amendment and the Senate amendment, and modifications committed to conference: Mr. Stump, Mr. Hunter, Mr. Hansen, Mr. Weldon of Pennsylvania, Mr. Hefley, Mr. Saxton, Mr. McHugh, Mr. Everett, Mr. Bartlett of Maryland, Mr. McKeon, Mr. Watts of Oklahoma, Mr. Thornberry, Mr. Hostettler, Mr. Chambliss, Mr. Jones of North Carolina, Mr. Hilleary, Mr. Graham, Mr. Skelton, Mr. Spratt, Mr. Ortiz, Mr. Evans, Mr. Taylor of Mississippi, Mr. Abercrombie, Mr. Meehan, Mr. Underwood, Mr. Allen, Mr. Snyder, Mr. Reyes, Mr. Turner, and Mrs. Tauscher.

From the Permanent Select Committee on Intelligence, for consideration of matters within the jurisdiction of that committee under clause 11 of rule X: Mr. Goss, Mr. Bereuter, and Ms. Pelosi.

From the Committee on Education and the Workforce, for consideration of sections 341-343, and 366 of the House amendment, and sections 331-333, 542, 656, 1064, and 1107 of the Senate amendment, and modifications committed to conference: Mr. Isakson, Mr. Wilson of South Carolina, and Mr. George Miller of California.

From the Committee on Energy and Commerce, for consideration of sections 601 and 3201 of the House amendment, and sections 311, 312, 601, 3135, 3155, 3171-3173, and 3201 of the House amendment, and modifications committed to conference: Mr. Tauzin, Mr. Barton, and Mr. Dingell.

From the Committee on Government Reform, for consideration of sections 323, 804, 805, 1003, 1004, 1101-1106, 2811, and 2813 of the House amendment, and sections 241, 654, 817, 907, 1007-1009, 1061, 1101-1106, 2811, and 3173 of the Senate amendment, and modifications committed to conference: Mr. Burton, Mr. Weldon of Florida, and Mr. Waxman.

From the Committee on International Relations, for consideration of sections 1201, 1202, 1204, title XIII, and section 3142 of the House amendment, and subtitle A of title XII, sections 1212-1216, 3136, 3151, and 3156-3161 of the Senate amendment, and modifications committed to conference: Mr. Hyde, Mr. Gilman, and Mr. Lantos.

From the Committee on the Judiciary, for consideration of sections 811 and 1033 of the House amendment, and sections 1067 and 1070 of the Senate amendment, and modifications committed to conference: Mr. Sensenbrenner, Mr. Smith of Texas, and Mr. Conyers.

From the Committee on Resources, for consideration of sections 311, 312, 601, title XIV, sections 2821, 2832, 2841, and 2863 of the House amendment, and sections 601, 2821, 2823, 2828, and 2841 of the Senate amendment, and modifications committed to conference: Mr. Duncan, Mr. Gibbons, and Mr. Rahall.

From the Committee on Science, for consideration of sections 244, 246, 1216, 3155, and 3163 of the Senate amendment, and modifications committed to conference: Mr. Boehlert, Mr. Smith of Michigan, and Mr. Hall of Texas.

From the Committee on Transportation and Infrastructure, for consideration of sec-

tion 601 of the House amendment, and sections 601 and 1063 of the Senate amendment, and modifications committed to conference: Mr. Young of Alaska, Mr. LoBiondo, and Ms. Brown of Florida.

From the Committee on Veterans' Affairs, for consideration of sections 641, 651, 721, 723, 724, 726, 727, and 728 of the House amendment, and sections 541 and 641 of the Senate amendment, and modifications committed to conference: Mr. Smith of New Jersey, Mr. Bilirakis, Mr. Jeff Miller of Florida, Mr. Filner, and Ms. Carson of Indiana.

Mr. REID. Mr. President, I ask unanimous consent that the Senate disagree to the House amendment to the Senate amendment, agree to the request for a conference, and that the Chair be authorized to appoint conferees on the part of the Senate, without further intervening action or debate.

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

The Presiding Officer (Mr. CARPER) appointed Mr. LEVIN, Mr. KENNEDY, Mr. BYRD, Mr. LIEBERMAN, Mr. CLELAND, Ms. LANDRIEU, Mr. REED, Mr. AKAKA, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mrs. CARNAHAN, Mr. DAYTON, Mr. BINGAMAN, Mr. WARNER, Mr. THURMOND, Mr. MCCAIN, Mr. SMITH of New Hampshire, Mr. INHOFE, Mr. SANTORUM, Mr. ROBERTS, Mr. ALLARD, Mr. HUTCHINSON, Mr. SESSIONS, Mr. COLLINS, and Mr. BUNNING conferees on the part of the Senate.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

#### GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session and resume consideration of S. 812, which the clerk will report.

The legislative clerk read as follows: A bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

Pending:

Reid (for Dorgan) amendment No. 4299, to permit commercial importation of prescription drugs from Canada.

AMENDMENT NO. 4326 TO AMENDMENT NO. 4299 (Purpose: To provide for health care liability reform)

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. Mr. President, I am about to send to the desk an amendment. I understand from discussions with the other side, we will be allowed to vote on or in relation to this amendment sometime Tuesday morning, with the time prior to that equally divided. I say to my friend from Nevada, what was he thinking of, a couple of hours equally divided on Tuesday morning before the vote or in relation thereto?

Mr. REID. I say to my friend, we will probably come in at about 9:30, have an

hour of morning business, with the vote to occur around noon, which would allow us to do our party conferences. So I suggest 90 minutes equally divided.

Mr. McCONNELL. That would certainly be agreeable to me. I thank the assistant majority leader.

Mr. REID. Staff is putting that in writing. Before the day is out, we will try to iron out something like that. We will get it worked out between the two leaders.

Mr. McCONNELL. I send an amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows: The Senator from Kentucky [Mr. McCONNELL] proposes an amendment numbered 4326 to amendment No. 4299.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

Mr. DURBIN. Reserving the right to object, and I will not object, if the Senator could give me a copy of his amendment.

Mr. McCONNELL. I say to my friend from Illinois, I will be happy to do that. Of course, it will be out there from now until Tuesday morning so people will have ample opportunity to take a look at it. As soon as the clerk can Xerox a copy, I am sure he will be glad to give it to the Senator from Illinois.

Mr. DURBIN. I do not object.

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

(The text of the amendment is printed in today's RECORD under "Text of Amendments.")

The PRESIDING OFFICER. Who yields time?

The Senator from Kentucky.

Mr. McCONNELL. The Senate last voted on the issue of medical malpractice back in 1995. It was an amendment I offered at that particular time. There were 53 votes in support of the amendment, including Senators FEINSTEIN and LIEBERMAN on the Democratic side who are still Members of the Senate. In addition, Senator Nunn, Senator Exon, and Senator JEFFORDS also supported that medical malpractice amendment back in 1995, which was, as I said, the last time we had a vote on this issue.

I will briefly describe what the amendment at the desk would do, and then I want to talk for a few minutes about the growing crisis. I know Senator HATCH is anxious to speak on judges, but I do want to at least describe what the amendment does and make a few observations about the growing crisis in the country.

First, let me make it clear that the amendment at the desk is pro-victim and pro-consumer. This amendment does not cap noneconomic—that is, pain and suffering—damages at all, not one penny. So compensatory damages—economic as well as pain and suffering—those kinds of damages are not

in any way adversely impacted by a cap under the McConnell amendment.

We do place reasonable caps on lawyers' fees. By doing so, it ensures that the injured victim, not the victim's lawyer, gets the majority of the award. After all, that is only fair. It is the victim who has suffered the injury and not the lawyer.

This amendment also allows punitive damages, even though we know, all of us who understand punitive damages, that they are not designed to enrich the plaintiff but, rather, to punish the defendant. We allow punitive damages under a cap, a reasonable limit of twice compensatory damages. So no limits on compensation for pain and suffering, but a limit on punitive damages of twice compensatory damages, twice the economic and noneconomic damages.

Essentially, what we are doing is guaranteeing the injured victim full compensation. In addition to guaranteeing the injured victim full compensation, we are also ensuring that they get more of the money to which they are entitled by providing a reasonable cap on the fee for the lawyer. In order to bring some certainty to the system and drive the costs of insurance down, the amendment caps punitive damages at twice the sum of the compensatory damages awarded. It provides some certainty. This is a very pro-victim, pro-consumer amendment.

When we voted on this back in 1995, one of the arguments made, I recall, was that there was no crisis, what is the problem? Frankly, we thought it was a growing crisis at that point. Today, it is a perfectly apparent crisis. The Nevada Governor has called a special session beginning Monday on this very issue. This crisis is sweeping the country.

We have a map that I think is useful. The red States are States that are currently experiencing a medical liability crisis; States such as Nevada that I mentioned, the State of Washington, the States of Oregon, Texas, Mississippi, Georgia, Florida, and the cluster in the Northeast—New York, Pennsylvania, West Virginia, and Ohio. My own State of Kentucky is a State with problem signs.

To give an example, we have doctors moving to Indiana, across the Ohio River, because Indiana has reasonable caps on recovery, and therefore they do not have a medical malpractice crisis and the doctors are not bailing out. In States that have enacted a reasonable approach, the crisis does not exist.

Another interesting chart gives a sense of what has happened since we last voted on this issue in 1995. The median jury award then was around \$500,000; today it has gone up to \$1 million. I don't think anybody believes that doctors and nurses and health care professionals are any more negligent today than they were then. I don't suppose anyone would suggest there has been some kind of dramatic deterioration in their behavior over the last 7

years, but in fact the awards have gone up dramatically, and of course, as we know, the insurance rates along with it, leading to an exodus from this field across America. The crisis has arrived. It is here.

To give an example from my own State, a few weeks ago in Corbin, KY, the Corbin Family Health Center was forced to shut the doors because the doctors were unable to find an affordable insurance policy. Dr. Richard Carter and his four colleagues deliver about 250 babies a year and have never lost a malpractice claim. Yet when their insurance company, the St. Paul Companies, decided to leave the medical malpractice business, the Corbin Family Health Doctors lost their coverage—a group that had never lost a claim. The remaining few insurance companies that were willing to provide coverage were only willing to do so for \$300,000 to \$1 million, a whopping 465 percent increase.

This is going on all across America. Tuesday we will have an opportunity to elaborate. There are a number of Senators on my side of the aisle who want to speak to this national crisis.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, this amendment has nothing to do with the price of prescription drugs, the cost of health care, or even the insurance premiums of doctors. It has everything to do with the profits of the insurance industry. At a time when Americans want greater corporate accountability, in this time of Enron, WorldCom, and other corporate scandals, it is unbelievable that our Republican friends cozy up to big insurance corporations to give them a break.

Let me remind my colleagues that the legislation before the Senate is about the high price of prescription drugs and providing a Medicare prescription drug benefit. Now the Republican side is trying to divert attention from this important debate by offering this amendment. It is an attack on the very people the underlying legislation was designed to help, those in need of quality medical care.

The McConnell amendment is designed to shield health care providers from the basic accountability for the care they provide. While those across the aisle like to talk about doctors, the real beneficiaries will be the insurance companies. This amendment enriches the insurance industry at the expense of the most seriously injured patients—men and women and children whose entire lives have been devastated by medical negligence and corporate abuse. This proposal also shields HMOs that fail to provide needed care, drug companies with medicine that has toxic side effects, and manufacturers of defective medical equipment.

In recent months, the entire Nation has been focused on the need for greater corporate accountability. The McConnell amendment does the re-

verse. It dramatically limits the financial responsibility of the entire health care industry to compensate injured patients for the harm they have suffered. When will the Republican Party start worrying about injured patients and stop trying to shield big business from the consequences of its wrongdoing? Less accountability will never lead to better health care.

This amendment places major new restrictions on the right of seriously injured patients to recover fair compensation for their injuries. These restrictions only serve to hurt those patients who have suffered the most severe, life-altering injuries, and to have their cases proven in court. If we were to arbitrarily restrict the compensation which seriously injured patients can receive, as the sponsor proposes, what benefits would result? Certainly, less accountability for health care providers will never improve the quality of health care. It will never even result in less costly care.

The cost of medical malpractice premiums constitutes less than two-thirds of 1 percent. Do we understand that? The cost of medical malpractice premiums constitutes two-thirds of 1 percent of the Nation's health care expenditures each year. Malpractice premiums are not the cause of the high rate of medical inflation.

Over the decade from 1988 to 1998, the cost of medical care rose 13 times faster than the cost of malpractice insurance. This chart reflects that: The growth of health care costs plus 74 percent; and the medical malpractice costs, 5.7 percent.

These restrictions are not only unfair to patients but an effective way to control medical malpractice claims. There is scant evidence to support the claim that enacting limits will lower insurance rates. There is substantial evidence to the contrary. There are other much more direct, effective ways to address the costs of medical malpractice insurance that do not hurt patients.

The supporters of the McConnell amendment have argued that restricting an injured patient's right to recover fair compensation will reduce malpractice premiums. They cite a report released just yesterday by the Department of Health and Human Services. However, that data is neither comprehensive or persuasive. It looks at only 10 of the 27 States that do not currently have a cap on malpractice damages, and it looks at the rate of increase in those States for only 1 year. In essence, that report cherry-picks the data to support a politically preordained conclusion.

Let's look at the facts: 23 States currently have a cap on medical malpractice damages. Most have had those statutes for a substantial number of years. And 27 States do not have a cap on malpractice damages. The best evidence of whether such caps affect the cost of malpractice insurance is to compare the rates in those two groups of States. Based on the data of medical

liability monitored on all 50 States, the average liability premium in 2001 for doctors practicing internal medicine was slightly less, 2.2 percent for doctors in States without caps on malpractice, \$7,715; and in States with caps on damages, \$7,887. Internists actually pay more for malpractice insurance in the States that have the caps.

The average liability premium in 2001 for general surgeons was also slightly less. For doctors in States without caps, \$26,144; in States with caps, it was \$26,746. Surgeons are also paying more in States that have caps.

The average liability premium on OB/GYN physicians in 2001 was only 3.3 percent more for doctors in States without caps, \$44,485; and States with caps, \$43,000—a very small difference.

This evidence clearly demonstrates that capping malpractice damages does not benefit the doctors it purports to help. Their rates remain virtually the same. It only helps the insurance companies earn bigger profits.

This chart over here indicates the States without the cap on damages, States with a cap on damages. I think the proof is in the pudding.

Since malpractice premiums are not affected by the imposition of caps on recovery, it stands to reason that the availability of physicians does not differ between States that have caps and the States that do not. Do we understand that? We are talking about comparing the number of available physicians between the States that do have caps and the States that do not. AMA data show that there are 233 physicians per 100,000 residents in States that do not have medical malpractice caps and 223 physicians per 100,000 residents in States with caps.

Looking at the particularly high cost of obstetrics and gynecology, States without caps have 29 OB/GYNs per 100,000 while States with caps have 27.4 per 100,000. Clearly, there is no correlation.

California, the State that has the lowest caps the longest, set a \$250,000 cap on noneconomic damages in the mid-1970s, which has not been adjusted for inflation since. If the tort reformers are correct, you would expect California to have had a smaller percent of growth in premiums since those caps were enacted. Between 1991 and 2000, premiums in California actually grew more quickly, 3.5 percent, than did the premiums nationwide.

The State with the caps shows the malpractice insurance actually went up.

If this amendment were to pass, it would sacrifice fair compensation for injured patients in a vain attempt to reduce medical malpractice premiums. Doctors would not get the relief they are seeking. Only the insurance companies, which created recent market's instability, would benefit.

Even supporters of the industry acknowledge that enacting tort reform will not produce lower insurance premiums.

Sherman Joyce, the president of the American Tort Reform Association, told the Liability Week publication:

We wouldn't tell you or anyone that the reason to pass tort reform would be to reduce insurance rates.

This is the president of the American Tort Reform Association, telling Liability Week:

We wouldn't tell you or anyone that the reason to pass tort reform would be to reduce insurance rates.

Victor Schwartz, the association's general counsel, told Business Insurance:

... many tort reform advocates do not contend that restricting litigation will lower insurance rates and "I've never said that in 30 years."

The American Insurance Association even released a statement earlier this year, March 13, 2002, acknowledging:

[T]he insurance industry never promised that tort reform would achieve specific premium savings.

Listen to that. The American Insurance Association even released the statement on March 13:

[T]he insurance industry never promised that tort reform would achieve specific premium savings.

A National Association of Insurance Commissioners study shows that in 2000, the latest year for which data is available, total insurance industry profits as a percentage of premiums for medical malpractice insurance was nearly twice as high—13.6 percent—as overall casualty and property insurance profits—7.9 percent.

Do we understand that now? The insurance industry commissioners are now saying that the insurance industry profits, as a percentage of premiums for medical malpractice, are twice as high as overall casualty and property insurance profits.

In fact, malpractice was a very lucrative line of insurance for the industry throughout the 1990s. Recent premium increases have been an attempt to maintain high profit margins despite sharply declining investment earnings.

Insurance industry practices are responsible for the sudden, dramatic premium increases which have occurred in some States in recent months. The explanation for these premium spikes can be found, not in legislative halls or in courtrooms, but in the boardrooms of the insurance companies themselves. There have been substantial increases in recent months in a number of insurance lines, not just medical malpractice. In 2001, rates for small commercial accounts have gone up 21 percent, rates for midsize commercial accounts have gone up 32 percent, and rates for large commercial accounts have gone up 36 percent. These increases were attributable to general economic factors and industry practices, not medical liability tort law.

Insurers make much of their money from investment income. During the time when investments offer a high profit, companies compete fiercely with one another for market share.

They often do so by underpricing their plans and insuring poor risks. When investment income dries up because interest rates fall, the stock market declines, or cumulative price cuts lower profit, the insurance industry then attempts to increase its premiums and reduce its coverage. This is a familiar cycle which produces a manufactured crisis each time their investments turn downward.

For example, St. Paul, one of the largest medical malpractice insurers, which has been experiencing serious financial difficulties lately, actually released \$1.1 billion in reserves between 1992 and 1997 to enhance its bottom line and make those dollars available for investment. Some of the company's investments did not go well. It lost \$108 million in the collapse of Enron alone. When claims became due, those reserves were not available to pay them.

A recent study of the Consumer Federation of America, presented at a hearing of the Health Subcommittee of the House Committee on Energy and Commerce last week, documented this industry's trend:

It is the hard insurance market and the insurance industry's own business practices that are largely to blame for the rate shock that physicians have experienced in recent months.

The Consumer Federation's findings are highly enlightening:

Medical malpractice rates are not rising in a vacuum. Commercial insurance rates are rising overall. The rate problem is caused by the classic turn in the economic cycle of the industry, sped up—but not caused—by terrorist attacks. Insurers have underpriced malpractice premiums over the last decade. It would take a 50 percent hike to increase inflation-adjusted rates to the same level as 10 years ago. Further limiting patients' right to sue for medical injuries would have virtually no impact on lowering overall health care costs. Medical malpractice insurance costs as a proportion of the national health spending are minuscule, amounting to less than 60 cents per hundred dollars spent. Insurer losses for medical malpractice have risen slowly in the last decade by just over the rate of inflation. Malpractice claims have not exploded in the last decade. Closed claims, which include claims where no payout was made, have remained constant, while paid claims have averaged just over \$110,000. Medical malpractice profitability over the last decade has been excellent, at just over 12 percent per year despite a decline in profits in the last 2 years.

That is the profit they have been making over the last decade.

This analysis of why we are seeing a sudden spike in premiums was basically confirmed by a June 24, 2002, Wall Street Journal article describing what happened to the malpractice insurance industry during the 1990s:

Some of these carriers rushed into malpractice coverage because an accounting practice widely used in the industry made the area seem more profitable in the early 1990s than it really was.

Does that have a ring to it, Mr. President? Carriers rushing in because an accounting practice widely used in

the industry made the area seem more profitable in the early 1990s than it really was? And now we are going to take it out on the individuals who are most vulnerable and most severely hurt in our society?

A decade of shortsighted price slashing led to industry losses of nearly \$3 billion last year.

I continue the quote from the Wall Street Journal:

I don't like to hear insurance company executives say it's the tort system—it's self-inflicted—says Donald Zuk, chief executive of SCPIE Holdings, Inc., a leading malpractice insurer in California.

This is what he said:

I don't like to hear insurance companies say it's the tort system—it's self-inflicted.

Zuk then continues:

Then it continues:

The losses were exacerbated by carriers' declining investment returns. Some insurers had come to expect that big gains in the 1990s from their bond and stock portfolios would continue, industry officials say. When the bull market stalled in 2000, investment gains that had patched over inadequate premium rates disappeared.

Let's look back at the type of severely injured patients who would be denied fair compensation under the McConnell amendment. These are the people who are being asked by those across the aisle to pay for the mismanagement of the insurance industry and the wrongdoing of health care providers:

Leyda Uuam—from Massachusetts—underwent surgery to correct a protruding belly button when she was 5 weeks old. Leyda will never walk, talk, move, or have any normal function after she suffered brain injury due to a series of errors by anesthesiologists, nurses, and a transport team.

When Mrs. Oliveira's unborn baby showed fetal distress her doctor failed to perform a timely caesarean birth as common sense would indicate. Instead, he attempted a forceps delivery. When this didn't work, he made three attempts at vacuum extraction, which were also unsuccessful. A different physician then attempted a second forceps delivery, which also failed. Finally, Olivera underwent a caesarean section, yet her son died within an hour of his birth. An autopsy report identified the cause of death asphyxia. The hospital, in an attempt to cover its negligence, amended the report falsely, listing the cause of death as probably fetal sepsis.

Twelve year-old Steven Olsen is blind and brain damaged today because of medical negligence. When he was hiking, he fell on a stick in the woods. The hospital refused his parents' request for a CAT scan, and instead pumped Steven full of steroids and sent him home with a growing brain abscess. The next day, Steven Olson became comatose and wound up back in the hospital. Had he received the \$800 CAT scan, which would have detected the brain mass growing in his skull, Steven would be perfectly healthy today. The

jury awarded Steven \$7.1 million in non-economic damages for his life-sentencing of serious illness and disability.

Harry Jordan, a man from Long Beach, underwent surgery to remove a cancerous kidney. The surgeon took out his healthy kidney instead. Jordan had been living for years on 10 percent kidney function, and he is now no longer able to work.

Elizabeth, a former fashion model, went to the emergency room complaining of nausea, vomiting, and "the worse headache of her life." The doctor misdiagnosed her as having an acute neck sprain and sent her home. Unfortunately, he failed to diagnose her symptoms as the warning leak of a brain aneurysm even though he had written a textbook which included an entire chapter on warning leaks. Ten days after her hospital visit, Elizabeth's aneurysm ruptured and she had a stroke. The bleeding destroyed brain tissue, requiring the removal of 1/3 of the frontal lobe of her brain. Elizabeth was left paralyzed as a result of her misdiagnosed aneurysm.

Philip Lucy's nasal cancer was misdiagnosed by doctors as high blood pressure and nerve damage for 2 years, although he continued to complain of pain. It was finally discovered that his left sinus was completely filled with a cancerous mass. This necessitated the removal of his left palate, left cheek, left orbit and his left eye.

LeVern Dostal, a recent retiree, died a slow and painful death after her surgeon failed to give her antibiotics before her gallbladder surgery. She developed sepsis and was hospitalized for a lengthy period of time, during which she underwent 3 more surgeries, as her condition slowly deteriorated.

Ms. Keck, 63, was admitted to the hospital for pneumonia. She sustained brain injuries because a nurse failed to monitor her oxygen level as instructed, and failed to notify the doctors of her worsening condition. She now suffers from paralysis and cannot speak. The hospital was purposefully understaffed to increase profits.

As we debate this amendment, let us all remember that we are dealing with people's lives—many of them have suffered life-altering injuries as a result of substandard medical care. The law is there to protect them, not to shield those who caused their injuries.

I hope the Senate will not accept the McConnell amendment for the reasons I have outlined. As we have seen on so many different occasions, the neediest, the youngest, and the most vulnerable individuals in our society are often those who suffer the greatest kinds of neglect and negligence.

If we are going to have accountability in our society, we ought to have accountability.

One of the extraordinary things I heard was yesterday during the President's statement in North Carolina when he talked about accountability by victims, but not accountability by

the insurance companies and not accountability by the others—not accountability by others even in the corporate world but accountability by schoolchildren. If they are not able to learn and be successful, then they are not included in terms of the completion of their studies. And now they are being held accountable. We are not getting the resources for them in order to give them the fair chance.

It seems to me we are being asked to protect the strongest elements in terms of our society. We have seen that during the course of this whole debate. Now we see it with regard to an amendment to protect the insurance companies. When we look at any piece of legislation, we should ask: Who is going to benefit, and who is going to lose? The answer is very simple with this amendment. The people who are going to benefit are going to be the insurance companies themselves, and the people who are going to pay the price are going to be our most vulnerable in our society who need our protection.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from Kentucky.

Mr. McCONNELL. Mr. President, I listened with interest to the speech of my good friend from Massachusetts, although I must say that it must have been drafted to address a different amendment other than the one the Senator from Kentucky sent to the desk. None of the victims that Senator KENNEDY recounted would have lost a penny of economic or noneconomic damages under the amendment that is at the desk—not a penny. We don't cap either pain and suffering, or economic damages. There is no cap at all.

I did not hear my friend from Massachusetts talk about the legal fees.

Let us go back and take a look at what this amendment does before yielding to my friend, the only doctor in the Senate, to address this issue.

This is a pro-victim amendment. There are no caps on economic and noneconomic damages in this amendment. Two things are capped: Punitive damages, which are designed to punish the defendant and not enrich the plaintiff, are capped at twice the rest of the damages. There is a very reasonable cap on attorney's fees. And the reason for that is the plaintiffs—the victims—the senior Senator from Massachusetts is talking about are only getting about 52 percent of the money. Those grievously injured parties are not getting enough of the awards.

Let us in this debate talk about the amendment that is before us—not the amendment that might have been before us.

The AMA supports the amendment—frankly, somewhat tepidly. They would like to go further. But the AMA does support my amendment. Obviously, they think it would make a difference in being able to continue to provide health care for our American citizens.

Mr. President, the amendment I offer would make needed reforms to medical malpractice litigation.

There are few challenges facing this body that are more complex than improving the quality and affordability of health care in America. This week, we will have debated competing proposals to expand Medicare and create a prescription drug benefit. Over the past year, the Senate has passed legislation to strengthen our Nation's defenses against the threat of bioterrorism and provide new resources to the researchers at the National Institutes of Health, NIH. While all of these proposals are worthy of this body's consideration, the Senate has not yet addressed one of the fundamental problems limiting the accessibility and affordability of quality care: reforming our Nation's flawed medical malpractice system.

These reforms are essential to ensuring that quality health care is available and affordable to all Americans. After all, what good is a Medicare drug benefit if you can't find a doctor to write a prescription or a pharmacist to fill it? Our current medical malpractice system encourages excessive litigation, drives up costs, and literally scares care-givers out of the medical profession. All too often, these lawsuits result in exorbitant judgements that benefit personal injury lawyers more than they compensate injured patients.

Enacting reasonable medical malpractice reforms will reduce health care costs and improve access to care, while allowing legitimate victims full access to the courts. My amendment would take a modest, but important, first step at reforming this flawed medical malpractice system in a manner which I believe will attract significant bipartisan support.

I have long championed strong, medical malpractice reform legislation. I believe debate on the Greater Access to Affordable Pharmaceuticals Act, provides us not only the opportunity, but the obligation, to enact meaningful malpractice reforms.

Much like the issue of a Medicare drug benefit, medical malpractice reform is not a new topic for the Senate. During debate on the Product Liability Fairness Act of 1995, I offered an amendment to enact reasonable reforms to our Nation's medical malpractice laws. After debating the amendment for several days, I was proud to have the support of 53 Senators and my amendment was agreed to by the Senate. Among those 53 supporters were some prominent Democrats and Independents: Senators LIEBERMAN, FEINSTEIN, JEFFORDS, NUNN and EXON.

Today I offer the same amendment the Senate agreed to in 1995. For the benefit of my colleagues who have joined the Senate since we last debated this issue, my amendment would do the following: The McConnell amendment would limit punitive damages to two times the sum of compensatory damages, economic and non-economic. This provision would help end the litigation lottery, where punitive damages are

awarded out of all proportion to the underlying conduct. The threat of being unreasonably held responsible for millions and millions of dollars in damages hangs like the sword of Damocles over the heads of our medical professionals.

My amendment would eliminate joint liability for non-economic and punitive damages. As a result, defendants would only be liable for their own proportionate share for the harm that occurred. It is unfair for an injured person to be found 99 percent liable for his injury, and his doctor to be responsible for only 1 percent, yet the doctor has to pay for all of the damages.

The amendment places modest limits on attorneys' contingency fees in medical malpractice cases. Specifically, the amendment would only allow personal injury lawyers to collect 33 percent of the first \$150,000 of an award and 25 percent of the award on all amounts above \$150,000.

My amendment encourages States to develop alternative dispute resolutions mechanisms to help resolve disputes before they go to court.

As I noted earlier, the amendment I offer today is the same one that the Senate agreed to in 1995. Unfortunately, as we all know, it is impossible to pass contentious legislation in this body without the 60 votes necessary to invoke cloture. Therefore, in the interests of preventing a filibuster against the larger product liability bill, I withdrew my medical malpractice amendment, and it has never been signed into law.

In 1995, the Senate considered our medical malpractice system to be so flawed that it required the Federal Government to enact these exact reforms. In the period since then, the system has gotten dramatically worse, not better.

I might not be so passionate about enacting medical malpractice reforms if these lawsuits were an accurate mechanism for compensating patients who had been truly harmed by negligent doctors. Unfortunately, the data shows just the opposite. In 1996, researchers at the Harvard School of Public Health performed a study of 51 malpractice cases which was published in the *New England Journal of Medicine*. In approximately half of those cases, the patient had not even been harmed, yet in many instances the doctor settled the matter out of court, presumably just to rid themselves of the nuisance. In the report's conclusion, the researchers found that, "there was no association between the occurrence of an adverse event due to negligence or an adverse event of any type and payment." In everyday terms, this means that the patient's injury had no relation to whether or not they received payment in their malpractice case.

While the research showing that litigation's effectiveness at compensating the injured hasn't stopped the personal injury lawyers from rushing to the

courthouse to file more lawsuits, the jackpots in the personal injury lawyers' litigation lottery have increased dramatically since we considered this issue in 1995. As my first chart shows, the Jury Verdict Research Service reports that the median award made by a jury has more than doubled since 1996, from \$474,000 to \$1,000,000 in 2000. Not surprisingly, the increase in jury awards has led to a similar increase in the dollar value of settlements reached out of court. Since 1995, the median settlement has increased from \$350,000 to \$500,000 in 2000.

These escalating settlements might make one wonder, "Are our doctors, nurses and hospitals twice as negligent as they were just 6 years ago?" The answer is, of course, no: the doctors haven't gotten worse, but the system has. In fact, plaintiffs only won 38 percent of the medical malpractice claims that went to trial, essentially the same as it was in 1995, 35 percent.

I think this bears repeating. In 1995, the Senate considered our medical malpractice system to be so flawed that it required the federal government to enact limits on the contingency fees charged by personal injury lawyers and punitive damages. In the period since then, the system has gotten worse, not better.

This litigation explosion is manifested in the premiums which doctors pay for their malpractice insurance. In the 7 years since we last debated medical malpractice reform on the Senate floor, doctors on Main Street USA have seen dramatic increases in their insurance premiums. Since 1995, obstetricians, OB-GYN's, have seen their premiums increase an average of almost 12 percent a year, each and every year. The same is true for the general surgeons who have seen their malpractice premiums increase 13 percent each year. Let me be perfectly clear, I am not talking about a thirteen percent increase over seven years, these premiums are increasing 13 percent EVERY year.

This may make people wonder, "Why should I care about how much doctors pay for malpractice insurance premiums?" The answer is access. Doctors are less likely to provide those services for which they are likely to be sued.

This is particularly true in rural areas of this Nation. While many doctors are willing to set up practices in rural areas, they cannot forgo malpractice insurance. Therefore, many doctors are forced to establish practices in more urban and suburban areas where they can earn the fees necessary to cover their malpractice premiums.

This has certainly been the case in Kentucky this year. Just a few weeks ago, the Corbin Family Health Center in Corbin, KY was forced to shut its doors because its doctors were unable to find an affordable insurance policy. Dr. Richard Carter and his four colleagues at Corbin Family Health deliver about 250 babies a year and have never lost a malpractice claim. Yet

when their insurance company, The St. Paul Cos., decided to leave the medical malpractice business, Corbin Family Health's doctors lost their coverage. The remaining few insurance companies that were willing to provide coverage will only do so for \$800,000 to \$1 million a whopping 465 percent increase.

This is a tragedy. Fifty of the clinic's patients are due to give birth in the next 2 months, and 130 more are due by the end of this year.

Fortunately for the families of Corbin, KY, the clinic's doctors were able to secure coverage last week, and the clinic reopened. However, their premium is twice what they paid previously. In addressing his clinic's predicament, the clinic's director, Steven Sartori, noted, "Even though you're relieved, it's not over because this malpractice problem is not going to go away. . . There's more doctors who are going to be in the same predicament I was in."

This problem is not limited to Kentucky. On July 1 of this year, Atmore Community Hospital in Atmore, AL, was forced to close its obstetrics program because it could not afford the 282 percent increase in malpractice insurance from \$23,000 to \$88,000. Now, expecting mothers must travel either to the hospital in Brewton, AL, 30 miles away, or to the big city hospitals in Mobile or Pensacola. That's more than an hour and a half drive.

Nor is the problem limited to the South. The administrators at Copper Queen Community Hospital in Brisbane, AZ were recently forced to close their maternity ward because their family practitioners were looking at a 500 percent premium increase. Expectant mothers must now travel more than 60 miles to the closest hospital in Sierra Vista or Tucson. According to a recent article in *Forbes* magazine, four women have since delivered babies en route.

In New Jersey, the director of Obstetrics and Gynecology at Holy Name Hospital was forced to lay off six employees from his practice when his malpractice premiums doubled. He told the *New York Times* "The issue is, we can't stay open. It's going to restrict access to care. It's going to change the way OB is delivered to the population, and they're not going to like it."

While our flawed medical malpractice system may be hitting obstetricians particularly hard, it is negatively impacting nearly every aspect of the medical profession. Many radiologists in Georgia are no longer reading mammograms, *Atlanta Business Chronicle*, 6/21/2002, because of the liability associated with the service. These lifesaving mammograms may only make up 5 percent of a radiologist's practice, but are responsible for a whopping 75 percent of their insurance liability. Officials at Memorial Hospital and Manor in Bainbridge, GA faced a staggering 600 percent increase in premiums despite a "nearly spotless claims history," *Modern Healthcare*, 4/1/2002.

However, no one should be fooled into thinking that this medical malpractice crisis is limited to the small hospitals of rural America. Perhaps the most publicized case involves the closure of the trauma unit at the University of Nevada Medical Center, UMC. Trauma centers are frequently referred to as "super emergency rooms" because they are staffed with highly trained surgeons and specialists who are qualified to treat the highest risk cases. Nearly all of the highly skilled surgeons and orthopedists who worked in the UMC unit decided they could no longer risk the liability exposure and resigned. UMC's director Dr. John Fildes explained that, "We want to be here, that's the sad thing. These physicians want to take care of patients, but they are withdrawing from high-risk activities to protect their families and livelihoods", *Washington Post* 7/4/2002.

What does the closing of UMC's Trauma Center mean to the people of southern Nevada? It means that those patients who are most seriously injured in car accidents must either be treated at less prepared emergency rooms or transferred out of state to the nearest trauma center. Fortunately, UMC has reached a temporary arrangement that will allow the unit to re-open by classifying its physicians as State employees for the next 45 days.

Pennsylvania has faced a similar crisis. I would like to read from a recent article that appeared in the *Allentown Morning Call*:

Thomas DiBenedetto is a marked man.

He feels the bull's-eye on his back every time someone is wheeled into Lehigh Valley Hospital's emergency room with broken, mangled bones.

It's his job to put people back together. DiBenedetto is an orthopedic surgeon in the Level One trauma center, and he loves what he does. Or, at least, he did.

Large medical malpractice awards and increasingly litigious patients have made it difficult for him to enjoy the job he's been doing for 13 years. He has been sued four times.

He won all four cases. Yet, his malpractice insurance costs this year went up nearly a third, to \$44,000. Even though his record is clean, he expects the bill to continue to climb.

Now, I am tempted to take issue with the AMA's finding in that I think some of these States have crossed the line from having serious problems to being in a crisis. I know how bad the situation is in Kentucky, and I think Kentucky ought to be listed as a crisis State. I noted the closure of the Corbin Family Health Center earlier, and we see daily reports of how Kentucky physicians are packing their medical bags and heading to Indiana, which has more reasonable tort laws.

For those doctors who choose to stick with the profession they love, they will inevitably be forced to pass these higher malpractice costs along to consumers in the form of higher fees.

Several years ago the Hudson Institute conducted a study in which it estimated that liability costs added \$450 to the cost of each patient admission to a hospital and accounted for 5.3 percent of their medical expenditures. In 1994, the Towers-Perrin Research firm estimated that malpractice expenses added \$12.7 billion to the cost of health care in America. To put that into terms many Senators can understand, that is more money that Medicare spent on nursing home care in 1994 and almost as much as was spent on the Medicare Home Health benefit. I don't think anyone would argue that these dollars would be better spent improving patient care rather than lining the pockets of the personal injury lawyers.

I will be the first person to admit that the reforms I propose today are modest. As many of my colleagues know, I have authored even stronger reforms contained in free-standing legislation, the Common Sense Medical Malpractice Reform Act of 2001. Our Nation's health care is staring down the barrel of a medical malpractice crisis, and it must be addressed soon. Therefore, I have chosen to offer this amendment which the Senate already agreed to in 1995. At its heart, this amendment merely assures that patients, not personal injury lawyers, receive the vast majority of any jury award or settlement. By establishing proportional liability, the amendment ensures that damages are paid by those parties who actually inflict the harm. I believe these are common sense steps the Senate can take to address, and I urge my colleagues to support it.

I yield 20 minutes to the distinguished Senator from Tennessee, the only physician in the Senate who is well versed on this issue. I yield 20 minutes to the Senator from Tennessee.

Mr. DURBIN. Mr. President, parliamentary inquiry: As I understand it, we have a time agreement in terms of the allocation of time.

The PRESIDING OFFICER. We are under a time agreement. The time is limited and under the control of the Senator from Kentucky and the Senator from Massachusetts.

The Senator from Tennessee.

Mr. KENNEDY. Mr. President, I think we were trying to go back and forth. I know the Senator has to leave. I don't know what the Senator's time limitation is. Could he take 7 minutes?

Mr. FRIST. Mr. President, I have a time constraint. I have been on the floor since last night waiting to make my opening statement.

I would be happy to yield 3 minutes, if the Senator has to make an airplane or something.

Mr. KENNEDY. Mr. President, I want the record very clear—then we are not going from side to side? I thought we were going from side to side. I withdraw that.

(Laughter)

Senator McCONNELL had two speeches.

We have followed the side-to-side rule. Now we are making it clear that on this legislation we no longer have to follow it. If that is the way it is going to be—we have respected that since the start of this debate. This is the first time I have been on the floor for 7 days that we have not done that.

I am prepared to yield to the Senator.

The PRESIDING OFFICER. The Senator from Tennessee has the floor.

Mr. FRIST. How much time has been used by each side?

The PRESIDING OFFICER. The Senator from Massachusetts has used 23 minutes. The Senator from Kentucky has used 11 minutes.

The Senator from Tennessee.

Mr. FRIST. Mr. President, I want to change the topic and focus where I believe the impact is most being felt today. It really has not been discussed on the floor thus far; and that is, at the level of the doctor-patient relationship, at the level where care is actually delivered. We heard a lot about the budget numbers and the insurance companies and the like, but what I would like to do is focus on where the impact actually is.

Yesterday, I was at a hospital, not as a physician, but I was there with someone in my family. I was in an emergency room 2 nights ago and then yesterday. Again, I was not there as a doctor or as a U.S. Senator. It was a local hospital, George Washington University Hospital.

On a side table, I picked up a newsletter. Again, it was not intended for me. The newsletter is called the "GW Medicine Notes." I have it in my hand. It is written by their medical staff for their medical staff and, I guess, for people in the hospital. The letter is from the chairman, Dr. Alan G. Wasserman. The whole front page really tells the story that much of the debate will be about today and on Tuesday.

I will open with just one sentence or two sentences from this letter, again not intended for me, but to really express the sentiment, the impact of what is happening all across America because what we are seeing today is, indeed, a crisis.

The words, again, from Dr. Wasserman, in what is called the "GW Medicine Notes," a monthly publication of GW, the George Washington Department of Medicine:

What we have is a runaway train that isn't stopping. The malpractice problem is not just a physician problem. It is beginning to affect the ability of patients to get proper care in a timely manner.

I may refer back to this letter because I found it fascinating, sitting there yesterday waiting for an MRI scan, just to see the sentiment that patients are actually being hurt. When I saw the words: "What we have is a runaway train that isn't stopping," the imagery, I think, is very appropriate.

We cannot do little things. This train is barreling through, and patients are

being hurt. Forget all the rhetoric, the dollars and cents, the bad insurance companies and the profits. Patients are being hurt by the current tort system that we have in effect today. The good news is, there is something we can do about it, and it starts right here with the McConnell amendment that is on the floor today.

I want my colleagues to listen very carefully. I hope, in the expanded reach, people are listening, because we have an opportunity, in this amendment, to improve patient care, and to reverse this runaway train, which is hurting patients today.

How can I say so definitively that patients are being hurt? You can look in the media. You can go into hospitals. I encourage everybody to ask their doctor. The next time you see your doctor or see a nurse or go into a hospital or interact with your health care system, just ask: What are these malpractice premiums doing?

We will talk a little bit about why premiums are going up.

What is being said around the country? Pick up the newspaper any day all across the country. Allentown, PA; Beckley, WV; New York, NY; Kansas City, KS; Jackson, MS.

Jackson, MS, November 23, 2001:

Costs Lead Rural Doctors to Drop Obstetrics.

That is because of the cost of the malpractice insurance. OB/GYNs are refusing to deliver babies and are dropping obstetrics.

Allentown, PA:

CARE CRISIS: Malpractice premiums crippling doctors. The emergency has stricken physicians in southeastern Pennsylvania, forcing some to leave their practices and patients behind.

Beckley, WV:

The situation may be more acute in West Virginia than anyplace else, but doctors across the board and around the country are facing double-digit hikes in malpractice premiums, something many hadn't seen since the 1980s.

Kansas City, KA:

Insurance rates reach crisis level for doctors. Some physicians have been forced to leave practices.

Again, we are talking about access to health care and costs of health care.

Dayton, OH:

WOMEN'S HEALTH CARE CRISIS LOOMS. . . . Rising malpractice premiums may force some doctors to stop delivering babies.

Buffalo, NY:

Soaring costs of medical malpractice insurance have caused fears among doctors that they will be forced to either quit their profession or practice in another state.

We all recognize this problem. I think both sides are going to state, again and again, that medical liability insurance premiums are skyrocketing. Why? The facts are there. We know it. We see it. Our physicians tell us why. We can look at what our insurance companies are having to charge today. The question is, why?

Medical liability claims and damage awards are exploding, and when they

explode, that ends up being translated into increased premiums. People think those increased premiums are paid for by the doctor. When the doctor pays \$50,000 or \$100,000 in malpractice insurance, it is not really paid by the doctor, because the doctor is going to pass that straight back to the patients.

When you go to a doctor for a particular procedure part of that procedure is going just to buy the insurance. These costs ultimately increase premiums. First of all, increased jury awards increase premiums. They are eventually passed back to the patient.

We saw a chart earlier today. Let me just show it again. It is not just in George Washington Hospital, where I happened to find this newsletter and talked to the doctors and nurses there, and not just at Vanderbilt but all throughout the local and national medical community. The problem is all over the United States of America.

This is from the AMA. Basically, it outlines, in red, those States that are in crisis. You can see, it is not just on the east coast, and it is not just in the South, and it is not just in the Northwest. Shown in red are States in crisis: New York, Pennsylvania, Texas, Nevada, and Washington. Shown in yellow, including my home State, are States with problem signs. As these rates increase 15, 16, 17 percent, sometimes 20 percent, sometimes 30 percent, they will force more states into the red, unless we act.

The end product of all this, all those articles, the end product of the newsletter—this is what is circulating in hospitals and clinics all over the United States of America—is that patients are suffering.

Why do I say that? No. 1, access to care. It is not just a matter of the costs, but it is access to care. If you are in a motor vehicle accident and you need a trauma center, we have seen trauma centers close because of these escalating, out-of-sight, skyrocketing premiums, which no longer can be tolerated. If you are one of those individuals who needs that care, the access is not there, and you are going to be hurt.

If you need an obstetrician—in many ways, it is a woman's issue—and your former gynecologist-obstetrician is one who gave up that interest in delivering babies because the malpractice insurance was so high, your access to obstetrics care, the delivery of babies, and the prenatal and perinatal care all of a sudden disappears.

Why? Ask your obstetrician. It is because the malpractice insurance has gone sky-high, from \$10,000, \$20,000, \$30,000, \$50,000, \$100,000 up to \$150,000, and it can no longer be sustained over time.

So physicians are dropping services. They have no choice. They are moving away from procedures that have a higher challenge rate because of the risk of the procedures. But if you are one who needs that procedure, you suffer from a lack of access to care. Those procedures that are a little bit higher

risk, physicians are beginning to leave and not do them.

We have had letters read about malpractice insurance. All of us understand that malpractice insurance needs to be addressed. It is the only way to improve the system itself. Malpractice does occur. There is nothing in the McConnell amendment that in any way lowers the standards on malpractice. You will have the other side reading a whole series of letters from people who have been injured. And as the Senator from Kentucky pointed out, there is nothing in his amendment that lowers the standards in any way in addressing true malpractice.

My colleagues who are physicians are now demanding action by Congress. Why? Because they took that Hippocratic oath to take care of patients, to do no harm. To illustrate this runaway train concept that Dr. Wasserman mentioned in his newsletter, things are at a crisis, we have level 1 trauma centers closing. Thank goodness they are not closing permanently but closing for this very reason—not for a whole broad range of reasons of cost increases but for this very reason—the high costs of liability insurance.

A level 1 trauma center is a big deal. It is not just an emergency room, and emergency rooms are terribly important, but it is not just an emergency room that sutures cuts or takes care of serious headaches. This is where you go if you are in a severe motor vehicle accident, have severe head trauma, multiple injuries, bleeding in the abdomen. This is where you go where you have trained specialists 24 hours a day to save your life. That is what a level 1 trauma center is.

The only level 1 trauma center facility at the University of Nevada Medical Center closed on July 3 after 57 orthopedic surgeons basically resigned because medical malpractice insurance rates made it too costly for them to treat high-risk patients.

Luckily, fortunately, the trauma center reopened when the surgeons agreed to return for at least 45 days. People can look at that case and say it was for this reason or that. The bottom line is, we have a group of people in a community who took an oath to take care of patients, but basically said this is such a severe, fast-moving, heavy, runaway train that we can't sustain what we do professionally because of this crisis.

This particular trauma center is one of the 10 busiest in the country and is the only one in Las Vegas. When it closed, the nearest trauma center was roughly an hour and 20 minutes away.

Therefore, when we talk dollars and cents and insurance companies making money, we need to address all of that. But let's recognize that we have to fix the system which has now gotten so bad, so severe that premiums are skyrocketing. That increase is passed on to patients. Patients cannot afford increases in health care costs. We have known that for a long time.

Now what is happening, the actual care expected by the American people and that the American people deserve is less available. We call it less access. But whether it is a trauma center closing, whether it is a woman who wants to keep her obstetrician, but the obstetrician says he can't afford to keep delivering babies because of these premiums, because of these excessive lawsuits, these frivolous lawsuits today, he can't afford his old specialty that he was trained to do. Then there is the third component of access. You have physicians leaving parts of the country. Basically, some parts of the country, these red areas where you have this crisis level, malpractice insurance has gotten so high that a physician can either quit—and they are doing that; they have no choice. Ask your physicians.

Mr. MCCONNELL. Will the Senator yield?

Mr. FRIST. I am happy to yield.

Mr. MCCONNELL. In response to his observation, what is happening in my State is they are going across the river to Indiana which, as you will note, is a State which has modest caps on recovery; therefore, affordable rates.

Mr. FRIST. I thank the Senator from Kentucky. He is exactly right. We have people moving from a yellow State, such as Kentucky, to a white State. The white means States that are currently OK. You see California. I will come back to California and comment on that. We have people from Mississippi, that already has fewer physicians, moving up to Tennessee. And who knows, they may end up moving to Wisconsin or Indiana or out to California for the same reason.

What is important, in response to the Senator from Kentucky's question, is that physicians are making decisions not on places they either like to practice to deliver the care they are trained to do, but now they are making decisions because of this exorbitant, runaway train. It is almost like a litigation lottery, malpractice lawsuit premiums that they are having to pay. They tell you that. That is the reason they are moving.

So we have the cost issue. We have the specialty issue. We have physicians changing specialties, not because of their individual practice, what kind of care they are giving, but because the premiums are that higher for obstetricians versus gynecologists. Obstetricians deliver the baby; the gynecologists takes care of many other women's issues. Then you have the geographic movement to other States.

There is a reason for all of this. It is a litigation problem. We need to fix the problem, and it can be fixed. The numbers are staggering. Between 1995 and the year 2000, the average injury award jumped over a 5-year period more than 70 percent to \$3.5 million. That is the average. More than half of all injury awards today top \$1 million of all the awards. The payouts aren't the only problem.

Simply defending a malpractice claim, whatever the claim is, is more than \$20,000, whether or not the doctor is at fault or the hospital is at fault. So there is an incentive through these exorbitant contingency fees where the trial lawyers, the personal injury lawyers, may make 40 percent. If there is a jury award, the trial lawyer, the personal injury lawyer gets 40 percent of the cut. Thus the personal injury lawyer has the incentive, the economic incentive to go out and engage in lawsuits, in frivolous lawsuits.

Each one of those which comes forward, no matter what, just to defend costs at least \$20,000. In 2001, physicians in many States saw their liability premiums for these frivolous lawsuits, excessive lawsuits that go to the millions and millions of dollars, with the trial lawyers taking off 40 percent—and Senator MCCONNELL's amendment addresses this contingency fee very directly to put some sort of control on the incentive that trial lawyers have to dig up these cases, then the physicians, because of the tremendous cost, whether the case is frivolous or not, they tell their insurance company to settle the case. They don't want to be tied up in a court. They want to deliver care. That is what physicians are trained to do. That is what they are obligated to do.

The solution: Intelligent, reasonable tort reform, sensible reform with fair and equitable compensation for those negligently injured. California has addressed this. Hopefully, over the next several days or hours we will address their experience. We have seen California put very reasonable controls and caps and incentives addressing things broadly, and they have been able to control their costs. So we know it can be done.

I see my time is about over. I look forward to coming back Monday to talk a little bit more about this issue. The bottom line is, the McConnell amendment will help patients. That is what it is about. Patients are suffering today. We know sensible tort reform works. We have seen it in California, in those States that have been progressive enough to do that. Now we have a duty to make sure these red States become yellow States and eventually become white States where we don't have this crisis today.

Sensible tort reform works. Let's act now to protect patients, their accessibility to quality care, the premiums that physicians have to pay which are ultimately translated down to cost to that individual patient.

I urge support of the underlying amendment.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. I thank the Senator from Tennessee. He has a unique perspective as the only physician in the Senate for lending his voice to this most important cause. I might say to my friend, to those on the other side of the aisle, we may or may not win Tuesday morning, but this is not going

away. We will be back, and we will some day address this problem because it is a national problem. Some on the other side will argue for States rights, which I always find interesting coming from very liberal Members of the Senate, that somehow this is not a Federal problem. I intend to outline in my full remarks exactly why it is a national problem and can only be corrected at the national level. I thank my friend for his outstanding comments this morning and look forward to continued discussion next week.

Mr. FRIST. Mr. President, I ask the Senator from Kentucky to allow me to enter three sentences in the RECORD, and then I will close.

First, I thank the Senator for his comments. This does give us an opportunity to point to the fact that this is a national crisis that has to be addressed. We have an obligation to address this crisis.

Dr. Frank Boehm, who is a good friend of mine, writes a newspaper article in the Nashville Tennessean. Though I do not have one of his articles, he keeps a really good feel of what is going on around the State of Tennessee and around the country and is also one of the preeminent high-risk obstetrical doctors in the United States of America. I communicated with him the other day.

I close with two or three sentences of what he said. He sees a lot of these high-risk cases coming through and reviews a lot of cases. He says:

What this has taught me is that doctors, hospitals and nurses are being sued in large numbers, in large part because of the possibility of a settlement or trial judgment of a large amount of money.

Then he talks about some of the things we can do, many of which are in the underlying McConnell amendment.

He closes with this:

Doctors need tort reform and so do our patients. With many physicians leaving States to practice elsewhere, or just closing up shop, patients are suffering from a lack of access to medical care in many parts of our country.

That was in an e-mail in response to my question of what is the lay of the land.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I thank the Senator from Tennessee particularly for his fine observation. There has been an effort on the part of some—and I am sure we will hear it again Tuesday—to say this is about insurance companies. This is not about insurance companies. It is about doctors, and it is about patients.

The AMA does support the McConnell amendment. I ask unanimous consent that a letter indicating their support be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN MEDICAL ASSOCIATION,  
*Chicago, Illinois, July 25, 2002.*

Re Medical Liability Reform Amendment  
Hon. MITCH MCCONNELL,  
*U.S. Senate, Washington, DC.*

DEAR SENATOR MCCONNELL: The American Medical Association (AMA) commends you for your leadership and initiative in offering an amendment to S. 812 ("Greater Access to Affordable Pharmaceuticals Act of 2001") that would bring several common-sense reforms to our nation's broken medical liability litigation system.

Many states in our nation are experiencing an emerging medical liability insurance crisis. Due to large jury awards and the burgeoning costs of defending against lawsuits (including frivolous claims), medical liability insurance premiums are skyrocketing. In many cases, physicians are finding that liability insurance is no longer available or affordable. The media now reports on almost a daily basis that the situation has become so critical in some states that physicians are forced to limit services, retire early, or move to another state where the medical liability system is more stable.

The most troubling aspect of our unrestrained medical liability system is the effect on patients. Access to care is seriously threatened in states such as Florida, Mississippi, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, Washington, and West Virginia. In other states, including Kentucky, a crisis is looming. Emergency departments are losing staff and scaling back certain services such as trauma care. Many OB/GYN's have stopped delivering babies, and some advanced and high-risk procedures are being postponed because surgeons cannot find or afford insurance.

Your amendment includes key building blocks to effective reforms, such as allowing injured patients unlimited economic damages (e.g., past and future medical expenses, loss of past and future earnings, cost of domestic services, etc.), establishing a "fair share" rule that allocates damage awards fairly and in proportion to a party's degree of fault, preventing double recovery of damages, allowing periodic payment of future damages, and preventing excessive attorney contingent fees (thereby maximizing the recovery of patients).

In addition to these necessary reforms, we urge you to include a reasonable limit of \$250,000 for non-economic (e.g., pain and suffering) damage awards, while allowing states the flexibility to establish or maintain their own laws limiting damage awards that have proven effective as stabilizing the medical liability insurance market. Multiple studies have shown that a limit on non-economic damages is the most effective reform to contain run-away medical liability costs. Such reform has also been proven effective at the state level. We also urge you to include a reasonable cap on punitive damages, such as the greater of 2 times economic damages or \$250,000.

By enacting meaningful medical liability reforms, Congress has the opportunity to increase access to medical services, eliminate much of the need for medical treatment motivated primarily as a precaution against lawsuits, improve the patient-physician relationship, help prevent avoidable patient injury, improve patient safety, and curb the single most wasteful use of precious health care dollars—the costs, both financial and emotional, of health care liability litigation.

The proposals in your amendment are an important step in the right direction to strengthen our health care system. The AMA looks forward to working with you regarding a reasonable reform on non-economic damages.

Sincerely,

MICHAEL D. MAVES, MD, MBA.

Mr. MCCONNELL. Mr. President, I see the Senator from Ohio in the Chamber. I will be happy to yield him such time as he may need.

Mr. VOINOVICH. Mr. President, about 10 minutes will do it.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I rise today as a Senator from a State that is on the edge of becoming one of those red areas on that national map. This Senator does not want his State to become one of those red States. I rise in strong support of Senator MCCONNELL's medical liability amendment.

The litigation tornado that continues to sweep the Nation does not seem to be losing strength. In fact, at the rate lawsuits continue to be filed, the only entity that stands to lose strength is our economy.

The cost of malpractice insurance has had an enormous impact on the rising costs of health care and the cost of health care insurance to the extent that more and more of my constituents are complaining that the cost of insurance is so high that they can no longer afford to buy it.

In particular, the effect of rampant litigation has really had a disastrous impact on the health care industry. When a pharmaceutical company decides not to develop and produce a new drug because the cost of possible litigation could erase any profit, who really loses?

When physicians choose not to perform certain procedures, such as delivering babies, because malpractice insurance rates are too high, who loses?

Even worse, when a physician stops practicing medicine because he or she no longer can afford the insurance premiums or is so fearful of malpractice being filed against them, who loses?

Recently, the American Medical Association released an analysis which found that medical liability has reached crisis proportion—I underscore "crisis proportion"—in 12 States. One of those 12 States is Ohio.

In addition, the American College of Obstetrics and Gynecology, the ACOG, issued a red alert and warned that without State and Federal reforms, chronic problems in the Nation's medical liability system could severely jeopardize the availability of physicians to deliver babies in the United States of America.

The good news for Ohioans is that Ohio did not make the ACOG's list of nine hot States, those in which a liability insurance crisis currently threatens the number of physicians available to deliver babies.

The bad news is that Ohio is only one step short of that mark. It is one of three States where a crisis is brewing. In fact, signs of the crisis are already beginning to show.

Currently, in Hancock County in northwest Ohio, they have only one physician to deliver babies. Think about it, a county with a population of

over 70,000 people has 1 physician to deliver babies. He has indicated that if his insurance premiums continue to climb at the current rate, he will have to close up shop.

That sounds like a crisis to me, and I am sure it sounds like a crisis to the women in Hancock County who need someone there to deliver their babies.

I believe this amendment that Senator MCCONNELL has before us gets us on our way to enacting meaningful medical liability reform. It limits attorney's fees so that the money awarded in court goes to the injured parties, who are the people who really need the money. It also allows physicians to pay any large judgments against them over a period of time to avoid bankruptcy and requires all parties to participate in alternative dispute resolution proceedings, such as mediation or arbitration, before going to court. It limits punitive damages to twice the sum of compensatory damages. These are all reasonable limitations.

One of the growing areas in the legal profession is mediation and arbitration. In fact, the Michael Moritz School of Law at Ohio State University, of which I am a graduate, is one of the leaders of that initiative in the legal profession.

When I was Governor of Ohio, I joined the chief justice of the supreme court and wrote to all the businesses in our State encouraging them to agree to a mediation and arbitration in order to reduce litigation costs and, frankly, improve the economic environment in our State.

Why shouldn't we do this in medical malpractice cases? Doesn't it make sense? Providing a commonsense approach to our medical liability problems is certainly a win-win situation. Patients would not have to give away large portions of their judgments to their attorneys and physicians could focus on doing what they do best: practicing medicine and providing health care.

I know there are differences of opinion about how to approach this, but we do have a crisis in this country. If those who are opposed to Senator MCCONNELL's amendment are concerned about this problem, then it would serve us well to sit down and figure out some way we can address this problem. We need to do it now, not tomorrow, not next month. I can tell you, if we do not do something about this problem, we are going to see more and more people in this country do without medical care. We are going to see a lot more of our physicians dropping out of the practice of medicine. And we truly will have something we never experienced in this great country, and that is a health care crisis.

I thank the Chair. I yield back any time to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I thank the Senator from Ohio, who represents one of those red States in cri-

sis, for his important contribution to this debate. I thank him so much.

Mr. President, I ask unanimous consent that Senator FRIST be allowed to control the remainder of the time we have for the morning on this issue.

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

The Senator from Tennessee.

Mr. FRIST. Mr. President, how much time is remaining on our side?

The PRESIDING OFFICER. The Senator has 50 minutes under his control.

Mr. FRIST. And the other side?

The PRESIDING OFFICER. Sixty-seven minutes.

Mr. FRIST. Mr. President, I mentioned in comments a few minutes ago the fact that I was in the hospital yesterday and two nights ago with a family member and I will go there in a few minutes. Being there as a patient's family is a different perspective than being there as a physician or Senator.

As one walks those halls and sees people working hard, day in and day out, 24 hours a day, as one watches the shift change at 7 or 8 at night, fresh people coming in and starting, and see physicians coming in at 9, 10 at night, starting early in the morning, seeing the emergency room and trauma centers going on around-the-clock, when one sees that and recognizes that we can do something that will make that better when the trends, especially in the last 3 to 4 years, are getting worse, it makes one feel very passionately about that.

When I see doctors leaving the practice of medicine for this reason, these exorbitant, skyrocketing, out of control—this runaway train which I mentioned earlier, such good imagery—it makes me want to passionately come to this body and make sure that people understand, make sure that my colleagues understand, that physicians are leaving the practice of medicine because of these exorbitant malpractice suits.

A physician who gets up every morning to take care of patients who come through that door is being charged \$100,000 not for what they do but to cover the legal system and these out-of-control malpractice suits, which I will say are in many cases driven by the trial lawyers, there is no question in my mind, and if you talk to people broadly they will say lawyers have the incentive.

When one sees that happening and sees that patients are going to suffer, they want to act. That is what this McConnell amendment allows us to do, to do something that does not solve the problem; it does not go as far as I want to go. As the Senator from Kentucky said, does not go so far as the American Medical Association, which represents so many tens of thousands of doctors, would go, but it is a first step. It puts the issue back on the table, and we ought to talk about this issue in this body.

It has been 7 years since we have actually addressed this issue, an issue

that patients are being hurt by, that is driving physicians out of the practice of medicine, that is driving physicians from Kentucky to Indiana, from Mississippi to Tennessee, out of New York City, out of New York, out of Texas, out of Florida, that is driving the price of health care up unnecessarily. It is unnecessary. In fact, it is hurting patients unnecessarily; it is not helping patients.

If there is malpractice, there needs to be appropriate punishment. There needs to be appropriate economic compensation. It needs to be fair. It needs to be equitable. But these skyrocketing lawsuits, many of them frivolous, need to be brought under some sort of moderation and some sort of control.

I mentioned that Dr. Wasserman, who is chairman of the Department of Medicine at George Washington University, who is in the hospital working right now—we did not even really talk about this specifically in any detail, but in the newsletter that I quoted earlier, which is pretty good reflection of what is going on in every hospital around the country, it is important for my colleagues to know that sentiment.

In that same newsletter, I read one sentence earlier saying that what we are facing, in terms of this lack of tort reform, a medical liability crisis being a runaway train, a beautiful analogy. He said, and I quote from the second paragraph of the letter:

Malpractice rates are increasing at a rapid rate across this nation. Insurance companies are going out of business, refusing to write new policies, or raising rates 50 to 200 percent.

People say, why? Some say it is the bad insurance companies that are making profits and taking advantage of people broadly, and that is where the problem is. Well, I disagree. It may be part of the problem that may need to be addressed, but the fundamental problem is the frivolous lawsuits, with no sort of restraint, with out-of-control incentives for the personal injury lawyers to take a 40 percent cut, to increase the number of cases, to bring these suits, again with no limits, no caps, not a \$100,000 cap, a \$500,000 cap, a \$1 million cap, \$5 million cap or \$10 million—it does not matter what it is, they take away 40 percent of whatever it is so they are going to drive it high.

The McConnell amendment stops short of what I would really like to do, and it does not have any sort of limitation of payments. It looks at limits on attorney's fees, establishes proportional liability, looks at both scopes, such as collateral service reform, which we will be able to talk about, but it is a good first step.

Dr. Wasserman, in his newsletter—and this will be the last time I will quote from it, but it captures it—says: Be patient. There is a coming crisis. Already, there is a shortage of physicians in certain medical specialties in certain areas. Do not try to have a baby in Las Vegas. There are no obstetricians. Try to find a rheumatologist

in Florida in the winter with less than a 3-month wait.

At some point, this will be politically important when more people are denied immediate access to health care, and then maybe change will come.

That hurts me in many ways, because it basically says we do not have the guts to face an issue that is not just dollars and cents and profits and all of this class warfare that we hear about, but an issue that is hurting patients, where the patients suffer.

The example is right before our eyes, and I do not see how we cannot address it. The example I mentioned earlier in the great State of Nevada, where physicians actually had to close down a trauma center, a level-1 trauma center, which is sophisticated care that can be delivered adequately in no other way, and if you are in that automobile accident, your care is in jeopardy. It does not have to be this way if we can pass this amendment, continue the discussion, again, hopefully improve and strengthen this amendment in the future.

This is not going to go away. It is getting worse. It is getting worse before our eyes. We last talked about it on this floor 7 years ago. This is the first time since then. That is inexcusable. I mentioned the level 1 trauma center having to close, leaving patients for that period of time if they were in an accident having to go an additional hour and a half for proper care.

Let's look at the obstetricians and gynecologists. Again, as I mentioned earlier, an obstetrician/gynecologist is trained to do gynecology, women's health issues. An obstetrician's practice is to deliver babies. It is a good example because as these doctors' insurance premiums go sky high, and when they go sky high, the obstetricians are saying: I cannot deliver babies anymore. I am going to change to the field of gynecology.

Then the mom, who has been going to that obstetrician for 5 years, 10 years or 15 years, goes to see their physician who says: I am not delivering babies anymore, and the reason I am not is because I cannot afford that malpractice insurance. So then all of a sudden there is this problem with access to care affecting the individual. We talked a little bit about costs; we talked about physicians moving.

I again ask women all over this country to ask their obstetrician what is happening to obstetrics care today because of malpractice insurance.

Nationwide, 1 out of 10 OB/GYNs no longer deliver babies because of this high cost of liability insurance. Obstetricians are not just geographically moving but are leaving the practice altogether. Again, I can say that. I can go to a hospital and say that. I can say that as a Senator and as a physician. The best thing is for people to talk to their obstetricians and ask how this malpractice insurance impacts on them.

Earlier today we heard some comments about insurance companies, and

I think on Tuesday we will have the opportunity to come back to that as well. Much of my focus is on the individual patient and on the impact on the practice of medicine, which is very real. I do want to at least introduce the fact that these insurance companies, many of which are not-for-profit in the sense that they are mutual funds—and I will use the example of the State Volunteer Mutual Insurance Company in Tennessee. It is owned by the physicians in Tennessee.

Again, it is not a red State yet. It is on the verge of being a crisis State. Eighty percent of the physicians in Tennessee come together and have a mutual insurance company because they can have the input and they can try to keep the rates down in the very best way possible.

I will read from a letter, and I ask unanimous consent to have this printed in the RECORD, dated July 25, from the State Volunteer Mutual Insurance Company.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

STATE VOLUNTEER MUTUAL INSURANCE COMPANY,

*Brentwood, Tennessee, July 25, 2002.*

Hon. WILLIAM H. FRIST, MD,  
*U.S. Senate,  
Washington, DC.*

DEAR SENATOR FRIST: I am writing to urge you to support tort reform legislation currently being considered by the Congress.

According to recent news reports, doctors and hospitals in a number of states are currently facing a true crisis in the cost and availability of professional liability insurance. These states include West Virginia, Pennsylvania, New Jersey, Florida, Nevada and Mississippi and several other states. Access to patient care in those states is being adversely impacted, especially in the area of pre-natal and obstetrical care.

While our situation in Tennessee has not yet reached the crisis experienced in those states, there are many indications that our state could well face the same sort of problems in coming years if we do not act now to make some changes in our civil justice system.

St. Paul Insurance Company, the nation's largest writer of health care professional liability insurance, experienced such losses that it announced last December that it was completely withdrawing from the market, adversely affecting tens of thousands of physicians who carried coverage with that company, some of whom were in Tennessee.

Professional liability premiums for doctors in Tennessee have been steadily rising in recent years. According to State Volunteer Mutual Insurance Company, which covers most practitioners in Tennessee, premiums have increased by 45 percent over the past three years, in order to keep up with rapidly escalating losses in medical malpractice lawsuits. Only approximately 4 percent of this 45 percent increase was related to lower investment yield, with the remainder being due to increasing medical malpractice losses. State Volunteer Mutual Insurance Company is a policyholder owned mutual company with no outside investors.

In recent years both juries and judges in Tennessee have made multi-million dollar awards for non-economic type damages, over and above a plaintiff's actual economic losses. (According to State Volunteer, in one recent case a jury awarded only \$25,000 in

economic damages but awarded non-economic damages of \$1,600,000. Another case resulted in a jury award of \$100,000 economic loss and \$1,900,000 non-economic damages. A judge in another case awarded \$1,062,080 in economic loss and gave \$4,500,000 non-economic damages. Another judge awarded \$687,691 economic loss and gave \$3,000,000 in non-economic damages. One jury awarded \$7,811 in economic loss but gave \$2,650,000 non-economic damages.)

Awards in personal injury and wrongful death cases in Tennessee are dramatically increasing, according to the latest statistical report of the state's Administrative Office of the Courts. In fiscal year 2001, even though fewer cases were disposed of in our courts than in the previous year, damages awarded statewide were more than \$94 million. This represented an increase of more than \$51 million over the previous year. The total was the largest since the courts began reporting these statistics. According to the same report, the average award for fiscal year 2001 was \$209,284, up \$95,064 from the previous year, the largest average since awards have been reported.

Senator Frist, doctors and hospitals in Tennessee are dedicated to providing excellent care to our state's population but at a time when health care reimbursements are shrinking, and professional inability costs are dramatically increasing, doctors in Tennessee believe that the Congress should enact some common sense tort reform that will preserve citizens' access to health care and compensate them for their actual economic damages caused by negligence, while modifying the current system of unlimited liability that doctors and other health care professionals and institutions currently face. Reforms modeled after California's "MICRA" law make sense to me. California passed legislation in 1975 that helped solve a crisis in that state. It is my understanding that key provisions in California's civil justice reform included the following:

- \$250,000 cap on non-economic damages;
- reasonable sliding scale for lawyers' contingency fees;
- collateral source payment offsets;
- periodic payment of future damages.

I believe similar reforms on a national basis will go far toward alleviating the health care crisis now facing much of the country and will help avoid such a crisis from coming to pass in Tennessee.

Thank you for your attention and concern regarding this important issue.

Sincerely,

STEVEN C. WILLIAMS,  
*President and Chief Executive Officer.*

Mr. FRIST. The State Volunteer Mutual Insurance Company is a policyholder owned mutual company with no outside investors.

So I think they don't have a huge incentive to go out and gouge the communities or patients. It is mutually owned by physicians throughout the State.

In the letter to me, I read further:

Senator FRIST, doctors and hospitals in Tennessee are dedicated to providing excellent care to our state's population. But at a time when health care reimbursements are shrinking, and professional liability costs are dramatically increasing, doctors in Tennessee believe that Congress should enact some common sense tort reform that will preserve citizens' access to health care and compensate them for their actual economic damages caused by negligence, while modifying the current system of unlimited liability that doctors and other health care professionals and institutions currently face.

This letter was written by Steven C. Williams, president and CEO of the insurance company, but also representing 80 percent of the physicians in Tennessee, calling for sensible reform, for moderate reform, reform that does not go overboard. That is what the McConnell medical malpractice amendment indeed does.

What is most important is what is happening to patients. Patients are suffering under the current system. It is a runaway train. We all know it is a problem. We have seen it in Las Vegas at the trauma center. We see it in various States. We go in our physician's offices and hear it. The problem is getting worse. It is increasing in its impact and not getting better. That is why we call for action now.

The Tennessee Medical Association, in a letter dated July 24, 2002, to me:

We have a storm brewing here in Tennessee. While the waves are not yet crashing in on us, as in many states, including our next-door-neighbor, Mississippi, it most certainly is coming. Over the last two years, medical malpractice insurance rates have gone up 32 percent.

Of additional concern is that in Tennessee there is a very clear trend of increasing awards in medical malpractice cases. This, we believe, is fueled in large part by a growing public perception and environment that likens the courtroom to a casino where there appears to be no limit.

That was Michael A. McAdoo, president, Tennessee Medical Association.

The medical liability premiums are skyrocketing. It is because the medical liability claims are exploding. It is because the awards are exploding. The problem is not limited to just the Northeast or the Southeast. But as you can see from this map, the medical liability crisis is all over the United States of America. It has to do with cost and access to care and physicians leaving their profession.

The response to what we do means we have to identify the underlying problem and not just worry around the edges or tinker around the edges. I mentioned earlier, an average jury award over a 5-year period jumped more than 70 percent on average. When more than half of all jury awards top \$1 million, we have this field of defensive medicine. That means physicians in the emergency room that I was in two nights ago, attending to a patient, are going to err in going a little bit too far in terms of tests. Why? Because if that headache, which to your exam is just a routine frontal headache treatable by a doctor, if you do not get the CAT scan or MRI scan, the risk, although it is beyond the normal bounds of routine accepted medical practice, a physician, a nurse, or a hospital is going to err on getting the expensive tests, although in your clinical judgment and using the practiced guidelines out there today, you do not need the tests. But you will get that series of more expensive tests that unnecessary testing.

Again, the American people pay for it. Those costs are unnecessary. They

are there because of the fear of skyrocketing lawsuits, numbers of lawsuits, awards themselves. No one wants to be in that category. The best protection is to get the range of tests, although you may think they are unnecessary.

What is the effect on the doctor? In 2001, physicians in many States saw their rates rise by 30 percent, and even more. That is just physicians, generally. If you look at the specialists, such as obstetricians or possibly neurosurgeons or neonatal specialists, malpractice insurance is rising by as much as 200 percent, and in some cases 300 percent.

In New York and in Florida, obstetricians—the ones who deliver babies—gynecologists, and surgeons pay more than \$100,000 for \$1 million in coverage. That \$100,000 they pay comes out of their pocket initially, but for them to stay in business and continue what they do, they take that \$100,000 and pass it on to the people who are listening to me, the people all across America. That is why this issue is so powerful today.

People for the first time realize one doctor out there, who took an oath to do no harm, to help patients, who trained 4 years in medical school, a year in internship, 5 years in surgical residency, 2 years in specialty training, and a year of fellowship, just to be able to help people, are having to pay \$100,000, not to help people, but to protect themselves. That is absurd.

Ultimately, for them to stay in business it gets passed all the way back through the system to that individual patient. It may come in taxes. It may come for those who do not have insurance, and pay retail, who do not have any insurance when the overall prices in health care go up. If you do not have insurance, you are in trouble today because the overall price of health care has skyrocketed. This is an area where through commonsense tort reform we can lower this escalating cost of health care across the board.

For annual premiums, some doctors in Florida and New York pay, again, above \$100,000. That is one individual doctor. This is not a big corporation that pays this. It is not a big hospital paying it. These are individual doctors paying this money so they can fulfill that Hippocratic oath of doing no harm.

In Tennessee, which is not yet in the crisis mode, and is not considered to be in crisis, but it has problem signs today, the premiums rose 17.3 percent last year in 1 year. They will rise anywhere from 15 percent to 17 percent this year. What we need to do is ask why. Is there more malpractice today? Are physicians not as well trained today as they were a year ago, or 5 years ago, or 10 years ago? Are they not using the tests appropriately today in order to take care of patients?

If so, we need to debate that issue and look at it and look at the data that is out there.

No, I think the dynamics are because of frivolous lawsuits, because the personal injury trial lawyers have a huge incentive, a huge financial incentive for themselves in order to bring cases forward, which puts physicians in a position where it is easier to settle these cases rather than to spend a year or 2 years, if you have the insurance. So there is this huge settlement, even if you don't have malpractice, even if you know that you are absolutely innocent. It is easier to settle for \$1 million or \$2 million so you can go back to the practice of medicine.

The system is broken, and it is getting worse.

Can it be fixed? Yes. The McConnell amendment makes a first step there—intelligent, reasonable, balanced tort reform. It will help address it, but it will not solve the entire problem. It is not going to make it go away, but I can tell you, it will help patients because they will not have to be driven to the ranks of the uninsured; because that obstetrician, with whom they have the first baby and second baby, will not have left practice because of that malpractice insurance; because they will be able to see the neurosurgeon for their brain tumor in their region because he or she did not move from Texas to Wisconsin because of these exorbitant malpractice rates.

I mentioned earlier that today is different than 6 years ago when we last addressed it. It is in a lot of different ways because the problem is getting worse. Ask the physicians, ask the people in the hospitals who are working there every day. Read the newspaper, and you will see that every newspaper is going to address this in a direct way. I think we need to go back and look at hard data that is out there today, in terms of what certain States have done and been able to accomplish and what other States have tried, and learn from that.

In California there is what is called MICRA, which is the Medical Injury and Compensation Reform Act. It became law in the mid-1970s. It is a good example of what works. When you look at States, other big States, you see a lot of them are in trouble. You see New York City is in trouble. If you are in New York City, talk to the physicians, talk to the medical community, ask them what has happened in terms of these tort issues recently.

Look at Pennsylvania; it is in trouble. Look at Florida, look at Texas, where there is trouble. This is California in white, meaning they do not have a huge problem there. You do not hear it. I was in California this past weekend and probably talked to six or seven people in the medical profession at academic health care centers, and it is not No. 1 on their list for reform because they say it is not a big issue there.

Why? In the 1970s, California passed MICRA—Medical Injury and Compensation Reform Act. California doctors and patients have been spared much of

the medical liability crisis that we see across the country today. I think it is a good surrogate measure, that California's premium, the premiums they are paying today, are among the lowest medical malpractice insurance premiums in the country. MICRA is the reason.

I have used this example of obstetricians and gynecologists, so I will keep going back to that. It is the reason that the obstetrician, the one who delivers babies in California, may pay about \$40,000 for medical liability insurance where, if you took that same obstetrician—same training, same medical school, had done the same number of procedures, delivered the same number of babies—and you put them in, let's say Florida or let's say New Jersey, or you put them in New York, the premiums—here, say, \$40,000 for that insurance—it will be above \$100,000, maybe up as high as \$150,000. The same person, same training, same number of babies, same Hippocratic Oath—"Do no harm"—here paying around \$40,000; in these red States, paying upwards to \$150,000.

My colleagues have to ask why, but more important, the American people have to ask why. Is there less malpractice in California? I don't think so. Better trained doctors in California? I don't think so. The reason goes back to the tort system, the liability system.

In other States it has been allowed to run out of control, and that is why this McConnell amendment comes in. Again, we have not really talked about all the things that are in the amendment. We will have the opportunity to do that. But that is why it is important to go back and look at what is in the amendment. It doesn't go very far. It doesn't go far enough for me or, I think, for most of my colleagues in the medical profession.

But why does MICRA work? Why does this doctor with the same training pay so much less than these other States?

Let's look at MICRA. What does MICRA do? This is not the McConnell amendment. I don't want to confuse the two, but it shows what common-sense reform in a State that was way ahead of the curve can accomplish. MICRA does limit attorney's contingency fees to a sliding fee scale. This allows the patient, when there is an award, to keep the money.

If it is malpractice and you are trying to compensate the patient, to have the lawyer walk away with 40 percent of the money doesn't make sense to me. I don't think it makes sense to the American people once they really understand that. With this limiting of how much the attorney can take out of what is sent home by the jury to the patient, by limiting that in some way, you have some element of control of this runaway train which is hurting patients.

It is pretty simple. In my mind it is simple. If you look at how much a lot of these personal injury trial lawyers

make today, especially in the environment where we are looking a lot more at the corporate world, the numbers are incredible. Ask, if you take the top 50 personal injury trial lawyers in America, what is their take? What do they make? The incentive is there.

If you are in the field of law, you would like to say, I am out just to save the world and do good. But when you take 40 percent of the take after a multimillion malpractice injury—first of all, the patient doesn't get it. That is who it is really about—or that is who it is about in the medical profession. It needs to be about the patient. That is whom you take the oath to serve.

It is hard for me to understand how you could have the huge contingency fees today when you hear physicians are leaving, they are not taking care of patients, they are being forced to close down trauma centers.

MICRA places a statute of limitations on bringing a suit 1 year from discovery or 3 years. This is the California law. This ensures that a suit would be brought in a reasonable amount of time. It protects evidence, and it also keeps people from sort of searching in the bowels of a hospital or advertising for cases 5 years ago, or 20 years ago, or 30 years ago. Again, malpractice occurs at a certain point in time, and we need to punish it, and punish it hard. But to go out and stir up these cases so you can be paid for it, I think is inappropriate.

What MICRA does—and again this is not in the McConnell legislation, and this I hope will come back to the floor again and again and again until we fix it—MICRA, California law, caps future noneconomic damages at \$250,000. These are not the economic damages. There is full compensation there. So, under MICRA, patients are fully compensated for their economic loss due to medical malpractice, and they are compensated for lost wages, and they are compensated for the medical care and the future costs of medical care.

I use California as an example because we have not talked about it on the floor of the Senate. We haven't talked about it in committee, because this whole issue has not been addressed. The bottom line is you can have reforms—which the majority of States do not have today, and that is the reason there is a role for this body to act—because the problem is well identified, and the problem is getting worse. The problem has not been adequately addressed by States—California and a handful of others have addressed it—so that we have an obligation to the patients.

The reforms in California have helped the patients. Injured patients receive a larger share of whatever award. If there is malpractice and there is an award, the patient can walk—hopefully, can walk—home with more of that award. In addition, these reforms have helped slow down the overall rising cost of medicine.

There is no question in my mind that physicians are practicing defensive

medicine, which the physicians have to practice, and this drives up the overall cost of health care today.

We talk a lot about prescription drugs, about the importance of generics, about the importance of coverage within Medicare, and about having a competitive system—all of which we hope will actually slow down the skyrocketing costs of medical care today. Indeed, the cost of health care in California has been slowed by the slowing and the restraining of these out-of-control, skyrocketing, runaway train costs in liability that other States have.

Mr. EDWARDS. Mr. President, will the Senator yield for a time question?

Mr. FRIST. I would be happy to yield.

Mr. EDWARDS. Does the Senator have an idea how much more time he will take?

Mr. FRIST. Probably 5 minutes, and then I would be happy to yield the floor.

Madam President, how much time do we have on either side?

The PRESIDING OFFICER (Ms. STABENOW). Eighteen and one-half minutes.

Mr. FRIST. Madam President, let me take a couple of minutes, and then I would be happy to sit down and look forward to the opportunity to talk about all of this on Tuesday, which I believe is when we will come back to this.

The McConnell medical malpractice amendment does the following:

It limits punitive damages. It limits punitive damages to two times the sum of what are called compensatory damages. Again, this gets sort of technical. We talk about economic damages and noneconomic damages. It allows punitive damages in those cases where the award has been proven by clear evidence and by convincing evidence.

I mentioned attorney fees. I am critical of that because I don't understand in this day and time why personal injury trial lawyers walk away with so much money that has been awarded to the person who has been injured. But it does limit attorney fees.

The McConnell amendment places very modest limits on attorney's contingency fees and medical malpractice cases. Specifically, the amendment allows personal injury lawyers to collect 33 percent, or a third, of a \$150,000 award, and about 25 percent of the award on all amounts above \$150,000.

Again, that is pretty modest from my standpoint. The fact that an award to somebody who has been injured is \$150,000, it was malpractice, and the fact that a trial lawyer will take away a third of that for their pocket, again, to me—that is what is in the amendment—that is an improvement over today. But, again, in the future I hope we come back and address that.

The statute of limitations—I mentioned California's law—the amendment requires that a medical malpractice complaint must be filed within 2 years of discovering the injury and

the cause. Again, that is when it should be filed.

The McConnell amendment is modest. It identifies the problem. It gives us the opportunity to talk about the problem on both sides of the aisle. It does not include all of the measures I think are necessary to address this problem eventually. But it is a good first step in the right direction.

We have evidence that reasonable tort reform—and we can debate what reasonable tort reform is. I think, again, the McConnell amendment is the first step. It doesn't go quite far enough, but it is a good first step.

We know that by addressing this we are going to hold down health care costs which are skyrocketing. The premiums are going up 15 percent, 17 percent, and 20 percent—last year, this year and next year. That translates down to the patient. Those premiums are eventually going to be passed down to the patient. To my mind, there is no question but that we will put them in the ranks of the uninsured.

On the access issue, the McConnell amendment is a simple amendment. I am convinced. Ask your physician, if you have the opportunity over the weekend. I am absolutely convinced it will improve access when we know that access overall is deteriorating.

We need to look at Las Vegas, and we need to look at the many examples which are in newspapers all across the country of physicians leaving a specialty practice because of malpractice insurance, or leaving a State.

We have an opportunity to do something which protects patients and which improves their access and clearly stops the deteriorating access to quality care before this problem gets worse.

I urge support of this amendment and look forward to coming back to it over the next several days.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EDWARDS. Madam President, I yield myself such time as I may use.

Let me say, first, from the discussion that we have been having all over America, and on the floor of the Senate for the last few weeks about trying to reinsert some responsibility and accountability because of the fundamental notion we believe in this country that everybody—every person, every company, big business, small business, and everybody in America—should be responsible and accountable for what they do, one of the reasons we have had such a downslide in Wall Street lately is people have lost confidence in the responsibility of people who run some—I emphasize “some”—of the companies that have been on the front pages of the newspapers for the last several months. What they want us to do is reimpose some of that corporate responsibility. So we work very hard on that.

At a time when the focus is on trying to make sure we have real responsi-

bility and real accountability in this country, the President yesterday went to my home State to do exactly the opposite. The President went to North Carolina to say: I am going to side with big insurance companies and against victims. I am going to say if a child who has been severely hurt as a result of bad care is trying to get some help for him and his family over a long period of time, I am going to put a limit on that. I am going to put a limit for a very simple reason: The big insurance companies of America will have to pay.

Unfortunately, there is a pattern with this administration. Every time they have a choice between the interests of average Americans, kids, families, and people who do not have lobbyists in Washington, DC, representing them, on the one hand, and on the other hand, the interests of big HMOs, big oil companies, big energy companies, the drug industry, the pharmaceutical drug industry, and big insurance industry in this case—whenever those interests come into conflict with the interests of ordinary Americans, this administration consistently sides with the big interests. They have done it on the Patients' Bill of Rights.

They have prevented us from having a real and meaningful Patients' Bill of Rights. While we try to protect families and patients, they side with the big HMOs. I think we are going to overcome it.

On preventing us from having a meaningful prescription drug benefit for senior citizens and doing something about the costs of prescription drugs in this country, on which the Presiding Officer has worked so hard, we know that is a fight between ordinary Americans and ordinary families who need these prescription drugs and the pharmaceutical industry. The President has stood with the big pharmaceutical industry.

On trying to do something about clean air in this country, the President and his administration have proposed weakening our clean air law—all in the interest of protecting his friends in the oil industry, in the energy industry, and against the interests of ordinary Americans.

So now he adds to that list, going to my home State of North Carolina, to say to the victims: I am going to make sure the big insurance companies of America are protected. At the end of the day, that is all this is about.

The proposal the President made is different from this amendment—which I will talk about in a minute—which is to impose a limit of \$250,000 on some of the damages for children can be recovered against these big insurance companies.

For example, in the case of a child who may be born blind or crippled for life or a child who has to be taken care of by his or her parents every single day, 7 days a week, every day of the year for the rest of their lives, the President says: I am going to make sure the insurance companies don't

have to pay what they are obligated to pay to that family, to that child.

It is wrong. It is no more complicated than that. And the children and the families, who have been the victims, know it is wrong.

The President held a roundtable yesterday in North Carolina on this subject. How many victims participated in that roundtable? How many people whose lives have been destroyed and who need the help that the insurance company is obligated to provide for them participated? Everybody else was well represented. What about the people who don't have lobbyists? What about the people who aren't represented here in Washington by lobbyists? The families, the kids who are hurt by all this, were they at the roundtable? Were their voices heard?

I invite the President to come back to North Carolina, and this time, instead of talking to these powerful interests, I hope he will sit down with regular folks who have been the victims and listen to what they have to say, listen to what their lives are like.

One of the phrases that was used in the administration proposal was: You have these families who have won the lottery.

Well, I can tell you what the parents of a child who was a victim said yesterday from North Carolina. I know these people because I represent them. The parents said: Our little girl was born, and because of the type of care she got, she couldn't see, she couldn't hear, she couldn't walk. Every day of her life—7 days a week, 24 hours a day—we took care of her. And we loved her so much. There is nothing we wouldn't have done for her. And then she died. And when we go to visit her at her grave, we don't feel much like we won the lottery.

These are the people whom these kinds of proposals affect. These are real people with real lives. We have to look at the consequences, even though they are not up here with powerful, fancy lobbyists representing them. They are the people we have to look out for. And they are the people who expect their President to look out for them. Unfortunately, he continues to stand with big insurance companies, with big pharmaceutical companies, with big HMOs. These people need his help. It is no more complicated than that.

Now, as to this amendment and the purpose of it, first, medical malpractice premiums constitute less than 1 percent of health care costs in this country. So think about the logic. The argument is, we are going to do something about health care costs in this country, and the way we are going to do it is to try to do something misguided—we are going to try to do something about medical malpractice premiums, which constitute about two-thirds of 1 percent of health care costs in this country.

First of all, it is the wrong place to start if you are going to do something

about health care costs in this country. If you want to do something about health care costs, you ought to do what the Presiding Officer and I and so many of us have tried to do—bring the cost of prescription drugs under control in this country, because that will have a real effect on health care costs. They are a driving force in rising health care costs in this country.

This is minuscule by comparison. So, No. 1, it is a misguided effort in terms of what it is focused on. No. 2, it will not work because these kinds of proposals—the President's proposal yesterday in North Carolina, and this amendment, which is different—are proposals that impose limitations on recoveries for victims, for families, to try to get rid of some concepts in the law. They have been used in many places around the country. They do not work. They do not, in fact, have the kind of impact on insurance premiums that these people who are proposing them say they have.

If you look at medical malpractice premiums in this country, and you look at the States that have these provisions that impose limits on the families, and then you look at the States that do not have them, the costs of medical malpractice insurance—I am looking for the year 2001 for internal medicine, for general surgery, for obstetrics and gynecology—are virtually identical.

This all sounds logical. If you impose limits on what the victims and the families can recover, why does that not help bring the cost of the insurance down? Why does it not have an effect on premiums? Because logic would tell you it would because insurance companies have to pay less, theoretically. So as a result, why don't they lower the premiums? Because the insurance company premiums have nothing to do with this. That is the reason.

The insurance company takes the money that they receive in premiums, and they invest it. Where do they invest it? They invest it in that same stock market in which most of the people in America are invested.

You can look at every time they start raising premiums. They come to Washington and say: There is a crisis; we have to do something about this; this is a serious problem; we have these outrageous awards for children and families; we have to stop it. And the way to stop it is to cut off the rights of the victims. That is the way to stop it.

So why? Because they are not doing well in their investments. Every single time, when the stock market falls, and the insurance companies' money that is invested is not bringing back a good return—in fact, they are losing money—they raise premiums.

Who has to pay those higher premiums? The health care providers. They are just as much a victim of this as the kids and the families who are victims of the bad medical care. The insurance companies are the ones that are responsible. You can look at it. It

is as sure as the Sun is going to come up tomorrow, if they are doing well on their investments, the premiums stay relatively stable. When they are not doing well on their investments, the premiums go up. That is what this is all about.

While these kinds of proposals are aimed at reducing the rights of victims—which is what they are—instead, what we ought to be doing is looking at what the big insurance companies are doing when they get unhappy with the results of their own investments. That is what drives this.

If you look at what has happened in these States—the Senator from Tennessee talked about California at great length. California has some of the most severe limitations in the country on what victims can recover—severe limitations. They have been in place a long time.

So let's look at what has happened in California.

Between 1991 and 2000, over that about 10 years—a little less than 10 years—the premiums in California went up more than the national premiums. Why? Why in the world, if they have got these serious limitations on recoveries—and they have been in place for years in California—why would their premiums go up? And why would they go up faster than in the rest of the country, many places which do not have these kinds of limitations? Because the rise in premiums, and what is happening in what insurance companies charge people around the country, is in direct relation to how they are doing in their own investments.

In some cases, it is an insurance company or the insurance industry that exists in a region, in some cases it is national, and in many cases, of course, it is connected to the international and the reinsurance markets, but it is clear as day that it is directly related to how they are doing in their investments in the stock market.

So this effort is misguided. Besides that, I do want to point out, though, that the Senators who are proposing this amendment to put limits on what victims can receive, even they are not willing to go as far as the administration is. The administration proposes a \$250,000 limit on some damages for children, among others, who have a lifelong disability as a result of bad medical care.

This amendment does not make that proposal. They are not willing to go that far. They know that when you put a limit on those kinds of recoveries, on those kinds of damages, it is like a laser directed at the most severely injured, and usually the youngest, because young children who have severe injuries for life, which they and their parents are going to have to carry for the rest of their lives—and you are limiting them to \$250,000 in those kinds of damages—\$250,000—nobody in America thinks that makes sense. That is why that is not part, I suspect, of this proposal.

Instead, this proposal goes about it in a different kind of way. What this proposal suggests is a couple things: One, that we get rid of something called joint and several liability. Without going into too much detail about this, we believe in this country—and it has been the law of the land for many years—that if you have a victim, whether it is a victim of criminal conduct or bad medical care, or somebody who has behaved wrongly, and you have a victim, the victim should not be the one held responsible. If you have several people who caused it, they share the responsibility.

What this proposal says is, all right, somebody got hurt as a result of the bad behavior of a group of people. Always remember, you have an amount that has been lost by the victim. Let's say it is \$100,000 that has been lost by the victim. If that money has been lost, it is shared among the defendants. What we have always said in America is, as part of our law, the victim should never be the one held responsible for that loss. The loss doesn't go away. The loss is always there; the damages are always there.

This proposal says, if you have five people who are responsible, then among those five people, none of them can be required to pay more than whatever a jury determines is their percentage responsibility. But remember, these are all wrongdoers. So on one side of the equation you have a child who is innocent. On the other side of the equation you have the group of wrongdoers. The amount that has been lost does not change. Somebody has to be responsible for that. So are we going to say that the wrongdoers are responsible or are we going to shift some of that responsibility to the innocent victim?

That is what this proposal does. It says we are going to get rid of what is called joint and several liability, which means you can collect against any one or all of the wrongdoers, and says instead, if there is a wrongdoer you can't get to, for whatever reason, that part of the responsibility goes back to the victim. It violates what we believe in this country. It violates our fundamental notion of responsibility and accountability that the people who ought to be held accountable for they are the people who did wrong, not the innocent victim. That is what is wrong with this specific proposal.

There are other proposals. The next proposal says if there is an award of something called punitive damages, then half of that money will go to the Government. Now, let's talk about that in a real case. Let's explain what the effect of that is.

To get punitive damages, the conduct has to be either criminal or very close to criminal. That is what is required in order for punitive damages to be awarded. So let's say you have a teenage girl who is the victim of this kind of criminal conduct. The jury awards these damages to that young girl. This is what this amendment says to that

victim of essentially criminal conduct: We are going to impose a 50 percent tax on you. That is what we are going to do. We are going to say to the victim of this conduct: There is a 50 percent tax on the damages that a jury, after hearing the whole case, has decided you are entitled to, 50 percent. That is going to go to the Government.

Is that the signal we want to send as a Congress, as the U.S. Senate? Do we want to say to the American people that we as a body want to impose a 50 percent tax on a child who has been the victim of what is essentially criminal conduct? This is crazy. It doesn't make any sense. It also violates our basic notions of fairness and responsibility and accountability.

We have talked a great deal on the floor about doing things about the victims of criminal conduct. This essentially falls in the same category. It makes no sense for the government to impose a 50 percent tax on a child who has been the victim of what amounts to criminal conduct.

These provisions—and there are others—are wrong: getting rid of what is called joint and several liability, which means the wrongdoers don't necessarily have to pay for all of what has happened, while some of it gets shifted to the victim. That is wrong.

Second, to say we are going to impose a 50 percent tax on a victim, a child who has been essentially the victim of criminal conduct, that is wrong.

More important than all of that, this whole effort is misguided. If what we want to do is do something about health care costs, we should not focus on what is less than 1 percent of health care costs. We ought to focus on the things that really make a difference, such as the rising cost of prescription drugs.

More importantly, the people who need us to look out for them are the very people that this amendment is aimed at—the kids, the families, the victims. We need to stand up for them. They need us to be willing to stand up for them no matter who is outside the floor of the Senate representing the most powerful interests in America.

No matter how many lobbyists the insurance industry has, no matter how many lobbyists the HMOs have, the big energy companies, the big oil companies, who is going to stand up for these kids and these families? If they don't have us to stand up for them, they have nobody.

On all of these fronts, whether we are talking about doing something about the high cost of prescription drugs for people, whether we are talking about kids and families who are the victims of bad medical care, whether we are talking about trying to protect our air for our children and for our families, on all these fronts, we have to stand up for them. The people who voted for us and sent us to the Congress are counting on us because they don't have lobbyists up there. They have nobody here outside the halls of Congress rep-

resenting them. They count on us to stand up for them.

As we go through these fights, we will stand up for them. This is one of them.

How much time do we have remaining?

The PRESIDING OFFICER. Forty-five and a half minutes.

Mr. EDWARDS. Madam President, I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Before the Senator from North Carolina leaves, I would like to ask him a question or two. I am sorry I was not able to hear all of his remarks. Having tried a few cases in my day, one of the concerns I have about this tort debate is the fact that the insurance industry is the only one that I know of, other than baseball, that can sit down in a restaurant in sight of everybody or in some dark room, wherever they want, and knowingly and openly conspire to set prices. There is nothing wrong with that. That is because of the McCarran-Ferguson law passed during the depths of the Depression. They can do this.

Let me say to my friend, to show how unnecessary the debate is here in the Senate, first of all, this is something the States should be doing, as is happening in Nevada.

This coming Monday, the Nevada State legislature is convening in a special session to deal with medical malpractice. I may not agree with what the State legislature does or doesn't do, but that is where this should be settled.

The State of Nevada is different than the State of North Carolina. We have all kinds of different problems with our torts than the Senator does.

I have two questions for my friend. First of all, do you think it would be a good idea for the Congress, after some 70 years, to take a look at McCarran-Ferguson to find out if insurance companies should be exempt from fixing prices, be exempt from the Sherman Antitrust Act? That is my first question.

The second question is, don't you think that tort liability, whether it is medical devices, medical malpractice, or products liability, should be settled by State legislatures?

Mr. EDWARDS. The Senator asked two very good questions. First, I think it is a terrific idea for us to look at the insurance industry, its practices in general, and what effect McCarran-Ferguson has on those practices. The Senator describes a large part of the problem.

The Senator knows as well as I do, you can't move in Washington without bumping into some lobbyist representing the insurance industry. They are so well heard and so well represented. I think it is a very good idea.

As to the second question, we have differences between North Carolina, my State, and the State of Nevada, and dif-

ferences between us and California. These are the kinds of issues that ought to be resolved at the State level. We have always believed that. There is a little bit of an inconsistency for the administration that normally says these are matters that ought to be left to the States, we trust the States to make these decisions; but in the case where they want to do something on behalf of the insurance industry, which is what this is, they want to take it away from the States; they want to do it at the national level.

What has historically been done in this area is the way it should be done, which is these are matters about State courts, how State courts handle these kinds of cases. They are in touch with it. They know what is happening in their individual States, what the problems are, and they can address them in a responsible and equitable way.

I thank the Senator for his questions. We reserve the remainder of our time, Madam President.

The PRESIDING OFFICER. Who yields time?

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER (Mr. REID). In my capacity as a Senator from the State of Nevada, I ask unanimous consent that the order for the quorum call be rescinded.

Without objection, it is so ordered.

In my capacity as a Senator from the State of Nevada, I ask unanimous consent that the quorum call that will shortly be called for be charged equally against both sides for the time remaining.

Without objection, it is so ordered.

I suggest the absence of a quorum, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENNETT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SARBANES). Without objection, it is so ordered.

#### ORDER OF PROCEDURE

Mr. BENNETT. Mr. President, I ask unanimous consent that I be allowed to proceed as in morning business.

The PRESIDING OFFICER. The Chair would inform the Senator that it is the Chair's understanding there is running time off of the allocated time on this amendment. I suggest to the Senator that he may want to use the time that has been allocated to his side on the amendment.

Mr. BENNETT. Mr. President, I ask unanimous consent that that be the case, that I be allowed to speak with the time being charged.

The PRESIDING OFFICER. The Senator will be recognized and the time remaining on the amendment will be