



April 5, 2011

The Honorable Fred Upton
Chairman
Energy and Commerce Committee
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Henry Waxman
Ranking Member
Energy and Commerce Committee
U.S. House of Representatives
2322A Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton and Ranking Member Waxman:

On behalf of the National Small Business Association (NSBA), I am pleased to submit the following comments in preparation for the U.S. House of Representative Energy and Commerce Committee's April 6 hearing titled, "The Cost of the Medical Liability System Proposals for Reform, including H.R. 5, the *Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2011*."

The Committee's upcoming hearing is timely and addresses a perennial concern for NSBA's small business members: rising health insurance costs. Medical malpractice reform is a significant component of the health care system that is contributing towards unsustainable health care costs for many small businesses, and thus must be addressed. Indeed, according to the Congressional Budget Office's recent publication, *Reducing the Deficit: Spending and Revenue Options*, comprehensive medical malpractice reform would reduce the budget deficit by \$62 billion over 10 years.

The growth of medical malpractice suits have resulted in decreased access to health care and increased health care costs for small businesses. Employers, employees and their families in rural areas are particularly hard hit when specialty physicians and those in high-risk fields opt out of practicing medicine due to the astronomical cost of malpractice insurance. Defensive medicine has become commonplace; doctors trying to avoid malpractice suits will frequently perform tests and procedures they otherwise would not have—resulting in billions wasted annually.

For these reasons, NSBA supports the *Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2011* (H.R. 5). The HEALTH Act would, among other things, establish a statute of limitations on claim filings, target provider liability to the specific procedures they were involved in, cap non-economic damages, and limit punitive damages. The Judiciary Committee reported H.R. 5 on March 17, 2011. NSBA urges the Energy and Commerce Committee to report the legislation as soon as possible.

NSBA surveys show 83 percent of small businesses support monetary caps in medical malpractice cases. That survey also found that a majority support addressing the issue federally. Tort reform traditionally has been dealt with at the state level; however, the National Conference of State Legislatures cites 17 states where there are no stipulations whatsoever on medical malpractice lawsuit caps. The broad variance in states' laws encourages attorneys to forum shop, which simply increases the need for a federal solution.

Beyond the provisions of the HEALTH Act, NSBA supports some form of safe harbor for physicians, as well as the use of health courts. Any safe harbor rule would have to be in conjunction with federally-defined, evidence-based medical procedures. Physicians, who abide by those standards and report outcomes, would be allowed a certain level of protection from medical liability. Health courts would allow for the establishment of specialized courts for dealing with medical malpractice claims.

Thank you for the opportunity to provide comments. We hope to continue to work with you and your staff as a constructive participant on these and other important initiatives that will shape our nation's health care system in order to lower health care costs for our nation's small businesses. Please do not hesitate to contact me or my staff to provide additional information on NSBA's health care reform principles or insight into the health care challenges faced by our nation's small businesses.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd McCracken", with a long horizontal line extending to the right.

Todd O. McCracken
President