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Congress of the United States
Joint Economic Committee
Democrats

109TH
CONGRESS

804 HART SENATE OFFICE
BUILDING
WASHINGTON, DC 20510-6602
202-224-0372
FAX 202-224-5568
www.jec.senate.gov/democrats

CHAD STONE
STAFF DIRECTOR

Opening Statement
Senator Jack Reed
Joint Economic Committee Hearing
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Thank you, Chairman Saxton, for holding this hearing on an issue that has received a great deal of attention recently. I welcome Dr. McClellan and thank you for testifying today.

On the campaign trail last year, President Bush repeatedly criticized trial lawyers for filing “junk lawsuits” that he said were responsible for rising health care costs. The centerpiece of the Administration’s medical liability reform would cap non-economic damages at \$250,000 and institute a three year statute of limitations on most lawsuits.

The 2004 Economic Report of the President stated that the President’s reform plan would “lower the cost of providing health care.” However, there’s little, if any, evidence to support this claim. While it is certainly troubling that medical malpractice premiums for doctors have been rising rapidly in recent years, and many physicians in my state have informed me of the cost burden and the potential impact on access to care for patients, it is far from clear that jury awards are the sole driving force as the President suggests.

In 2003, the Government Accounting Office (GAO) studied states with and without caps on non-economic damages and found that the states with caps had lower premium increases than those without caps. However, GAO did not have enough data to show a direct link between malpractice award caps and premiums. Similarly, the Congressional Budget Office (CBO) has found that there are potential savings for malpractice premiums by limiting the amount of malpractice awards, but they are skeptical that a cap would provide relief for health care costs in general.

Malpractice costs were \$24 billion in 2002, less than two percent of total national health care spending of \$1.4 trillion, according to CBO. Reducing malpractice awards by 30 percent would only lower health care costs by approximately 0.5 percent or about \$7 billion.

CBO also finds that limiting physicians’ malpractice liability would not have much impact on “defensive medicine” practices, such as providing unnecessary tests or procedures to avoid a lawsuit, because physicians do so more often out of concern for patients or to generate additional income than because they fear liability.

Dr. McClellan, I know you have studied the issue of defensive medicine and malpractice, so I will be particularly interested in your opinions about the amount of health cost savings non-economic caps on damages would produce.

I believe, however, that there are some other reasons for the latest increases in medical malpractice insurance premiums that would not be addressed by the kinds of reforms the President and his supporters are advocating. The GAO, for example, points to slower growth in insurance company investment income and reduced competition in the liability insurance market as other potential drivers behind rising malpractice premiums.

We also should not lose sight of the fact that this issue must be considered in the context of medical errors and the quality of patient care, which are inextricably linked to physician accountability. A study by the Institute of Medicine reported in 2000 that between 44,000 and 98,000 people die every year because of preventable medical errors. These statistics point to a need to link any discussion of tort reform to the issues of medical errors, public safety, and physician accountability.

In the last Congress, the Republican leadership sent narrow medical liability legislation for OB/GYNs directly to the floor, thereby sidestepping serious Committee deliberation and inquiry into the nature of and possible solutions for rising insurance premiums. While it's hard to see how the President's proposal for medical liability reform will make more than a dent in spiraling health care costs, this is an important issue that lawmakers must be allowed to investigate thoroughly.

I appreciate Dr. McClellan's willingness to testify on this issue, but I also hope you will be open to questions regarding your oversight of the Centers for Medicare and Medicaid Services (CMS). I have a number of questions regarding the \$500 billion of federal spending that you administer at CMS that undoubtedly has a bigger impact on physician behavior and overall health spending than medical malpractice costs.

I look forward to Dr. McClellan's testimony.

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