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MARK WALKER, CHAIRMAN

H.R. 1215 – Protecting Access to Care Act (King, R-IA)

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FLOOR SCHEDULE:

Expected to be considered June 28 under a structured rule.

TOPLINE SUMMARY:

H.R. 1215 would provide for medical liability reforms to address the cost of frivolous litigation and reduce the practice of "defensive medicine," with the goal of lowering health care costs and increasing access to care. The bill would apply in instances where health care is provided through federal programs or supported by federal subsidies (including tax benefits), and is modeled after successful reforms implemented in California in 1976.

COST:

The Congressional Budget Office (CBO) estimates that H.R. 1215 would reduce deficits by $14 billion over the 2017-2022 period and almost $50 billion by 2027. CBO also estimates that enacting this bill would reduce discretionary costs by $1.5 billion by 2027, assuming "appropriations actions consistent with the legislation." CBO estimates, however, that the aggregate cost of private sector mandates on attorneys and plaintiffs filing medical malpractice claims would exceed the annual threshold specified in the Unfunded Mandates Reform Act in at least four of the first five years.

CONSERVATIVE VIEWS:

- **Expand the Size and Scope of the Federal Government?** Yes, the bill creates new federal rules and standards for health care liability lawsuits brought in state and federal courts. The bill would also reduce the size of federal medical expenditures by almost $50 billion.
- **Encroach into State or Local Authority?** Yes, the bill would preempt state laws regarding the filing of medical malpractice lawsuits and limitations on attorney's fees. Some conservatives may be concerned that the use of the presence of federal spending or tax subsidy as a justified federal nexus to preempt state law is overly broad, though Congress has previously enacted numerous federal tort statutes superseding state liability laws.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

H.R. 1215 would provide for reforms in medical malpractice liability laws in instances where health care is provided through federal programs or supported by federal programs (including tax benefits). These reforms include capping non-economic damages at $250,000, limiting attorney contingency fees to help

increase victim recoveries, allowing the courts to require that payments for future damages are made periodically instead of as a lump sum (protecting against bankruptcies that can decrease victim compensation), and a "fair share" rule requiring damages to be allocated in direct proportion to fault.

Specifically, it would:

- Set the statute of limitations for applicable health care lawsuits at three years after the injury or one year after the injury was discovered or reasonably should have been discovered, whichever occurs first. The statute of limitations is also set at three years for minors, unless the minor is child under age six, in which case it would be set at whichever occurs last: (1) within three years of injury; (2) one year after the injury is discovered; or (3) prior to the child's eighth birthday.
- Establish a $250,000 cap on non-economic damages in applicable health care lawsuits, regardless of the number of parties the suit is brought against or the number of claims brought for the same injury, and ensures that damages are allocated fairly according to fault.
- Eliminate joint and several liability in applicable health care lawsuits for both economic and non-economic damages claims.
- Limit the amount of attorney contingency fees to no more than (1) 40 percent of the first $50,000 recovered; (2) one-third of the next $50,000 recovered; (3) one-quarter of the next $500,000 recovered; and (4) 15 percent of any amount over $600,000.
- Require the court to, at the request of any party, ensure that future damages equaling or exceeding $50,000 are paid by periodic payments.
- Provide immunity in product liability or class action lawsuits for health care providers who prescribe or dispense an FDA-approved medical product pursuant to a prescription.

H.R. 1215 would preempt state law, with certain exceptions including for state laws that:

- Specify a different amount of economic or non-economic damages (whether greater or lesser).
- Specify a shorter statute of limitations for any health care lawsuit or a different statute of limitations (whether shorter or longer) for any health care lawsuit filed by a minor.
- Trigger the statute of limitations based on the date of alleged negligence.
- Establish a statute or repose for the filing of a health care lawsuit.
- Specify a lesser percentage or lesser total value of damages which may be claimed as attorney contingency fees.
- Specify periodic payments at any amount other than $50,000 (whether greater or lesser).
- Mandate periodic payments absent the request of either party.

Some conservatives may be concerned that medical liability law has traditionally been the province of the states. Supporters of medical liability reform emphasize that Congress has enacted numerous federal tort statutes superseding state liability laws, including federal vaccine tort liability and federal tort reforms protecting the domestic firearms industry. H.R. 1215 includes numerous recommendations of President Reagan's Tort Policy Working Group, which concluded that "…tort law appears to be a major cause of the insurance/affordability crisis which the federal government can and should address in a variety of sensible and appropriate ways."

AMENDMENTS:

1. Rep. Hudson (R-NC) – This amendment would permit a physician to apologize to a patient for an unintended outcome without the apology counting against them in a court of law. It would also require a plaintiff to provide a notice of intent to the physician 90 days before the lawsuit is filed and require that a physician in the same specialty as the defendant physician sign an affidavit certifying the merits of the case before the lawsuit could be brought to court. Finally, it would require that any "expert witness" called to testify meet the same licensing requirements as the defendant physician. The amendment would not preempt any state laws that establish additional

requirements, for the filing of pre-litigation documents; however, it would set a minimum federal standard for affidavit filings. .

2. Rep. Roe (R-TN) – This amendment would require that expert witnesses in medical negligence cases be licensed to practice in the same state as the defendant physician, or a contiguous bordering state. It would also require that expert witnesses practice a profession or specialty relevant to the issues in the case, and have practiced in the appropriate geographic area during the year before the alleged injury or wrongful act occurred.
3. Rep. Barr (R-KY) – This amendment would give affirmative defense to defendants in health care liability cases if they can show they complied with clinical practice guidelines.
4. Rep. Burgess (R-TX) #20 – This amendment would clarify that health care services, as defined in the bill, include safety, professional, and administrative services directly related to health care.
5. Rep. Burgess (R-TX) #24 – This amendment would begin the tolling of the statute of limitations on the date of the alleged breach or tort, rather than the date of injury (which is not always a date certain). The statute of limitations would be three years after the alleged breach, three years after the date the medical treatment that is the subject of the claim is completed, or one year after the claimant discovers or reasonably should have discovered the injury, whichever occurs first.

COMMITTEE ACTION:

This bill was introduced by Representative King (R-IA) and referred to the House Committee on Judiciary, where a mark-up was held and the bill was voted out by a vote of 18-17.

Read the Committee Report here.

ADMINISTRATION POSITION:

A Statement of Administration Policy can be found here.

CONSTITUTIONAL AUTHORITY:

According to the sponsor: Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 1, United States Constitution (Spending Clause); Article I, Section 8, Clause 3, United States Constitution (Uniform Laws that remove barriers to trade and facilitate commerce); and Article I, Section 8, Clause 9, United States Constitution, Article III, Section 1, Clause 1 and Article III, Section 2, Clause 2 (authority over federal courts).