



July 26, 2002

## *Medical Liability Reform*

# **Already Approved by the Senate, the McConnell Amendment Would Expand Health Care Access**

Senator McConnell has introduced an amendment to the “Greater Access to Affordable Pharmaceuticals Act” ([S. 812](#)) that would slow the explosion of medical liability lawsuits currently imperiling health care across America. Fear of meritless lawsuits is forcing many doctors (particularly obstetricians) to close up shop or move to states with more rational laws. This has led to [specialist shortages in many states](#) and [increased health care costs](#).

In 1995, the Senate passed, by a vote of 53-47, the same McConnell amendment as today’s amendment (104<sup>th</sup> Congress, 1<sup>st</sup> Session, [Vote #144](#)) with the support of Senators Feinstein, Lieberman, and Jeffords. The bill ultimately was vetoed by President Clinton. The McConnell amendment provides:

- **Limits on Punitive Damages:** Limits punitive damages to two times the sum of compensatory damages (economic and non-economic). The amendment only allows punitive damages in those cases where the award has been proven by clear and convincing evidence.
- **Proportional Liability:** Eliminates joint liability for non-economic and punitive damages. As a result, defendants only would be liable for their own proportionate share of the harm that occurred.
- **Limits on Attorneys’ Fees:** Places modest limits on attorneys’ contingency fees in medical malpractice cases. Specifically, the amendment would limit lawyers to collecting 33 percent of the first \$150,000 of an award and 25 percent of the award on all amounts above \$150,000.
- **A Statute of Limitations:** Requires that a medical malpractice complaint must be filed within two years of the claimant discovering the injury and its cause.
- **Periodic Payments:** Courts would be allowed to require periodic payments for large awards.

- **Broad Applicability:** Applies to all federal and state medical malpractice cases except to cases in those states that have already enacted stronger medical malpractice reforms.
- **Collateral Source Reform:** Awards in malpractice cases would be reduced by the amount of compensation received from collateral sources. This would prevent the practice of “double dipping.”
- **Alternative Dispute Resolution:** Encourages states to develop alternative dispute resolution mechanisms to help resolve disputes before they go to court.
- **State Health Quality Assurance Improvements:** Requires that a portion of all punitive damage awards be set aside to: (1) improve state licencing, investigating, and disciplining of medical professionals, and (2) reduce medical malpractice expenses for physicians who volunteer to provide care in medically underserved areas.

*Roll Call* columnist Morton Kondracke [writes](#), “Democrats rarely get tagged as ‘the party of trial lawyers,’ which they are” [7/25/02]. The McConnell amendment will reveal whether Senate Democrats stand with patients or trial lawyers.

---

RPC staff contact: Michael F. Cannon, 224-2946