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September 23, 2011

The Honorable Patty Murray, Co-Chair  
Joint Select Committee on Deficit Reduction  
448 Russell Senate Office Building  
Washington, DC 20510

Dear Senator Murray:

We, the undersigned members of the Health Coalition on Liability and Access (HCLA), ask you to give serious consideration to including comprehensive medical liability reforms in the final package approved by the Joint Select Committee on Deficit Reduction. Such reforms have a long history of improving access to care and more importantly for the purpose at hand, have been demonstrated as offering billions in savings to the American taxpayer.

As you are aware, the HCLA is a national advocacy coalition of associations and businesses representing physicians, dentists, allied health care providers, hospitals, health care liability insurers, employers, and health care consumers. We are dedicated to reforming our medical liability system to increase patient safety, ensure that injured patients are compensated quickly and fairly, improve provider-patient communications, and foster an environment for affordable and accessible medical liability insurance. In addition to reforms to benefit patients and their healthcare providers, we seek reforms that will improve the federal government's budgetary imbalance.

The Congressional Budget Office (CBO) has scored several medical liability reform proposals as providing significant budgetary savings. These proposals include:

- A \$250,000 cap on subjective, noneconomic damages (with no limit on economic damages);
- Collateral source rule reform allowing evidence of outside payments to be submitted in court;
- Ban on subrogation by certain collateral sources;
- A fee schedule for attorney contingency fees to ensure victims of negligence receive the funds they need;
- Periodic payments of future damages; and,
- A reasonable statute of limitations.

In its March 2011 budget options document ("Reducing the Deficit: Spending and Revenue Options"), CBO scored a package of comprehensive medical liability reforms as providing \$62.4 billion in savings over 10 years (see attached excerpt of the CBO report) – savings which will help the Committee to achieve its deficit reduction goals.

In addition to the proven reform package mentioned above, we also recommend additional federal reforms that we believe would reduce the cost of health care and thus lower federal expenditures on health care programs. These include a certificate/affidavit of merit requirement (to ensure that only legitimate medical liability cases are filed in court), expert witness reforms (to prevent “hired guns” from providing inaccurate testimony in such cases), and “apology protections” (to improve patient-provider communications). Furthermore, we ask you to adopt the language of H.R. 816, the Provider Shield Act, clarifying that the Patient Protection and Affordable Care Act does not create new standards of care for medical liability lawsuits (in order to prevent a possible explosion of medical liability lawsuits that could be inadvertently triggered by the new law). Each of these reforms would save taxpayers money while simultaneously improving our health care and legal systems.

Thank you for your willingness to take the crucial leadership role required of members of the Joint Select Committee on Deficit Reduction. We commend you for your dedication to helping the nation resolve its fiscal crisis. As the Committee moves forward with its critical task, we stand ready to provide you any information you need on the budgetary benefits of medical liability reform.

Sincerely,

American Academy of Facial Plastic and  
Reconstructive Surgery  
American Academy of Otolaryngology—  
Head and Neck Surgery  
American Association of Neurological  
Surgeons  
American Association of Orthopaedic  
Surgeons  
American College of Cardiology  
American College of Radiology  
American College of Surgeons  
American Congress of Obstetricians and  
Gynecologists  
American College of Osteopathic Surgeons  
American Dental Association  
American Insurance Association  
American Medical Association  
American Medical Directors Association  
American Osteopathic Association

American Osteopathic Academy of  
Orthopedics  
American Society of Anesthesiologists  
American Society of Plastic Surgeons  
American Tort Reform Association  
America’s Blood Centers  
Congress of Neurological Surgeons  
Cooperative of American Physicians  
MAG Mutual Insurance Company  
Medical Liability Mutual Insurance  
Company  
NORCAL Mutual Insurance Company  
Physician Insurers Association of America  
Physicians Insurance A Mutual Company  
PMSLIC Insurance Company  
Premier health alliance  
ProAssurance Corporation  
State Volunteer Mutual Insurance Company  
The Doctors Company

cc: The Honorable Tom Harkin, Chair, US Senate Committee on Health,  
Education, Labor and Pensions  
The Honorable Patrick Leahy, Chair, US Senate Committee on the Judiciary