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September 23, 2011

The Honorable Jeb Hensarling, Co-Chair
Joint Select Committee on Deficit Reduction
129 Cannon House Office Building
Washington, DC 20515

Dear Congressman Hensarling:

We, the undersigned members of the Health Coalition on Liability and Access (HCLA), ask you to include 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 Lamar Smith, Chair, US House Committee on the Judiciary