

April 27, 2017

The Honorable Michael Burgess, MD, *Chair*  
The Honorable Gene Green, *Ranking Member*  
Committee on Energy and Commerce Subcommittee on Health  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, DC 20515

**RE: Support H.R.1704, The ACCESS Act of 2017**

The American Society of Plastic Surgeons (ASPS) is writing in support of H.R.1704, the *Accessible Care by Curbing Excessive LawSuits* (ACCESS) Act of 2017, and **requests that you advance this much needed medical liability reform measure**. ASPS is the world's largest association of plastic surgeons, with over 7,000 members representing 94 percent of Board-Certified Plastic Surgeons in the United States.

Currently, the medical liability system negatively impacts the physician-patient relationship, and is plagued by frivolous lawsuits. Sadly, over 75% of physicians will be involved in a malpractice claim during their career.<sup>1</sup> This overly litigious culture promotes defensive medicine, which in turn increases the cost of health care delivery. Patients feel the negative effects of defensive medicine by being subjected to unnecessary screenings, tests and hospital stays. ASPS aims to help reform our nation's medical liability system to: 1) increase the safety of patients; 2) make sure that injured patients are compensated in a timely and fair manner; 3) improve the provider patient relationship; and 4) ensure access to affordable medical liability insurance. The ACCESS Act will accomplish these aims.

If enacted, H.R.1704 would adopt reforms that have been enacted in the states and have yielded positive results. The legislation includes the following:

- A three-year statute of limitations from the date of injury and one-year following date of discovery. State law prevails where more stringent statute of limitations are in place;
- A \$250,000 cap on non-economic damages. Damage limits of any amount in state law prevail;
- A limit on attorneys' contingency fees to 40% percent of the first \$50,000; 33.3% of the next \$50,000; 25% of the next \$500,000; and 15% of any amount above \$600,000. Where states have passed laws further limiting contingency fees, the state law prevails;

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<sup>1</sup> Jena, Anupam B., Seth Seabury, Darius Lakdawalla, and Amitabh Chandra. "Malpractice Risk According to Physician Specialty." *The New England Journal of Medicine* 2011;365:629-36 (2011). Print.

- Allows juries to be informed of, and consider collateral sources of compensation when determining awards;
- Allows for periodic payments of future damages over \$50,000;
- Creates a requirement that expert medical witnesses be practicing clinicians in the same specialty being evaluated in a lawsuit; and
- Exempts providers from product liability suits involving FDA-approved products.

As outlined above, the ACCESS Act will preserve states' rights. States that have enacted effective reforms will retain flexibility to adopt variations to meet their individual needs. The benefits of federal medical liability reform will be broad-sweeping and will include significant budgetary savings, as demonstrated by the Congressional Budget Office (CBO) estimate that a near identical measure will reduce the deficit by nearly \$50 billion.

H.R.1704 will improve the medical liability culture in the United States, and ASPS urges you to **advance the ACCESS Act through your subcommittee**. Thank you for your consideration of these comments and please contact Patrick Hermes, ASPS's Senior Manager of Advocacy and Government Affairs, with any questions at [Phermes@plasticsurgery.org](mailto:Phermes@plasticsurgery.org) or (847) 228-3331.

Sincerely,

A handwritten signature in black ink that reads "Debra Johnson MD". The signature is written in a cursive, flowing style.

Debra Johnson, MD  
President, American Society of Plastic Surgeons

Cc: Members of the House Committee on Energy and Commerce Subcommittee on Health  
Representative Pete Sessions