Health Action Agenda for the 110th Congress:

Setting the Right Course to Transform Health

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Healthcare remains the public's top domestic issue. Americans cite rising healthcare costs as their most pressing financial problem, more than energy costs and taxes combined—even more than the "lack of money."[1]

This can be changed. We can transform health and healthcare to deliver more choices of greater quality at lower cost to every American. It will take innovative ideas, the right priorities, and bold leadership—and we must act now.

What we need is real change—and real change requires real change. Without transformational change, little can be done to stem the tide of rising costs, the growing ranks of the uninsured, and the frightening trend of medical errors and poor quality.

As representatives of the American people, the Congress can and should play a lead role. The new Congress should be commended for putting healthcare at the top of their agenda. We offer this paper to set out the ideas, priorities, and transformational solutions for lawmakers to act upon in the 110th Congress.

[1] Gallup Poll News Service, "Consumer Views of the Economy" (October 2006).

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1. Create the Next Generation of Healthcare Consumerism

One fundamental problem with our system is that it does not recognize value. The U.S. health system fails to embrace and encourage competition, nor does it engage consumers.

Real change requires that we re-center the entire system on the consumer. This transformation hinges on giving consumers the financial responsibility to manage their own health and healthcare, as well as information upon which to make informed decisions. This formula is absolutely critical to creating a functional market, the kind we see at work everyday in every other sector of our economy, from buying a car to evaluating a professional service. It can work in healthcare.

Consumer empowerment has gained significant momentum in the past five years, and the early returns from consumer-directed plans are impressive. WellPoint, the nation's largest insurer and a member of the Center for Health Transformation, documented that medical and pharmacy cost trends for employees offering a consumer-directed health plan decreased 8.8%, while the average trend for employees in its traditional plans rose by as much as 8 percent. Last summer, UnitedHealth Group released a three-year study of consumer-directed health plans (CDHPs), which included nearly 50,000 participants, concluding that employers saw a 3 to 5 percent *decline* in healthcare costs for employees in consumer-directed plans, while they experienced an 8 to 10 percent increase for those in traditional plans. More importantly, health outcomes were better for those in consumer-directed plans.[2]

Like UnitedHealth Group, Aetna also released results from its consumer-directed health plans, comparing the experience of more than 100,000 members in consumer-directed plans to nearly 1.5 million in traditional plans. This was the largest study to date, and among the significant findings were:

1. <u>Cost increases were below inflation</u>. Full replacement plans saw the most significant savings, with Health Reimbursement Accounts since January 2003 experiencing an average medical cost trend of 1 percent, and an overall increase of only 3 percent from 2003 to 2005.
2. <u>Health outcomes were the same or better</u>. CDHP enrollees with chronic conditions maintained or improved the level of care they

[2] UnitedHealth Group, Definity Health Market Solutions Health Services Research (June 2006).

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received prior to joining the plan, including a 6 percent higher usage of inhaled steroids among asthmatics.

3. Preventive care was maintained or improved. In one example, first-year Health Savings Account (HSA) members received cervical cancer screenings at a 13.8 percent higher rate than did Preferred Provider Organization (PPO) members.
4. Higher use of generic drugs. CDHP enrollees utilized generic drugs at 4.5 percent higher rate.
5. Double the use of online tools. CDHP enrollees accessed online tools to manage their health and healthcare more than twice as often as those in other plans.
6. Building savings. 52 percent of enrollees with a Health Savings Account rolled over their entire balance in 2005. 49 percent of enrollees with a Health Reimbursement Account rolled over some or all of their funds in 2005.

This transformation is underway, and Health Savings Accounts are a critical component. The 109th Congress passed important legislation that gives more flexibility to employers that offer health plans with HSAs and to the employees who use them. But to continue the momentum, we need legislative and regulatory changes that will create even greater flexibility, choice, and access to HSAs. We need the next generation of "Flexible HSAs" to support the growing consumerism movement. Specifically, the Congress should:

- Allow HSA "shared savings" contributions as rewards and incentives for healthy activities and disease management programs. This would allow plan members to be financially rewarded for participating in activities that improve their health and save money, such as completing a wellness assessment, participating in a disease management program, and maintaining a healthy lifestyle.
- Give employers the ability to limit the use of employer-funded HSAs specifically to healthcare needs while employed. While "employee choice" is vital to true ownership and portability, there must be a voluntary agreement between an employer and its employees that HSA funds will be used only for healthcare expenses as defined by Treasury while the employee is with the contributing employer.
- Allow HSA dollars to be used to pay for health insurance premiums.
- Give consumers the option to open an HSA without having to purchase a high-deductible health plan.

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2. *Uphold the Individual's Right to Know Price and Quality of Health Services*

A critical part of healthcare consumerism is having access to information. Every American has the fundamental right to know the price and quality of health and healthcare services *before* making a purchasing decision. Most Americans agree. According to a poll conducted by America's Health Insurance Plans, 93 percent of respondents said they have a right to know how their doctors and hospitals perform.[3]

While Americans are privy to a vast amount of information when they shop for a new car, home, or thousands of other products and services, this information is virtually nonexistent in healthcare. However, there are glimmerings of this future. During his service as governor of Florida, Jeb Bush created two revolutionary websites where anyone can find information on drug prices, hospital performance data, costs, and level of experience. These sites, www.myfloridaRx.com and www.floridacomparecare.gov, empower consumers so they can make informed decisions about their health and healthcare. Many other states are following Florida's lead.

President Bush and Health and Human Services Secretary Leavitt have also shown bold leadership delivering the citizen's right to know. On August 22, 2006, President Bush signed Executive Order 13410, requiring four key federal departments and agencies to gather performance data on hospitals, health plans, and doctors; the order also requires them to make the information available to the public. This is a vital step towards a transparent, consumer-focused system.

The Congress can also help build a 21st Century Intelligent Health System by passing meaningful legislation to deliver the citizen's right to know. The Congress should:

- Instruct HHS to release patient-protected, de-identified Medicare claims data. In the 109th Congress, Senator Judd Gregg introduced S. 3900, the Medicare Quality Enhancement Act, as an interim step to get performance data to consumers. This bill could serve as a model to give the public access to all Medicare claims data currently withheld by the Centers for Medicare and Medicaid Services (CMS). This information can inform the public about nearly every doctor and hospital in the country, and consumers could use it to identify the best performers.

[3] America's Health Insurance Plans, *2004 National Post-Election Survey Regarding Health Care Issues* (November 3-4, 2004). Conducted by Ayres, McHenry & Associates, Inc. AHIP is a member of the Center for Health Transformation.

- Pass legislation creating websites similar to those operating in Florida and Missouri, which contain cost, quality, and experience data on provider performance and prescription drug prices. CMS has begun to release this type of information by posting prices on 30 of the most common procedures in Medicare. The creation of something akin to MedicareCompare.gov would be even more valuable.
- Pass legislation creating a Travelocity model for drug purchasing in Medicare, where cost and quality data for drugs is easily available to consumers.[4]

3. Create a True Nationwide Healthcare Marketplace by Breaking Down Artificial State Boundaries to Purchasing Health Insurance

One solution that would bring dramatic progress is creating a thriving individual health insurance market. Yet this is also one of our biggest challenges. In many states, a single carrier sells as many as 90% of the individual insurance policies. In these markets, insurers have little reason to offer more choices at lower costs because they face little, if any, competition.

With nearly 45 million Americans lacking health insurance, expanding the availability of affordable individual health insurance is essential. But to get there, we need competition. Increased competition will encourage more creative products, better services, and lower prices—just as it always does wherever competition thrives.

Unfortunately, current law stands in the way of progress. State and federal laws permit consumers to buy only those health plans that have been approved in their own state, meaning it is illegal to cross state borders to buy health insurance. These prohibitions remain despite the fact that 82% of Americans would cross state lines in order to reduce their insurance premiums; despite the fact that 86% of Hispanics and 85% of African Americans greatly favor having this option; despite the fact that those with annual household incomes below $25,000 believe that crossing state lines to find lower cost health insurance is a perfectly acceptable option.[5]

New laws can transform the dysfunctional individual market into a vibrant market where additional carriers can sell services and—more importantly—insure more Americans. To create a rational, working market in healthcare, which will drive down costs and dramatically cut the number of uninsured, the Congress should immediately:

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[4] For more information on this model, please visit www.healthtransformation.net.
[5] Zogby International, Commissioned by the Coalition for Affordable Health Insurance (September 2004).

- Pass legislation to allow individuals and families to buy insurance from plans in other states.
- Require state insurance commissioners to identify and accept HSA policy approvals from other states with acceptable and consistent laws and regulations.
- Encourage insurance commissioners to develop a nationwide HSA market of reciprocal agreements.
- Empower state insurance commissioners with veto authority to identify states with laws and regulations so egregious that those policies should not be sold in their states.
- Allow internet purchasing of HSAs with high-deductible health plans, approved for sale in individual states but not otherwise sold nationally.

4. Insure Every American through Market-based Solutions and Public-sector Assistance

According to the Institute of Medicine, every year an estimated 18,000 Americans die unnecessarily because they have no health insurance.[6] The lack of insurance endangers lives, reduces quality of life, and drags down not only the individual, but our entire healthcare system and economy as well.

Insuring every American will save countless lives and billions of dollars—but we must act now—and we must act anew—if we are to succeed. Our goal should be healthcare coverage for all Americans within five years. We can achieve this goal through market-based solutions, private and corporate efforts, tax incentives, direct public subsidies, strong community support, and faith-based outreach. To insure all Americans, the Congress should:

- Reintroduce bills from the 109th Congress, specifically H.R. 5864, the Health Partnership Through Creative Federalism Act, and S. 2772, the Health Partnership Act. These bipartisan bills support President Bush's pledge in his State of the Union address to allow individual states or multi-state collaborations to try new approaches to expand coverage to the uninsured.
- Pass President Bush's tax reform plan to expand healthcare coverage.
- Establish a nationwide health insurance marketplace by giving individuals the freedom to shop for insurance plans across state lines.

[6] Institute of Medicine, *Hidden Costs, Value Lost: Uninsurance in America* (2003).

- Provide low-income families with $1000 in direct contributions to a Health Savings Account, along with a $2000 advanced tax credit to purchase an HSA-eligible high-deductible health plan.
- Make premiums for these plans tax-deductible.
- Provide tax rebates to small businesses that contribute to their employees' Health Savings Accounts.
- Extend and expand grant funding to high-risk pools across the country.
- Require that anyone who earns more than $50,000 a year must purchase health insurance or post a bond.

5. Spur the Adoption of Health Information Technology that Will Save Lives, Save Money, and Protect our Homeland

Transforming health and healthcare requires a modernized approach to both the delivery and administration of healthcare. From electronic prescribing to electronic health records, properly-implemented health information technology undoubtedly saves lives, saves money, and can be a valuable tool for national security.[7]

Over the past two years, nearly 30 bills have been introduced on health information technology. It is time for the Congress to act.

In the 109th Congress, the Senate unanimously passed S. 1418, the Wired for Health Care Quality Act. This bill, among other things, directed the Secretary of Health and Human Services to develop uniform quality measures to be used to assess the quality of care a patient receives, including elements of a qualified health information technology system. It also contained grant funding for connecting physicians and creating community networks, authorizing $652 million from 2006 through 2010. The 110th Congress should use this bipartisan bill as a starting point. Specifically, the Congress should:

- Drive adoption of health information technology with physicians, pharmacists, and all other healthcare providers through payment reimbursement reform.
- Create a Healthcare Provider Information Technology Investment Loan Program. This low-cost, low-risk program should be modeled after the federal student loan program's Direct Loan program to incentivize the purchase of health information technology, including electronic prescribing tools, electronic health records, and computerized physician order entry systems.

[7] For descriptions and results from dozens of examples where health IT saved lives and saved money, please see Speaker Gingrich's 2006 testimony before the Senate Commerce Subcommittee on Technology, Innovation, and Competitiveness.

Section Four of H.R. 4832, the Electronic Health Information Technology Act as introduced in the 109th Congress by Reps. Lacy Clay and Jon Porter, outlines a workable and sensible model program.[8]

- Create a clear, concise, and useable exemption and safe harbor to Stark and Anti-kickback statutes, so that hospital systems and other entities can choose to provide community physicians with health information technology, particularly electronic health records.
- Begin the process of harmonizing the wide discrepancy between state and federal privacy laws, while ensuring strong patient privacy protections and consumer confidentiality.
- Direct HHS to move to ICD-10 coding within a reasonable timeframe to ensure that technology captures accurate information.
- Create a Health Information Technology Program within the Science and Technology Directorate's Office of Systems Engineering and Development at the Department of Homeland Security (DHS). Health information technology should be added to the portfolio the existing DHS Office for Interoperability and Compatibility and be integrated into current efforts at HHS, such as the Biosurveillance Workgroup of the American Health Information Community.
- Fund a joint project between HHS and DHS to explore the use of existing federal IT infrastructures, such as the Veterans Administration, Tricare, and HHS, with non-governmental networks, such as the Internet or Internet2, to create a nationwide network for extreme disasters. This project should build upon the CDC's Public Health Information Network by including organizations and individual healthcare providers beyond public health. This network would be akin to President Eisenhower's bold initiative in the 1950s to create the national interstate highway system.[9]
- Begin the process of harmonizing the wide discrepancy between state and federal data-sharing and e-prescribing laws.

6. *Build a Foundation of Value-based Competition to Reward Quality Care and Deliver Better Health Outcomes*

The foundation of a 21st Century Intelligent Health System is value-based healthcare, where everything—from drugs and doctors to treatments and

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[8] For more information on this proposal, please see the Issue Brief by the American Medical Group Association, posted at www.amga.org/PublicPolicy/Priorities/2005hit.pdf. The American Group Medical Association is a member of the Center for Health Transformation.

[9] For more information on the specific uses of an electronic virtual public health network, please see the 2006 article by Newt Gingrich and David Merritt, entitled "Build Eisenhower's Highway System for Today's Needs," available at: http://www.healthtransformation.net/news/cht_articles_and_op_eds/4212.cfm.

technology—is judged by the value it brings to the consumer.[10] This underlies every other market outside of healthcare, where quality and price determine the value of any given product or service. For this to work in healthcare, we must abandon our current transaction-based payment system that encourages process-driven care and instead embrace a results-based payment system that encourages better quality and more efficient care.

The Congress can begin the transformation to a results-based payment system by passing legislation to:

- Make 100% of Medicare claims data available to the public in order to inform consumers on the performance and efficiency of healthcare providers.
- Create MedicareCompare.gov to post information on quality outcomes, price, and experience.
- Fast-track the efforts of the Ambulatory Quality Care Alliance, the Hospital Quality Alliance, and other collaborative efforts to develop standardized quality measures of provider performance.
- Set timelines for mandatory quality reporting and integrating results-based criteria into federal reimbursement.
- Transform the federal reimbursement payment model to reward the delivery of quality care.

7. Create a Culture of Health by Centering the System on Prevention, Early Testing, and Wellness

In the United States, more money is spent on treating diseases and their complications than is spent on preventing them in the first place. Prevention is both undervalued and poorly supported. We are facing a growing chronic disease burden that threatens to overwhelm our fiscal resources and the healthcare system in general. Consequences of inaction – for individuals, states, and our country – are incalculable. To maintain global economic competitiveness, reduce burgeoning costs, and ensure our children have healthy futures, disease prevention and health promotion must become a core value. GE has it right when it promotes "early health" rather than late disease.[11]

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[10] Two brilliant books are required reading for anyone who is serious about transforming our broken system: *Redefining Healthcare* by Michael Porter and Elizabeth Teisberg (2006) and *Healthy, Wealthy, and Wise* by John Cogan, Glenn Hubbard, and Daniel Kessler (2005).
[11] For more information on GE's Early Health model, visit www.gehealthcare.com/euen/early_health/index.html. GE is a member of the Center for Health Transformation.

Chronic diseases such as coronary heart disease, diabetes, cancer, and obesity are the leading causes of death and disability in the United States. Nearly $2 trillion was spent last year on healthcare, and the vast majority of it was spent on treating Americans with chronic illnesses. However, less than 2% was spent on preventing these diseases.

Specific action plans should be created for every major disease, and an important first step would be to focus on diabetes. If left unchecked, diabetes will devastate our health system. Every year, there are 1.5 million newly diagnosed cases of diabetes, a disease that contributes to over 200,000 deaths and costs the system more than $132 billion.[12] Put another way, every 24 hours, 547 people die from diabetes and over 4,100 new cases are diagnosed. Among the hundreds of diseases affecting Americans, at least $1 out of every $20 spent on healthcare in the U.S. is spent on diabetes.

By 2025, more than one-quarter of all Americans will have diabetes (50 million cases) or pre-diabetes (65 million cases). In 2025, estimates are that diabetes will contribute to 622,000 deaths a year and cost the nation $351 billion in 2002 dollars. If not reversed, trends indicate that by 2025 an American will develop diabetes every 7 to 9 seconds.[13]

This bleak future does not have to happen. Research has clearly demonstrated that many of the serious consequences of diabetes can be reduced and/or delayed through proper treatment and monitoring.[14] Diabetes is preventable, but current levels of activity are not sufficient. To reverse this scourge, the Congress should:

- Create a public-private advisory group focusing on chronic illness, employee wellness, and disease management incentives.
- Instruct the Agency for Healthcare Research and Quality to create a National Diabetes Report Card on the state of diabetes care in America.
- Create an intergovernmental Medicare Diabetes Screening Collaboration and Outreach Program.
- Create a temporary incentive program to pay physicians for ordering diabetes screening tests for covered Medicare beneficiaries.
- Expand medical nutrition therapy coverage for Medicare beneficiaries with pre-diabetes.

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[12] Centers for Disease Control and Prevention National Diabetes Fact Sheet: http://www.cdc.gov/diabetes/pubs/factsheet.htm.

[13] Institute for Alternative Futures, "Diabetes & Obesity 2025: Four Future Scenarios for the Twin Health Epidemics" (June 2006).

[14] Diabetes Control and Complications Trial Research Group, "The effect of intensive treatment of diabetes on the development and progression of long-term complications in insulin-dependent diabetes mellitus," *New England Journal of Medicine*, 1993: 329(14): 977-86.

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- Improve diabetes mortality and morbidity data collection.
- Authorize Medicare safe needle disposal coverage.
- Ensure access to diabetes care and treatment in Medicaid.
- Commission an Institute of Medicine (IOM) study on what the appropriate level of diabetes medical school education should be.
- Provide a tax incentive for physicians for the purchase and utilization of software that promotes best practices and modern treatment for patients with diabetes.
- Improve access to and the quality of diabetes self-management training tools and education, starting with a review of current Medicare coverage.
- Require public schools to schedule physical education five days a week for grades K-12.
- Restrict the sale of high-calorie and unhealthy foods and drinks in public school vending machines during school hours.
- Allow public schools to weigh students and intervene to identify children with (or at risk) for Type-2 diabetes.
- Encourage the development of remote patient management services and devices, including the automatic collection and population of patient personal health records and electronic health records.

Our emphasis must shift to prevention and early detection with other diseases as well. Cancer, for instance, is one of the most preventable and increasingly curable life-threatening diseases – if it is detected early. Simply applying what we now know about prevention and early detection could cut cancer deaths in half and save billions of dollars:

- Increase colorectal and breast cancer screening rates by removing co-pays and extending the Welcome to Medicare visit time limit from six months to one year.
- Ensure that all eligible women have access to life-saving screenings by reauthorizing and increasing funding for the CDC's National Breast and Cervical Cancer Early Detection Program.
- Help smokers quit and reduce their risks for lung cancer by expanding comprehensive smoking cessation coverage in Medicaid.
- Increase preventive health services and improve health outcomes by funding the Patient Navigator Act (signed into law in 2005).
- Increase colorectal cancer screening rates for the underserved by authorizing a colorectal cancer early detection and treatment demonstration program to serve at least 2 million low-income, uninsured individuals ages 50-64.

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8. Protect Patients by Delivering Safe, Effective Care

With the release of the Institute of Medicine's 1999 report "To Err is Human," Americans were shocked to learn of mortal dangers in our healthcare system.[15] The IOM estimated that as many as 98,000 Americans are killed every year by hospital medical errors. Despite several years of increased awareness of the serious safety issues in our healthcare system, we have made little progress in providing safe, quality care to our citizens.

Two recent reports conclude that little has changed. In the summer of 2006, the IOM issued a report on medication errors containing the startling fact that citizens average one medication error every day they are in a hospital.[16] HealthGrades also reported that "current progress is slow, results in general are at best modest, and the gap between the best possible care and actual care remains large."[17] In fact, HealthGrades identified that six of the key patient safety indicators developed by the Agency for Healthcare Research and Quality continued to worsen from 2002 to 2004 by 12 percent or more.

As a regulator and purchaser of healthcare, the federal government can make a difference. The Congress should do its part by taking aggressive action to eliminate medical errors. Specifically, the Congress should:

- Fast-track the creation of a real-time, national system of safety measurements and best practices. Modeled after the CompStat crime control and prevention system, this system should provide the metrics needed for monitoring, measuring, and managing the safety of our system.
- Make the reporting of medical errors mandatory, while balancing appropriate legal rights and protections for caretakers, institutions, and patients.
- Tie federal payment reimbursement to improved safety and quality outcomes. As part of a broader initiative to fundamentally change how we pay for healthcare, providers that have implemented technologies and processes proven to improve safety (such as barcode medication administration systems) should be reimbursed at a higher level.
- Direct the Agency for Healthcare Research and Quality, or a similar agency, to set specific, measurable goals that the nation must attain. Modeled after FDA Commissioner (and former director of the National Cancer Institute) Andy von Eschenbach's bold declarative to end cancer as a cause of death by 2015, the federal efforts in health and healthcare

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[15] Institute of Medicine, *To Err is Human: Building A Safer Health System* (November 1999).
[16] The Institute of Medicine, *Preventing Medication Errors* (July 2006).
[17] HealthGrades Quality Study, Third Annual Patient Safety in American Hospitals Study (April 2006).

research should be just as bold. These goals should be comprehensive, yet brief enough to include only those goals worth reaching.

- Require that federal funds should be awarded solely to grant applicants that seek to achieve one or more of the specific goals outlined by AHRQ or a similar agency.

9. Modernize the Congressional Budget Office to Ensure Accurate Scoring and Encourage Transformational Legislation

Transforming health and healthcare could be rapidly expedited by modernizing the scoring processes at the Congressional Budget Office (CBO). The CBO must incorporate into its analysis the economic growth, efficiencies, and cost savings that result from implementing transformational policy. In health, this change will literally save thousands of American lives and billions of their tax dollars.

Today, we spend billions of dollars on government programs that are financial black holes, while rejecting legislation that would actually reap dramatic savings for the federal budget. This happens because CBO considers all the costs of legislation, but none of its benefits. A bad CBO score makes any legislation—no matter its potential—appear too costly, and therefore politically indefensible.

One egregious example shows how irrational scoring actually blocked expanding healthcare coverage to the uninsured. Former Congressman Sam Johnson of Texas introduced H.R. 1872, which would spend $125 billion over 10 years to expand coverage to the uninsured through Health Savings Accounts and tax reform. Unfortunately, the bill was pulled because, as Mr. Johnson put it to Congressional Quarterly, "the score was too big."[18] This bill was discarded despite the fact that we spend an estimated $125 billion every year on the uninsured—and despite the fact that study after study concludes that citizens with insurance are healthier and cost less.

This backwards approach was on full display last summer, when CBO concluded that expanding the use of health information technology would actually *increase* healthcare costs.[19] While stating unequivocally that legislative reforms to encourage health IT adoption would increase costs, the CBO was uncertain that the use of health IT would actually improve care and saves money. The real world knows different. Case study after case study concludes that when properly

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[18] Alan K. Ota, "House Republicans Still Health-Minded, but Not at This Price," *Congressional Quarterly Today* (July 14, 2005).
[19] Letter from Acting CBO Director Donald Marron to Rep. Charles B. Rangel (June 15, 2006). The topic was the effects of creating an exemption/safe harbor for health IT to the Stark and Anti-kickback statutes.

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implemented, health information technology improves the delivery of care, improves efficiency, and decreases overall costs in the long run.

To promote accurate scoring and analysis at CBO, the Congress should:

- Immediately hold hearings in the House and Senate Budget Committees on modernizing the CBO to ensure accurate scoring.
- Instruct the new CBO director, through a joint letter signed by the Speaker of the House and the Senate Majority Leader, to incorporate estimated budget savings into legislative scores and analyses.
- Amend the Congressional Budget and Impoundment Control Act of 1974 to require the CBO to incorporate estimated budget savings into legislative scores and analyses.
- Commission an independent study on the accuracy of scoring done by the CBO and OMB related to healthcare in the last 15 years to identify if current scoring formulas are accurately estimating both the financial cost and the savings generated by such laws.

10. Pass Meaningful Health Justice Reforms to Improve Access to Care and Reduce Costs

Spiraling medical liability insurance premiums are forcing many physicians, hospitals, and other healthcare professionals to cut services, reduce staff, close clinics, or leave the practice of medicine altogether. Rising liability insurance costs, combined with the increased fear of being sued, is driving America's family physicians and Ob-Gyns to stop delivering babies. Specialties that perform advanced and high-risk procedures (such as neurosurgery and orthopedics) are also acutely affected. Emergency departments are losing nurses and physicians and scaling back or eliminating certain services, including trauma units, because of the lack of civil justice reform at the state and federal levels. The result seriously compromises Americans' ability to access quality medical care.

Additionally, nearly 80 percent of physicians practice "defensive medicine," such as ordering unnecessary tests, because they fear lawsuits. [20] This drives up healthcare costs to the tune of $70 to $126 billion per year. Enacting sensible and reasonable medical liability reforms would save money, but also improve the quality of care.[21]

[20] "Fear of Litigation Study: The Impact on Medicine," Common Good (April 11, 2002).
[21] "Addressing the New Health Care Crisis," U.S. Department of Health and Human Services (March 2003).

A recent study published in the *American Journal of Public Health* indicates that 28 states have laws that limit payment in malpractice cases. Several studies show that these laws reduce the frequency and severity of malpractice claims and lower premiums. The *AJPH* study used multivariate models and relatively recent data to estimate the impact of state tort reform laws that directly limit malpractice damage payments on healthcare expenditures. This study revealed that "estimates from these models suggest that laws limiting malpractice payments lower state healthcare expenditures by between 3 and 4 percent."[22] Because the estimates only examined the impact on state expenditures, the savings could be even more significant when considered in conjunction with the federal government's participation in programs such as Medicaid.

An important leader in health justice reform is the state of Texas. In the summer of 2003, the Texas legislature enacted important medical litigation reform. A voter-approved constitutional amendment, Proposition 12, followed later that year to solidify the changes. As a result, physicians are returning to the state, particularly in underserved specialties and counties. Insurance premiums to protect against frivolous lawsuits have declined dramatically, with the state's largest carrier reporting declines up to 22% and other carriers reducing premiums by an average of 13%. The number of lawsuits filed against doctors has been cut almost in half.[23]

To see these trends nationwide, the Congress should pass meaningful medical liability reform. Specifically, the Congress should pass legislation to:

- Establish an appropriate statute of limitations.
- Require courts to impose sanctions for the filing of frivolous lawsuits.
- Limit non-economic damages.
- Allow courts to restrict the payment of attorney contingency fees.
- Establish qualifications for expert witnesses.
- Require courts to reduce damages by the amount of collateral source benefits to which a claimant is entitled.

[22] "The Impact of State Laws Limiting Malpractice Damages on Health Care Expenditures," *American Journal of Public Health* (August 2006), Vol.96, Iss.8; pg 1375.
[23] For more information on the results from Texas, please see the opinion column, "Prodigal State," by Newt Gingrich and John Gill, (*The Wall Street Journal*, May 4, 2006).

Conclusion

Moving the nation's largest sector of the economy will not be easy, and these proposals are by no means the only changes we need. However, these changes will lay a foundation that will undoubtedly transform health and healthcare, from the current system which is inefficient, costly, and deadly, to one that is modernized, cost-effective, and safe. Congress should embrace this opportunity to help build a 21st Century Intelligent Health System that delivers more choices of greater quality at lower costs for all Americans. Our country deserves nothing less.

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