

## Congressional Closeup by Carl Osgood

### House Passes Medical Liability Reform

On May 12, the House voted 229 to 197 to place limits on certain kinds of damages arising out of medical malpractice lawsuits. The Help Efficient Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2004 would also place strict limits on how much time a plaintiff has to file a suit, and establish very high standards for the payment of punitive damages. The bill also includes what House Judiciary Committee chairman James Sensenbrenner (R-Wisc.) described as "reasonable" limits on non-quantifiable damages, and on the contingency fees lawyers can charge. Sensenbrenner said that the bill is modeled after reforms enacted in California in 1975, and added that the Congressional Budget Office has concluded that, under the bill, health insurance premiums would be 25-35% lower than they are now.

Democrats, however, did not buy into the GOP's notions of how to solve the malpractice liability crisis. Rep. John Conyers (Mich.), the ranking Democrat on the Judiciary Committee, noted that the bill overrides the law in every state in the country, when it caps damages, lawyers' fees, and other things. Conyers said that the bill, "instead of helping Americans that seek health-care remedies and remedies for bad medical practice and to help the medical profession, itself," the bill actually will enrich insurance companies, HMOs, pharmaceutical companies, and manufacturers of medical products. "In other words," he said, "all the bad, unpleasant, negative parts of our health-care system are being protected."

Rep. Sherrod Brown (D-Ohio) was even stronger in his denunciation of the bill. He accused the Republicans of laying the blame for the medical liability crisis on the victims of

medical malpractice. "The bill does not have one provision acknowledging the insurance industry's accountability for skyrocketing premiums," he said. He charged that the insurance industry has been trying to recoup its losses in the stock market over the past ten years, on the backs of medical providers. He further charged that the Republicans have refused to even talk about reforms to make the insurance industry more accountable. "In this bill," he said, "businesses are never at fault, patients are greedy, the U.S. Congress knows better than a jury of your peers in your community, and state laws are cast aside without a second thought."

### Dorgan, Waxman Target Iraq Oversight Contracts

Senators Byron Dorgan (D-N.D.), and Ron Wyden (D-Ore.) and Reps. Henry Waxman (D-Calif.) and John Dingell (D-Mich.) sent a letter to Secretary of Defense Donald Rumsfeld, blasting the practice of outsourcing oversight of reconstruction contracts in Iraq to other companies. In the May 18 letter, they wrote, "These contractors are being asked to carry out essential government oversight functions, including defining and prioritizing project requirements and actually overseeing the work of construction contractors." They noted that the seven contractors involved, have business relationships with the companies they are supposed to be overseeing. These oversight contracts also provide for award fees to the oversight contractors based in part on the assessment of the performance of the construction contractors they are charged with overseeing. "This creates a financial incentive for the oversight contractor to give high marks to the work of the construction

contractors," they charge.

Speaking to reporters, Dorgan announced that he and Wyden would be offering an amendment to the Fiscal 2005 defense authorization bill "to void these contracts and say that it is the Pentagon's responsibility, the government's responsibility to oversee these contracts." He added that "we know there's already evidence of fraud and abuse. It ought to require us to tighten" oversight, "not loosen it. It ought to require us to be very vigilant at oversight, not ask private companies that have fundamental conflicts of interest to do oversight. . . . It's the responsibility of government." The amendment Dorgan and Wyden plan to introduce would require the Defense Department to terminate all seven contracts, worth \$129 million, beef up contractor oversight, and make sure there are no more such contracts.

### House Panel Votes To Delay Base Closings

The House Armed Services Committee on May 13, reported out its version of the Fiscal 2005 defense authorization bill, with a number of provisions that run counter to Bush Administration policy. The most significant of these is a provision delaying the 2005 commission on military base closings. In its summary of the bill, the committee stated that because of the stress on the military services due to current operations and the planned realignment of U.S. forces in Asia and Europe, "more time is needed before making irreversible decisions to close or realign military installations."

The bill would suspend the base closing process until the DoD submits mandated reports to Congress on its plans to change basing locations and rotational policies overseas, infra-

structure requirements related to military transformation, and anticipated infrastructure needs to support surge requirements for future conflicts. The Senate bill, reported out a week earlier, includes no such provision, and there is doubt as to whether it will survive the conference committee. Sen. Susan Collins (R-Me.), who supports delaying the base closing process, said in a statement, "I believe it faces an uphill battle in the Senate." She added that the current process is flawed and that "now is not the time to close and reorganize our military bases when the country is in the midst of a war and our future infrastructure needs are unclear."

The bill also includes provisions increasing the end strengths of the Army and the Marine Corps by 30,000 and 9,000, respectively, over the next three years; funding to support the Air Force's plan to lease and buy Boeing air refueling tankers; and funding to support the production of up-armored humvees at a rate of 450 per month. The House also added a provision instructing the Pentagon on how to spend the \$25 billion in supplemental spending it is asking for the war in Iraq, rather than giving the DoD the blank check it demanded.

## **D**emocrats Announce Health Insurance Plan

Senate Democrats, not to be left out of the debate on expanding access to health insurance, announced their own plans on May 12. Minority Leader Tom Daschle (S.D.) charged that the Republican plan, announced just the day before, recycles old programs, including medical liability reform, that do little to reduce the number of uninsured, which, he said, has been increasing at a rate of almost 100,000

per month since President Bush took office in January 2001. He claimed that the Democrats' plan "is guaranteed to reduce costs and expand access."

A portion of the Democrats' plan was introduced, legislatively, the next day by Sen. Bob Graham (Fla.) in the form of a bill to fully fund and expand the State Children's Health Insurance Plan. Graham said that his bill "would allow states to expand health coverage under the SCHIP program to all uninsured children, regardless of their family income." The full funding in the bill would "assure the long-term stability" of the SCHIP program, by reversing the \$1 billion per year decline in Federal funding of each of the last two years. He called it "the first step" to achieving full coverage.

Besides expanding SCHIP, Daschle said that simply making existing programs work better is one of the "fastest and easiest ways" to address the problem of the uninsured. These include allowing all veterans access to Veterans Administration health care, extending the military TRICARE program to members of the National Guard and Reserves, among others. "We have programs in place," he said, "that, if they were working properly, would dramatically address this issue of the uninsured and quality of care in this country."

## **I**mpasse Broken on Judicial Nominations

Senate Democrats and Republicans announced a truce in their sometimes bitter partisan war over judicial nominations on May 18, after a meeting at the White House with White House Chief of Staff Andrew Card, Senate Majority Leader Bill Frist (R-Tenn.), and Senate Minority Leader Tom

Daschle (D-S.D.). Daschle promised to stop blocking judicial nominations in return for a promise from Card, that President Bush would refrain from making any more recess appointments of judges during the remainder of the 108th Congress. Daschle's commitment is to move, by the July 4th recess, 25 nominations that have been on the calendar but blocked. That agreement does not extend to seven other nominations the Democrats consider controversial and have already been subject to cloture votes, however. Daschle told reporters after the meeting, that the Democrats' position on those nominations "has not changed, and will not."

Frist called the agreement fair and balanced. "We've worked on it for days, and both sides are satisfied," he said. He also noted that the Bush Administration "made that decision that they, at this juncture, have no plans to use that constitutional opportunity and right, and therefore are willing to put it on the table in order to have 25 judges" that would otherwise be blocked.

Daschle noted that the blocking of nominations came after the White House had made two recess appointments of controversial nominees who were being blocked in the Senate. "The first time was bad enough," Daschle said, "but to do it a second time—we had no choice but to warn the White House that that would virtually terminate any real prospects for consideration of additional nominees." Sen. Patrick Leahy (D-Vt.) said on the Senate floor that "it was the White House's refusal to reach a reasonable accommodation of the concerns of many Senators about the unilateral approach of the President regarding his recess appointments to the Federal courts that complicated our efforts to reach agreement regarding votes on less controversial nominees."