

December 2, 2010

National Commission on Fiscal Responsibility and Reform
1650 Pennsylvania Ave NW
Washington, DC 20504
via email: commission@fc.eop.gov

Re: Commission recommendation 3.3.12 medical malpractice liability reform

Dear Chairmen Simpson and Bowles and Members of the National Commission on Fiscal Responsibility and Reform:

We, the undersigned consumer and patient safety advocacy organizations, strongly oppose the Commission's recommendation 3.3.12 in its "Moment of Truth" report. The recommendation to impose cruel liability restrictions on patients injured by the medical errors of private medical workers and institutions demonstrates a significant lack of forethought about the consequences to the country's health care system as well as its fiscal health.

Last month, we expressed our concerns to the Commission regarding Chairmen Alan Simpson and Erskine Bowles' previously released deficit reduction proposal, which dedicated a vague paragraph to recommending medical liability restrictions. Unfortunately, instead of removing the recommendation, the Commission's report identifies specific liability proposals and principles, each of which we discuss and disprove in the accompanying analysis. We urge all commissioners to reject the report if medical liability restrictions are included, and to offer proposals that represent true health care cost savings, such as efforts to reduce unnecessary medical errors.

The prevalence of medical mistakes continues to be an ongoing health care crisis, which is quickly turning into a fiscal crisis as well. In fact, a few days after the release of the co-chairmen's proposal, the Department of Health and Human Services Inspector General (HHS) released a patient safety report illustrating that the frequency of medical errors in the U.S. health care system is a big contributor to the expanding deficit. HHS found that 1.6 million Medicare patients suffer injuries every year from medical mistakes, amounting to an annual taxpayer price tag of at least \$4.4 billion. While the Commission claims that limiting providers' liability would save \$17 billion through 2020, eliminating avoidable medical errors could potentially save \$44 billion over the same period.

Limiting patients' legal rights in the middle of these urgent circumstances will only worsen the safety and fiscal problems. Injured patients will be further restricted from seeking compensation from the private parties who caused the harm and the associated costs will shift to others. State and federal governments will have to be prepared to bear the brunt of covering patients' health care costs because the actual culprits will be let off the hook. As the HHS study indicates, Medicare already bears a substantial amount of the burden of paying for others' medical mistakes. If the restrictions are implemented, it will be forced to pay significantly more. Finally, medical providers, shielded from accountability as this proposal promises to do, will have no

impetus to improve patient care, which will again increase medical mistakes and their associated costs.

We support the federal government's effort to practice fiscal responsibility, however, the medical liability recommendation only promises to be ineffective and dangerous. If the commissioners fully consider the consequences of these restrictions that shield negligent parties and shift the costs of care to government entities, they will reject the present proposal contained within the report.

Sincerely,

Alliance for Justice
Center for Justice & Democracy
Consumer Watchdog
National Consumer Voice for Quality Long-Term Care
Public Citizen

Citizens for Patient Safety, Denver, CO
Coalition For Patients' Rights, Baltimore, MD
Connecticut Center for Patient Safety, Harford, CT
Empowered Patient Coalition, San Francisco, CA
HealthCare PSI, Springfield, MO
James's Project, Wayne, PA
Mothers Against Medical Error, Columbia, SC
MRSA Survivors Network, Hindale, IL
New Hampshire Patient Voices, Bow, NH
Ohio Infectious Disease Forum, Raleigh, NC
Patient Safety America, Houston, TX
Patients Right To Know, Centennial, CO
Save The Patient, Chicago, IL
South Carolina Voices for Patient Safety, Chesterfield, SC
Texas Watch, Austin, TX
Voice4Patients, Warren, ME
Woodymatters, Minneapolis, MN