House Republicans last week took two whacks at health care policy in one piece of legislation, voting to restrict medical malpractice lawsuits and at the same time abolish an independent board responsible for curbing Medicare spending growth.

The House on March 22 passed, 223-181, the legislation (HR 5), which would impose caps on some damages awarded in malpractice lawsuits, limit attorneys’ fees and establish a statute of limitations for filing health care lawsuits. The measure would also scrap the Independent Payment Advisory Board (IPAB), which was created by the 2010 health care overhaul (PL 111-148, PL 111-152) and is charged with making cost-cutting recommendations if Medicare spending exceeds target growth rates.

HR 5 — To limit medical malpractice awards and to abolish the Medicare Independent Payment Advisory Board.

The vote, which came shortly before the Supreme Court is set to hear oral arguments on the overhaul’s constitutionality, was largely along party lines, with seven Democrats, including Kathy Hochul of New York and Larry Kissell of North Carolina, voting for the measure. Ten Republicans, including Daniel Webster of Florida and Judiciary Committee member Louie Gohmert of Texas, voted against the bill. (House vote 126, p. 614)

New Jersey Democrat Frank Pallone Jr. supported the IPAB repeal provision at the committee level but voted against the bill on the floor, making clear that the malpractice language dissuaded him. Pallone said he was “very disappointed that the Republican leadership has robbed many Democrats of their ability to vote cleanly on IPAB repeal and have instead yet again politicized this body.”

Del. Donna M.C. Christensen, D-V.I., also initially supported the IPAB repeal but called the combined measure “a disastrous marriage between two bills.” Delegates can vote in committee but not on the floor.

Over two days of debate, Republicans argued that IPAB, composed of an unelected body of experts appointed by the president, would infringe on congressional authority.

“When it comes to my parents, both of whom are on Medicare, no government acronym, no government bureaucrat, no government board can ever substitute for the good judgment of their chosen family doctor,” Texas Republican Jeb Hensarling said during floor debate March 21.

Democratic critics accused Republicans of scaring Medicare recipients, adding a financial argument: that IPAB could serve as a valuable backstop to control spending. As to the malpractice portion, they voiced their opposition to the bill’s $250,000 cap on non-economic damages and said the measure could potentially infringe on states’ rights.
Phil Gingrey, R-Ga., the bill’s sponsor and a licensed physician, said the measure’s “flex cap” provisions ensure that state tort laws take precedence. “We want to end frivolous lawsuits. That’s what this bill does,” Gingrey said.

The White House issued a veto threat on March 20 seeking to protect IPAB from being dismantled before its 15 members have been appointed. The statement of administration policy also cited “serious concerns” about the medical malpractice provisions, specifically about the caps for awards.

Background

The bill began as two separate provisions, one (HR 5) to cap malpractice awards and one (HR 452) to repeal IPAB. House Republican leaders decided to combine them to offset the cost of the IPAB repeal, which would increase federal direct spending by $3.1 billion over 10 years, according to the Congressional Budget Office. The combined version, according to a CBO estimate, would save the government about $45.5 billion over 10 years in part by reducing spending on Medicare, Medicaid and health insurance for federal workers.

Earlier in the week, two GOP lawmakers had sought to keep the IPAB legislation as a stand-alone bill. Reps. Paul Broun of Georgia and Lee Terry of Nebraska on March 19 submitted to the Rules Committee an amendment to remove the malpractice language from the combined bill.

Democrat Allyson Y. Schwartz of Pennsylvania, a cosponsor of the original repeal bill, also urged the committee to reject the malpractice provisions.

“Linking this bill to tort reform — an unrelated, divisive and partisan issue — is bringing what was once a bipartisan effort to a screeching halt,” Schwartz said in a written statement.

But voting along party lines with Republicans in favor and Democrats in opposition, the committee on March 20 approved a floor rule that rejected consideration of the Broun-Terry amendment. On final passage, Terry and Schwartz both voted no, and Broun voted present.

In addition to the proposal with Terry, Broun unsuccessfully offered two other amendments to the malpractice language. One would replace the liability provisions with the text of a measure he cosponsored (HR 4160) that would combine federal funding for Medicaid and the Children’s Health Insurance Program into a block grant. It also would freeze Medicare physician payment rates for two years.

His other proposal would limit the definition of a health care liability claim in the malpractice provisions to care provided under federal health programs.

Another committee-rejected amendment, offered by Ted Poe, R-Texas, would prohibit the liability language from being construed to preempt any state law in effect on enactment. Some GOP lawmakers, including Terry, have criticized the malpractice legislation because they believe it would impinge upon states’ rights.

History shows that a combined bill is likely to hit a dead end in the Senate. Versions of the liability bill passed the House in 2002, 2003 and 2005, but they never advanced in the Senate, even when the chamber had a GOP majority.
Constitutional torture in the cause of tort reform

The Atlanta Journal-Constitution | By Jay Bookman | 3/24/12

Upon taking control of the U.S. House in 2010, Republicans announced that every bill proposed or passed in that chamber would be required to cite specific provisions of the U.S. Constitution that authorize Congress to take such action.

Here, for example, is the language originally contained in H.R. 5, which was approved in the House this week. The bill would abolish the Independent Payment Advisory Board and impose new national limits on malpractice claims.

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3 (2) EFFECT ON INTERSTATE COMMERCE.—Con-
4 gress finds that the health care and insurance indus-
5 tries are industries affecting interstate commerce and
6 the health care liability litigation systems existing
7 throughout the United States are activities that affect
8 interstate commerce by contributing to the high costs
9 of health care and premiums for health care liability
10 insurance purchased by health care system providers.
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Hmmmmm.

So, “Health care and insurance industries are industries affecting interstate commerce….”?

They “affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers”?

Therefore, the federal government has the authority under the commerce clause to pass legislation dictating how states must handle those issues?

Interesting. Very interesting.

Now, as it happens, the U.S. Supreme Court will be hearing arguments next week in an important case that also revolves around these very questions. In fact, in its defense of ObamaCare, the administration will use language almost identical to that of House Republicans. They will tell the nine justices that “health care and insurance industries are industries affecting interstate commerce.” They will also claim
that health insurance and health care “affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.”

Recognizing the potential embarrassment, not to mention the bad timing, U.S. Rep. Rob Woodall of Georgia this week introduced an amendment that stripped H.R. 5 of the language cited above. His amendment was approved just before the bill went onto final passage. Now, the bill contains no constitutional justification for imposing federal limits on state malpractice awards. Apparently, since they can’t find language in the Constitution to justify their actions that would not also justify ObamaCare, they simply abandoned any pretense that it matters.


**Bloomberg Businessweek**

**House Votes to Drop Medicare Board From Health-Care Law**

*Bloomberg Businessweek  |  By Michelle Jamrisko  |  3/23/12*

The Republican-led U.S. House voted to eliminate a Medicare advisory board from the 2010 health-care overhaul days before the U.S. Supreme Court hears arguments on the law’s constitutionality.

The measure, H.R. 5, passed yesterday on a 223-181 vote. It also would cap awards in medical-malpractice claims for pain and suffering at $250,000 in most states.

President Barack Obama signed the health-care law, known as the Affordable Care Act, two years ago today. It is intended to extend insurance coverage to tens of millions of uninsured Americans, impose new taxes on the highest wage earners and produce savings in Medicare, the health-care system for the elderly. The Supreme Court hears arguments March 26-28 on legal challenges to the law.

The Independent Payment Advisory Board, composed of 15 presidentially appointed members, would recommend cuts in Medicare payments to doctors, hospitals and other health-care providers. The board’s members haven’t been selected thus far.

“I am the first one to tell you how much I am opposed” to the advisory board, said Representative Frank Pallone of New Jersey, who was among Democrats who said they were disappointed that Republican leaders merged the repeal with medical malpractice liability provisions they oppose.

Republicans “have no interest in truly repealing” the advisory board, Pallone said. “They only care about defacing the Affordable Care Act and continuing their political game of repealing the law piece by piece.”

**Veto Threat**

The White House threatened a veto of the bill on March 20, calling the advisory board “an important safeguard” to rein in Medicare cost growth. The message from the U.S. Office of Management and Budget said the malpractice award caps would create “inappropriate and harmful restrictions” without reducing preventable injuries or improving the quality of care.
The medical malpractice provisions would limit fees to lawyers that are based on a percentage of a damage award, set guidelines for punitive award limits and create a deadline for filing the lawsuits.

The House has passed similar medical liability provisions, including in 2002, 2003 and 2005. The proposals didn’t advance in the Senate, now controlled by Democrats.

Starting in 2015, the payment advisory board would have the ability to recommend cuts of as much as 0.5 percent of Medicare spending, increasing to 1.5 percent for 2018 and beyond. The board’s recommendations would automatically take effect unless Congress passed its own spending reductions that matched the amount recommended by the board.

‘Medical IRS’

“It’s going to be more like a medical IRS than an advisory panel,” said Representative Charlie Dent, a Pennsylvania Republican, referring to the Internal Revenue Service. The board’s purpose “is to save money by restricting access to health care for Medicare beneficiaries,” he said.

The medical liability provisions in the bill would reduce the federal budget deficit by $48.6 billion over 10 years, while repealing the Medicare advisory board would increase the deficit by $3.1 billion, according to a March 19 Congressional Budget Office estimate.

Medical associations and the U.S. Chamber of Commerce are among the bill’s supporters. Opponents include trial lawyers’ associations, consumer advocacy groups and state legislatures.


Politico Pulse | By Brett Norman | 3/23/12

DON'T MESS WITH TEXAS. Rep. Louie Gohmert, a conservative Republican from the Lone Star State, was one of 10 Republicans to break ranks with his party and vote against legislation Thursday to repeal the Independent Payment Advisory Board and overhaul medical-malpractice laws. Those familiar with the congressman know he's not one to mince words. In an interview after the vote, Gohmert shed light onto why he and others bucked the GOP sponsored bill, which passed easily and is DOA in the Senate. Gohmert said that the medical liability portion of the bill represents an overreach by the federal government into what has traditionally been the turf of state legislatures. 'I'll get marked down by the Chamber of Commerce and the National Association of Manufacturers, but I absolutely don't want the federal government to tell the state of Texas what it can and cannot do,' he said. 'What galls me is that one of the most important Republican principles we have is states’ rights.'

-- DEFECTOR DEMS. Rep. Kathy Hochul, who won her seat in a New York special election last year that was seen as a setback for the GOP Medicare plan, was one of seven Democrats who broke ranks and voted to repeal IPAB. The others were Reps. Dan Boren of Oklahoma, Dennis Cardoza of California, Larry Kissell of North Carolina, Jim Matheson of Utah, Collin Peterson of Minnesota and David Scott of Georgia.
House Republicans Accidentally Accept The Constitutionality Of The Affordable Care Act

On Thursday, House Republicans stripped language from their own health care bill that could “undermine their argument that the Democrats’ 2010 healthcare law abused the Commerce Clause of the Constitution,” The Hill’s Pete Kasperowicz reports. That language, included in H.R. 5, a bill to repeal the Affordable Care Act’s Independent Payment Advisory Board (IPAB), read:

Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

The administration is deploying this very argument in defense of the Affordable Care Act at the Supreme Court next week, insisting that since health care costs “affect interstate commerce,” the Constitution’s commerce clause empowers Congress to regulate the industry and require everyone to purchase coverage in an effort to lower insurance premiums. As a result of the mandate — that is, if people must purchase insurance before they fall ill — Congress can require insurance companies to accept all applicants, regardless of their pre-existing conditions, and offer more affordable coverage to those who need it most.

H.R. 5 passed the House on Thursday, but even with the last minute change, the final version of the bill still includes language that resembles the administration’s claim that Congress can regulate the purchase of health care under the Constitution’s Commerce and Necessary and Proper clauses:

SEC. 303. CONSTITUTIONAL AUTHORITY.

The constitutional authority upon which this title rests is the power of the Congress to provide for the general welfare, to regulate commerce, and to make all laws which shall be necessary and proper for carrying into execution Federal powers, as enumerated in section 8 of article I of the Constitution of the United States.

The bill specifically mentions “interstate commerce” in its definition of ‘health care lawsuit’: “The term ‘health care lawsuit’ means any health care liability claim concerning the provision of health care goods or services or any medical product affecting interstate commerce, or any health care liability action concerning the provision of health care goods or services or any medical product affecting interstate commerce,” it reads.
House Republicans on Thursday voted to eliminate language in their own healthcare reform bill that said the U.S. healthcare industry affects interstate commerce, which Republicans feared could undermine their argument that the Democrats' 2010 health law abused the Commerce Clause of the Constitution.

Democrats have argued that the Commerce Clause lets Congress regulate interstate commerce, which allowed Congress to mandate that all Americans buy health insurance. Republicans have rejected that interpretation by saying the Commerce Clause cannot require people to enter the marketplace, in this case by purchasing health insurance. That argument will be tested in the Supreme Court in hearings that begin next week.

The bill at issue on Thursday, H.R. 5, would repeal the 2010 law's Independent Payment Advisory Board (IPAB), and also impose medical tort reform in a bid to reduce "defensive medicine" and lower overall costs.

While Republicans broadly support the bill, language in the findings section appeared to make a link to healthcare and the Commerce Clause in a way that likely made many Republicans uncomfortable. That section says:

"Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers."

On Thursday morning, Rep. Rob Woodall (R-Ga.) offered an amendment to strip that language and all other language in the findings section of the bill. On Wednesday, Woodall explained that the language could confuse the issue of the GOP's position on how to interpret the Commerce Clause.

"The House has voted 25 times so far to either fully repeal, defund, or dismantle portions of the President’s health care law," he said. "Clearly, the House does not subscribe to the notion that the Commerce Clause bestows almost unlimited powers on Congress.

"By eliminating the 'findings,' we eliminate any confusion."

During brief debate on his amendment, Woodall dodged this larger issue, and said he wants to strike the findings section of the bill "because the language of the bill speaks for itself."

The House approved of Woodall's amendment to the bill by a 234-173 vote.
A federal tort reform bill scheduled for a vote in the House of Representatives this week has found some unlikely foes.

The bill, which would cap medical malpractice damages, was introduced by Rep. Phil Gingrey of Georgia in January 2011. But the measure, which is attached to a bill repealing part of healthcare reform, has ignited a small firestorm among Republican politicians and conservative scholars who say it tramples states' rights.

--One of the first out of the gate was Virginia Attorney General Kenneth Cuccinelli, a Republican, who promised to fight the federal tort reform law if it passes. "I would file suit against it just as fast as I filed suit when the federal health-care bill was signed into law in March 2010," Cuccinelli wrote in Washington Post op-ed called "Keeping the feds at bay."

--Two states' rights Republicans, Reps. Terry Lee of Nebraska and Paul Broun of Georgia, have introduced an amendment seeking to strike the federal tort reform language from the bill. Republican Reps. Ted Poe and Louie Gohmert from Texas have also criticized the bill as an encroachment on states' rights.

-- Randy Barnett, a conservative scholar and constitutional law professor at Georgetown University Law Center, also took umbrage: "Tort law has historically always been solely a matter of state law," he told Summary Judgments.

--And constitutional scholar, Robert Natelson, criticized the two-part bill as a "dirty trick" that places conservatives in an impossible position of choosing between repealing part of health care reform and defending states' rights.

--Last but not least, Tea Party leaders chimed in on Monday with an email to their supporters, saying GOP House leaders need a "refresher course" on the Tenth Amendment, Talking Points Memo reported.

-- Jen Talaber, a spokeswoman for Rep. Phil Gingrey who introduced the bill, told Talking Points Memo that the law would allow state caps on malpractice liability to trump the federal limit. "Detractors of lawsuit abuse reform, namely Democrats and the trial lawyer lobby, have attempted to turn this into a 10th Amendment issue," she said. "It is not."
IPAB repeal hits ideological snags

Politico | By Jake Sherman & Anna Palmer | 3/20/12

A mix of conservative ideologies came into sharp collision Tuesday as Republicans readied to repeal yet another piece of President Barack Obama’s health-care law.

The problems came when Republicans were preparing legislation to wipe out the Independent Payment Advisory Board, a panel created as part of the Democrats’ health-care law. Its purpose: Keep Medicare spending down.

To pay for repealing that provision costs big money, and Republicans wanted to offset the cost with medical malpractice reform — something they think can save tens of billions of dollars.

But a gaggle of Republican lawmakers came alive to the fact that changing malpractice laws at the federal level would interfere with existing state laws — in some cases, nullifying states’ constitutions. States’ rights advocates got up into a tizzy.

To make the situation more complicated, Democrats who supported repealing IPAB won’t vote for the kind of medical malpractice reform Republicans support.

And House floor rules prohibited amendments that would allow lawmakers to “vent steam” in opposition.

It’s another example of the complex ideologies that are laced throughout the House Republican Conference. Even when Republicans are on the same page, things are complicated.

“These are big issues, and I love that about this Congress,” said Rep. Rob Woodall (R-Ga.), a member of the Rules Committee who had concerns about the medical malpractice provision. “We’re tackling things that don’t divide across party lines, they divide across philosophical lines.”

The provision has pitted trial lawyers against big business operations like the U.S. Chamber of Commerce. The American Association of Justice’s Linda Lipsen said that members who believe in personal responsibility should be opposed to this bill.

“We were very disappointed that they would put politics into play,” Lipsen said, focusing on the medical malpractice provisions.

Concerns got so serious that Majority Leader Eric Cantor (R-Va.) and Rules Chairman David Dreier (R-Calif.) huddled with lawmakers Tuesday afternoon.

It’s not that any Republican is against medical malpractice — the issues are deeper than that.

“I’ve got friends, frankly, that are on both sides of it,” Rep. Trey Gowdy (R-S.C.) said. “It’s not a policy. No one is opposed to tort reform that I’ve talked to. It is a constitutional analysis.”
Despite the concerns, House Judiciary Committee Chairman Lamar Smith (R-Texas) said he thinks the bill will move forward without changes.

“So far, I think it’s manageable,” Smith said.

GOP sources say they have the votes to pass the repeal, concerns with states’ rights issues notwithstanding.

http://www.politico.com/politicopulse/0312/politicopulse704.html

TWEAKS EYED FOR IPAB/MED-MAL BILL - Lawmakers in the House have filed 20 amendments - so far - for a bill that repeals IPAB and overhauls medical-malpractice laws. At first read, both sides seem to be hedging their bets. For instance, Rep. Paul Broun (R-Ga.), a physician, has an amendment that would sever the medical liability portion of the bill and keep only the IPAB repeal language intact. If that doesn't work, the congressman also introduced one that would again strip the medical malpractice portion and instead insert a bill that block-grants Medicaid. (That same amendment would also freeze Medicare physician payment rates for two years.) Not to be outdone, Rep. Alcee Hastings (D-Fla.), introduced language that would strip away the IPAB repeal portion of the bill. Link to the Rules Committee website: http://1.usa.gov/zUllbC

FIRST IN PULSE: NEW REPORT SLAMS MED-MAL INSURERS - Despite claims of medical-malpractice insurance 'crises,' the average profit margin for the top 10 medical-malpractice insurers is twice as high as 50 of the most profitable Fortune 500 companies, according to an analysis coming out later this morning by the American Association for Justice, a trial lawyers group. The report, released ahead of that expected House vote this week on malpractice reform and IPAB repeal, alleges that medical malpractice insurers have distorted profits and losses to muddy the debate. The report: http://www.justice.org/cps/rde/xbr/justice/Reserving_Practices_and_Record_Profits_2012.pdf

http://lawversusaonline.com/dcdicta/2012/03/20/in-fight-against-hr-5-aaaj-and-conservative-groups-form-unusual-coalition/

In fight against HR 5, AAJ and conservative groups form unusual coalition

DC Dicta  |  Kimberly Atkins  |  3/20/2012

As lawmakers prepare to take up the controversial tort reform legislation later this week, the measure is creating a strange coalition of opponents seeking to stop the bill in its tracks.
As we’ve reported in *Lawyers USA*, the trial lawyers’ group the American Association for Justice has actively opposed H.R. 5, the Help Efficient, Accessible, Low Cost, Timely Health Care (HEALTH) Act. The bill, which would cap non-economic damages in medical negligence cases at $250,000 and repeal part of the federal health care law aimed at cutting Medicare costs, is set for a House vote later this week.

But AAJ officials say the bill affects far more than medical malpractice cases. It is a “far-reaching bill that would affect caps on damages, limits on attorneys’ fees, medical negligence law, nursing home cases, medical device and pharmaceutical cases, and bad faith cases against health insurers,” according to a message to AAJ’s membership.

AAJ officials tell me that the bill would also thwart suits against doctors who commit intentional torts, such as sexual abuse.

Meanwhile, conservative groups such as the Heritage Foundation and the Tea Party movement have also attacked the measure, saying it infringes upon states’ rights and violates the Commerce Clause, according to the InjuryBoard’s Andrew Cochran.

Cochran quotes the Heritage Foundation’s Hans von Spakovsky’s statement on the group’s blog *The Foundry*:

“The problem with most of the proposed reforms in H.R. 5 is that the law governing medical malpractice claims is a state issue, not a federal issue. Despite H.R. 5’s reliance on the Commerce Clause, Congress has no business (and no authority under the Constitution) telling states what the rules should be governing medical malpractice claims,” Spakovsky writes.


**Tea Party Questions Constitutionality Of GOP Bill Repealing Medicare Reform Provision**

*Talking Points Memo* | By Sahil Kapur | 3/20/12

The right is giving House GOP leaders a collective headache.

They were already under fire from conservative members for taking a piecemeal approach to repealing the health care law. Now conservative activists are after them for abandoning Tea Party principles at the same time.

Caught in the middle of these related attacks is President Obama’s Medicare cost-cutting panel — the Independent Payment Advisory Board (IPAB), which was created by the health care law.

The House is poised to vote this week to repeal IPAB. A small but vocal contingent of dissatisfied, all-or-nothing Republicans worries that this strategy is too timid, and will lead the public to conclude that some parts of the law are acceptable.
But Tea Party activists are upset about something else entirely. GOP leadership has opted to fund the $3.1 billion cost of repealing IPAB with legislation written by Rep. Phil Gingrey (R-GA) that would reform medical malpractice laws. That’s a problem not just for the handfuls of House Democrats who want to scrap IPAB, but also for conservatives who believe federal malpractice award caps are unconstitutional.

Judson Phillips, the leader of Tea Party Nation, fired off an email to supporters Monday lamenting the GOP’s pay-for, claiming House leaders need a “refresher course” on the 10th Amendment. “The IPAB repeal ought to be fairly simple. Even some Democrats are on board with it,” he wrote. “The Republican leadership decided to play stupid political tricks and attach the Medical Malpractice bill to the IPAB repeal bill.”

The measure in question caps the amount courts can award in non-economic damages for any given medical malpractice lawsuit at $250,000. Tea partiers don’t necessarily have an issue with the concept, but they strongly believe it’s an issue that states, not the federal government, should decide. And they cite the 10th Amendment as evidence that malpractice damage caps imposed by Congress infringe on states’ rights.

“The 10th Amendment does not say that the powers granted to the states can be usurped simply because the right party is in power,” Phillips wrote. “Whether you think tort reform is a good idea or not, it is an issue that belongs to the states, not to the federal government. Tort law has always been governed by the states.”

The constitutional concern was shared by the conservative Heritage Foundation, which declared in a Monday evening blog post that the House GOP bill is “misguided” because “the law governing medical malpractice claims is a state issue, not a federal issue.” The post argued that “Congress has no business (and no authority under the Constitution) telling states what the rules should be governing medical malpractice claims.”

Jen Talaber, a spokeswoman for Gingrey, told TPM that the bill addresses 10th Amendment concerns by letting state laws capping malpractice award supercede the federal limit, regardless of their level. “Detractors of lawsuit abuse reform, namely Democrats and the trial lawyer lobby, have attempted to turn this into a 10th Amendment issue,” she said. “It is not.”

The bill, Talaber said, would “ensure that current or future state law addressing issues such as non-economic damages would supersede the federal law. Further, juries in different states may still award as much as they see fit to compensate a patient for economic damages.”

That hasn’t appeased all conservatives. Reps. Louie Gohmert (R-TX) and Ted Poe (R-TX) objected to the legislation in the Judiciary Committee last year, forcing top Republicans to shelve it indefinitely, after they twisted arms to clear the bill through the panel. Virginia’s conservative Attorney General Ken Cuccinelli was so troubled by the measure, he vowed last year to challenge it in court if Republicans managed to turn it into law.

It’s not clear the conservative objections will carry enough weight with the GOP to endanger the bill. Republicans see IPAB as a long-term threat to their years-long goal of turning Medicare into a private insurance system. But they may well lose their bipartisan cover.

Speaker John Boehner’s office previewed the vote this way: “The House will act this week to repeal another part of ObamaCare: IPAB, which empowers a board of unelected bureaucrats to deny care and raise costs. This will be the 26th vote the House will take to repeal all or part of ObamaCare, which is a big part of the regulatory onslaught coming out of Washington, DC.”
The question now is whether the anti-“Obamacare” message will be enough to completely unify the GOP. It may not pass muster with conservative purists who, as Phillips put it in his email, view the 10th Amendment as “one of the best defenses we have against tyranny.”


Repeal vote could help GOP with physicians’ lobby

The Hill | By Julian Pecquet | 03/20/12

A vote in the House this week on repealing a portion of the healthcare reform law could go a long way toward helping Republicans mend fences with the American Medical Association (AMA).

The powerful physicians’ lobby was at loggerheads with Republicans when it endorsed the Democratic healthcare reform plan in 2009, a rift that persisted after Congress enacted the bill into law.

But two years after the passage of reform, the AMA’s relationship with Democrats has soured, partially because Democrats have failed to deliver on promises to eliminate scheduled cuts to Medicare payments to doctors.

House Republicans, meanwhile, are moving forward with legislation supported by the AMA that would repeal the Independent Payment Advisory Board (IPAB), a panel established by the healthcare law to cut Medicare costs.

A number of Democrats support abolishing IPAB, but GOP leaders have tied the vote to caps on medical liability, which Democrats overwhelmingly oppose.

While 40 to 45 Democrats were expected to vote for ending IPAB — the repeal bill has 20 Democratic co-sponsors — that number has fallen to a mere handful now that it’s been attached to medical liability reform.

"I don't think there'll be a lot of [Democratic] votes" for the repeal bill when it comes up on the House floor, House Minority Whip Steny Hoyer (D-Md.) said Tuesday.

A high-ranking GOP aide said linking the votes was a deliberate move to deny “free votes to some Democrats who are looking to distance themselves from their healthcare vote.”

"It's not typical of any majority to give free votes to the other side,” the aide said.

But K Street sources said the maneuver was also aimed at winning the support of the AMA, which strongly supports liability caps for doctors.
A well-connected Republican lobbyist said the decision to link the vote was spearheaded by House Majority Leader Eric Cantor (R-Va.) in an effort to “get people back in the fold who should have always been in the fold.”

"They really want that AMA golden seal of approval" for any Medicare reforms going forward, the lobbyist said, adding that Cantor “really wants to open up those [fundraising] coffers” at the AMA.

Republican leaders strongly denied linking the bills to win the support of the AMA.

The AMA’s political action committee has donated only $97,700 to House candidates so far in the 2012 election cycle, according to the Center for Responsive Politics. The PAC donated nearly $1 million in the 2010 cycle, with the giving split evenly between Republicans and Democrats.

An AMA official said the group is spending less money on campaigning this year because there’s less healthcare legislation moving through Congress. But the official also said the group’s PAC is expected to meet in a couple of weeks to discuss future plans.

The GOP aide stressed that House leadership did not reach out to the physicians’ group before announcing its decision to link IPAB repeal and liability reform. The AMA seemed pleased by the move, however.

In a recent alert to members, the AMA called the repeal bill a "huge step forward for the medical community."

"As the vote approaches," the alert says, "it is critical to build momentum behind this important legislation that will end the threat of the IPAB to physicians and their practices through a fiscally responsible approach that reins in medical liability costs."

Other medical lobbies think adding the medical malpractice issue lessens pressure on the Senate to take up IPAB repeal, even if they're not saying so publicly.

"There is a bit of disappointment — frustration might be a good word — that leadership decided to pair the two together because of the controversy," said a physician source, adding that medical malpractice is an "unnecessarily complicating factor."


GOP Lawmakers Seek to Remove Malpractice Provisions From IPAB Repeal

CQ Today | By Melissa Attias | 3/19/12

Two GOP lawmakers are seeking to strip out the medical liability language that is expected to be paired with legislation to repeal a Medicare cost-cutting board.
Republican Reps. Paul Broun of Georgia and Lee Terry of Nebraska have submitted to the Rules Committee an amendment to remove the language; the panel is slated to meet Tuesday afternoon to report a rule for floor consideration.

Legislation to scrap the Independent Payment Advisory Board (IPAB) is expected to be considered as part of a measure (HR 5) that would impose federal caps on some medical malpractice awards, according to bill text released by the Rules Committee on March 12.

The House is likely to take up the measure on Wednesday.

But the decision to link the two bills has drawn criticism from House Democrats who support repeal of the board. Pennsylvania Democrat Allyson Y. Schwartz, a cosponsor of the repeal bill, urged the Rules Committee on Monday to reject the malpractice provisions that Broun and Terry’s amendment would eliminate.

“Linking this bill to tort reform — an unrelated, divisive and partisan issue — is bringing what was once a bipartisan effort to a screeching halt,” Schwartz said in a statement.

Several amendments submitted to Rules would limit the medical liability language, which also would establish a statute of limitations for filing health care lawsuits and limit attorneys’ fees. But while many of them are being proposed by Democrats, some Republicans are breaking with their party to offer changes to those provisions.

In addition to the proposal with Terry, Broun is offering two other amendments to the malpractice language. One would replace the liability provisions with the text of a measure he cosponsored (HR 4160) that would combine federal funding for Medicaid and the Children’s Health Insurance Program into a block grant. It also would freeze Medicare physician payment rates for two years.

His other proposal would limit the definition of a health care liability claim in the malpractice provisions to care provided under federal health programs. Texas Republican Ted Poe also submitted an amendment that would prohibit the liability language from being construed to preempt any state law in effect on enactment.

Some GOP lawmakers, including Lee, have criticized the medical malpractice legislation because they believe it would impinge upon states’ rights.

Under the 2010 health care law (PL 111-148, PL 111-152), the 15-member advisory board is tasked with making cost-cutting recommendations if Medicare spending exceeds target growth rates. The recommendations would take effect automatically unless legislation was enacted to achieve equivalent savings.

A March 7 Congressional Budget Office cost estimate found that the legislation to repeal the board would increase direct spending by $3.1 billion over 10 years. CBO estimated that the version of the medical malpractice measure approved by the Energy and Commerce Committee last year would save $57 billion over a 10-year period.

A version of this article appeared in the March 20, 2012 print issue of CQ Today
OVERNIGHT HEALTH: Dems prepare for battle as GOP readies Medicare overhaul

The Hill: Healthwatch Blog  |  By Julian Pecquet  |  03/19/12

'Clean' IPAB: The House Rules Committee decides Tuesday which amendments will be allowed to come up for a vote on the House floor when lawmakers vote to repeal the reform law's cost-cutting board this week. Republicans are under pressure to allow a vote on a "clean" repeal bill, without the medical malpractice caps that have been proposed as a way to offset the repeal bill's $3 billion cost.

States rights' conservatives Reps. Paul Broun (R-Ga.) and Lee Terry (R-Neb.) have an amendment that would strike the medical malpractice language. And Rep. Allyson Schwartz (D-Pa.), one of 20 House Democrats who have co-sponsored IPAB repeal, released a statement urging Republican leaders to hold a clean vote.

"Linking this bill to tort reform — an unrelated, divisive, and partisan issue — is bringing what was once a bipartisan effort to a screeching halt," Schwartz said. "I urge the Rules Committee to reject this offset."

AAJ urges lawmakers to reject med-mal reform bill

Lawyers USA  |  Kimberly Atkins  |  March 18, 2012

As House lawmakers prepare this week to vote on a bill that would cap non-economic damages in medical negligence cases at $250,000 and repeal part of the federal health care law, members of the nation’s largest trial lawyer lobby group stepped up their efforts to thwart the measure.

The officials from the American Association of Justice have been contacting lawmakers and urging members to search their caseloads for clients who can help demonstrate how the Help Efficient, Accessible, Low Cost, Timely Health Care (HEALTH) Act, H.R. 5, would harm victims of medical malpractice and their families.

The legislation has two components:

• Title I would, among other things, impose the non-economic damages cap, cut contingency fees paid to attorneys, limit punitive damages to two times the amount of economic damages awarded or $250,000, whichever is greater; and allow courts to require periodic payments of damage awards.
• Title II would repeal the portion of the Patient Protection and Affordable Care Act of 2010 that created the Independent Payment Advisory Board, an agency designed to cut Medicare costs but which has been criticized for having overly broad powers and insufficient oversight.

AAJ CEO Linda Lipsen said GOP lawmakers supporting the bill are putting politics before policy. The better approach for decreasing medical-malpractice lawsuits, she said, would be to boost safety measures to decrease the estimated 98,000 annual fatalities from preventable medical errors, which have cost nearly $300 billion over the last decade, according to AAJ.

“The Republican leadership is missing a big opportunity here,” Lipsen said to reporters during a media briefing Friday. “We could have a potential dialogue about safety. … If Republicans and Democrats would just roll up their sleeves and really talk about patient safety, it would not only save money, it would save lives.”

AAJ President Gary M. Paul said trial lawyers know better than most the negative effects of tort reform measures.

“As a trial lawyer I get to see the effect of [damages] caps like this one on families who have loved ones who have been lost as a result of medical malpractice,” Paul told reporters.

Rep. Phil Gingrey, R-Ga., a co-sponsor of the bill, said the damage cap and the elimination of the IPAB would result in major health care cost cutting.

“The health care law mandates this panel be comprised of 15 bureaucrats who would determine what services Medicare patients receive,” Gingrey said of the agency in a statement. “[A]s a physician with more than 30 years of experience, I consider the decision-making process between doctors and patients sacrosanct. Health care choices, sometimes life-threatening, belong in the hands of the patient, their family, and their doctor – not unelected bureaucrats tasked with saving Uncle Sam money.”

Last week, members of the National Conference of State Legislatures urged members of Congress not to pass the legislation, saying the measure tramples on states’ rights.

“At its most basic level, this comes down to the issue of federalism and whether the federal government thinks it can do something better than the states,” said South Dakota state Senator Joni Cutler, co-chair of the NCSL Committee on Law and Criminal Justice, in a statement. “Let me state it plainly, the federal government cannot do this better than the states.”

http://www.politico.com/politicopulse/0312/politicopulse704.html

**POLITICO**

*Politico Pulse | By Jennifer Haberkorn | 3/16/12*

TRIAL LAWYERS TO HOUSE: STATES RIGHTS! That was one message from the American Association for Justice, a trial lawyers’ group, which held a conference call with reporters today on a medical malpractice bill that’s been tied to the IPAB repeal vote next week. “There’s no one-size-fits-all solution,” AAJ chief executive Linda Lipsen said, adding it was “ironic” that the bill has support from Republicans who otherwise support state rights. The decision to include a medical malpractice cap on non-economic damages — very similar to bills in recent Congresses that have cleared the House and been
shot down in the Senate — has cut into Democratic support for the IPAB repeal effort. The POLITICO Pro story, ICYMI: http://politico.pro/xnsvLl.


GOP Provision Could Kill IPAB-Repeal Bill

National Journal Daily | By Billy House and Meghan McCarthy | 3/14/12

Are House Republicans sabotaging one of their own health care law reform bills?

Republicans have attached a medical-liability provision to their measure to repeal the Independent Payment Advisory Board, a key component of the 2010 health care law. House Democrats say this is a blatant—if not outright cynical—instance of undermining bipartisan backing of legislation to score political points.

“By tying repeal to a highly polarizing and entirely unrelated issue, Republicans are signaling that this vote has nothing to do with addressing legitimate policy concerns,” complained Rep. Allyson Schwartz, D-Pa., a cosponsor of the bill, which Republicans say is tentatively set for a floor vote next week.

Schwartz is among the Democrats who now say they won’t be backing the bill because of the attachment of language that would force caps on medical-malpractice awards—a move many Democrats have traditionally opposed as anticonsumer. Democratic rejection of the bill now may not scuttle passage in the Republican-led House. But whatever slim chance the measure had in passing the Democratic-controlled Senate appears all but dead.

Republicans have been making IPAB repeal one of their main themes in attacking the Affordable Care Act.

Those attacks have notably included Republican invocations of “death panels,” which supposedly give the government power to decide what can and cannot be done for Medicare patients. In fact, IPAB’s power is limited to cutting payment rates to providers; it is not allowed to cut any services.

Meanwhile, Democrats have supported undoing the independent board for a completely different reason.

The unifying irritation to members of Congress on both sides of the aisle is that the 15 members of the board have been given the power to cut Medicare payment rates to doctors and hospitals without congressional approval. To overcome an IPAB cut, Congress must pass its own equivalent cut with a majority.

The bill from Rep. Phil Roe, R-Tenn., to abolish IPAB has 20 Democratic cosponsors in the House. And Democrats said as many as 60 others in their caucus were lining up to support the measure.

The IPAB repeal bill sailed through House committee markups, getting approved by voice vote on its way to the House floor.
But all of that bipartisanship ended when Republican leaders decided last week that the IPAB bill—which costs $3 billion—would be tied to legislation capping awards in medical-malpractice cases, ostensibly to cover the cost of the repeal.

According to the Congressional Budget Office, the medical-malpractice legislation would save the federal government $57 billion, meaning it would easily cover the cost of the IPAB repeal. After the first $3 billion is used to cover IPAB, the next $54 billion would go directly toward the deficit.

Democrats suggest the Republican decision has less to do with the deficit and more to do with scoring political points. They say Republicans have simply decided they would prefer to keep the issue of IPAB alive this election year and don’t want to give Democrats the chance to show voters that they, too, might want some changes to the health care law.

“ This is a perfect example of what they really intended to do from the beginning—to use this as a political issue to damage the Affordable Care Act,” said one House Democratic aide. “But now that we’re agreeing that [IPAB’s] a bad part of the [health care law], Republicans have decided to create an obstruction to their own bill.”

Said Schwartz: “Republican leadership is manipulating the process for political purposes and has squandered a rare opportunity for bipartisanship.”

“I remain a strong advocate for IPAB repeal, but I have no intention of changing my position on [medical-malpractice legislation] to support a partisan messaging vote,” she said. “This whole exercise is an affront to those of us genuinely committed to protecting seniors and strengthening Medicare.”

Michael Steel, a spokesman for House Speaker John Boehner, said on Wednesday, “Our goal is protecting patients and reducing costs—the stated goals of the failed ‘Obamacare’ law. The bill we bring to the floor will do just that, combining two popular bipartisan reforms.”

A spokeswoman for Roe said he supported the addition of the medical-liability language to his bill.

“Pardon my lack of sympathy for Democrats who are suddenly growing the backbone to distance themselves from ‘Obamacare’s’ most unpopular provisions,” said Paul Lindsay, a spokesman for the National Republican Congressional Committee.

Meanwhile, the NRCC this week has continued its steady release of attacks on House Democrats for supporting passage of the “government takeover of health care.”

State lawmakers blast medical malpractice reform bill

The Hill | By Julian Pecquet | 03/14/12

The nation's leading advocacy group for state lawmakers wrote to House leaders on Wednesday to share their "strong, bipartisan opposition" to federal medical malpractice reform because it would infringe upon states' rights.

House Republicans are seeking to pass a tort reform bill capping non-economic damages at $250,000 next week as a way to pay for repealing the health reform law's Medicare cost-cutting board. The bill to repeal the Independent Payment Advisory Board (IPAB) has broad support from healthcare groups and some Democrats, but tort reform legislation is more controversial.

"Medical malpractice, product liability and other areas of tort reform are areas of law that are regulated by the states," says the letter from the National Conference of State Legislatures. "Since the country's inception, states have addressed the myriad of substantive and regulatory issues regarding licensure, insurance, court procedures, victim compensation, civil liability, medical records and related matters."

The letter goes on to point out that during the 2012 legislative sessions, 35 states have introduced over 350 pieces of legislation addressing medical malpractice concerns.

"The adoption of a one-size-fits-all approach to medical malpractice envisioned in H.R. 5," the letter adds, "would undermine that diversity and disregard factors unique to each particular state."

The letter is signed by the conference's Law and Criminal Justice committee co-chairs, South Dakota Sen. Joni Cutler, a Republican, and Mississippi Rep. Tommy Reynolds, a Democrat. It was sent to House Speaker John Boehner (R-Ohio) and House Minority Leader Nancy Pelosi (D-Calif.).
House attack on ‘death panel’ doubly hypocritical

The Atlanta Journal-Constitution  |  By Jay Bookman  |  3/13/12

House Republicans are pushing a bill that would abolish the Independent Payment Advisory Board, the mythical “death panel.”

IPAB, a 15-member panel of medical experts, is designed as a mechanism to control costs in Medicare and other federal health-care programs. If costs rise too quickly, IPAB steps in to implement policy and treatment changes to bring those costs back into line. By law, it is forbidden to recommend any form of health-care rationing. (Congress also reserves the power to override any IPAB recommendation).

Theoretically, Republicans ought to embrace cost-controlling mechanisms, especially in social programs such as Medicare. And in the past, they have. As Rick Santorum likes to point out, Newt Gingrich and Mitt Romney both included IPAB-like agencies as part of their own, supposedly conservative health-care reform proposals. The party’s opposition to IPAB can be explained only by the fact that it has proved so useful in scaring people to death about the “real intentions” behind ObamaCare.

But here’s another little twist: If you abolish IPAB, you also forfeit the cost savings that it is projected to produce. Without it, Medicare spending would increase and so would the federal deficit. So if House Republicans want to abolish IPAB without adding to the deficit, they have to find some way to offset the increased spending.

Enter U.S. Rep. Phil Gingrey, a physician and a Republican from Marietta. He has proposed a bill that would impose a federal limit on malpractice awards. According to the Congressional Budget Office, the Gingrey bill would reduce the deficit by a total of $57 billion over the next 10 years, enough to compensate for the cost of abolishing IPAB.

But let’s be clear about what the Gingrey bill would do. It would not only change federal law, it would override state malpractice laws as well. It is Congress announcing that it knows better than state legislators how malpractice issues should be handled even in state courts and by local juries. From the modern-day Republican point of view, the Gingrey bill represents a clear infringement of the Tenth Amendment, which reserves such powers to the states.

And if you think about it, the hypocrisy of it all doubles. Conservatives claim to hate ObamaCare because it represents a federal intrusion into state matters. Now, in an attempt to strike a symbolic blow at ObamaCare, they themselves propose to dictate how states handle health care issues, in this case issues of medical malpractice.
House Republicans have set up a vote next week to repeal a board created by the 2010 healthcare law that the GOP has criticized as a rationing board that could force Medicare cuts without congressional approval.

Republicans plan to move H.R. 5, the Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act, as early as next week. The legislation was originally a medical tort-reform bill, but a version of the bill that appeared Tuesday on the House Rules Committee website included new language to repeal the Independent Payment Advisory Board (IPAB).

The Rules Committee has set an amendment deadline for March 19, a sign that it could approve a rule for the bill early next week and send it to the House floor soon afterward.

The tort-reform title of the bill would cap punitive damages in medical lawsuits at $250,000, limit contingency fees and other payments to lawyers and install other reforms aimed at reining in limitless legal actions against doctors. Republicans have said these reforms would reduce government healthcare spending by about $50 billion over a decade.

Republicans appear to see the tort reform bill as a way to pay for IPAB repeal. Last week, the Congressional Budget Office said repealing the IPAB would cost about $3 billion.

But Republicans will likely lose some Democratic support by coupling the two issues, as Democrats roundly oppose the tort-reform bill.

Democrats wrote a lengthy critique against the tort-reform language in a report accompanying the bill, saying among other things that the bill would pre-empt state laws that might set other limits on punitive damage awards. But Republicans noted that some of these reforms are based on California law, such as the $250,000 cap, and that these reforms are needed to help lower medical costs.

“The American medical lawsuit system is broken,” Republicans wrote in the bill report. “According to one study, 40 percent of claims are meritless, in that either no injury or no error occurred in the case.

“Attorneys’ fees and administrative costs eat away 54 percent of the compensation that should be paid to plaintiffs. And completely meritless claims (which are nonetheless successful approximately one in four times) account for nearly a quarter of total administrative costs.”
Dems drop off IPAB repeal over malpractice links

Politico Pro  |  By MATT DOBIAS  |  3/12/12

IPAB repeal legislation began to hemorrhage Democratic support Monday, after Republicans said they intend to pair the broadly popular House bill with a more partisan medical malpractice reform package.

"Typical right-wing overreach," charged Rep. Barney Frank (D-Mass.), one of 20 Democrats to co-sponsor the IPAB repeal bill. "I'm baffled by it. It's a way to destroy the chances of bipartisanship."

On Friday, congressional GOP sources confirmed their plans to link Rep. Phil Roe's bill to repeal the Medicare Independent Payment Advisory Board to separate legislation sponsored by Rep. Phil Gingrey (R-Ga.), which would cap noneconomic malpractice awards when a patient is injured.

The malpractice bill more than offsets the $3.1 billion cost the Congressional Budget Office put on Roe's bill, and would give House Republicans a two-part victory next week as national attention turns to President Barack Obama's health care law on its second anniversary.

As expected, the linkage proved toxic among Democrats, many of whom want to see the IPAB rolled back but don't support the GOP effort to overhaul medical malpractice laws. House aides had expected dozens of Democrats to vote for it when it goes to the floor this month.

"Speaking of malpractice, this is political malpractice," Rep. Joe Courtney of Connecticut, another Democratic co-sponsor of IPAB repeal, told POLITICO. "This is a poison pill," he said, adding that Republicans could have found another pay-for that wouldn't have alienated Democrats.

It's unclear exactly how Republicans plan to move the two bills, but both should clear the House relatively easily. About 200 Republicans had co-sponsored IPAB repeal, but the number of House Democrats aboard will likely plummet. Even among Democrats, repeal has always been more popular in the House than in the Senate and White House. But many Democrats oppose malpractice caps.

"It's an indication that they're not serious," Frank said. "Almost all of the Democrats won't vote for it," with malpractice attached.


Of the Democrats who co-sponsored Roe's bill, only Rep. Jim Matheson of Utah has shown support for the malpractice component.
Schwartz Slams GOP For Tying IPAB Repeal To Medmal

*Talking Points Memo | By Sahil Kapur | 3/12/12*

Rep. Allyson Schwartz (PA), the most outspoken Democratic supporter of the GOP's effort to repeal the Medicare cost-cutting Independent Payment Advisory Board, tore into Republicans on Monday for proposing to pay for it with medical malpractice reform.

In a statement to TPM sent via a spokesperson, she warned that the "partisan" pay-for will cost the GOP Dem vote and guarantee defeat.

"Unfortunately, Republican Leadership is manipulating the dialogue on this issue for political purposes, which will undoubtedly lead many Democratic Members to vote against the bill – despite support for the underlying policy from House Democrats across the ideological spectrum," Schwartz told TPM. "By unnecessarily tying repeal of IPAB to a partisan malpractice bill, House Republicans have effectively ensured that this bill is dead. This is deeply disappointing."

Medical malpractice reform has long been a poison bill for Democrats and even some Republicans who want to leave malpractice damage caps to states.

Barney Frank Chews Out GOP For Squandering Bipartisanship Opportunity

*Talking Points Memo | By Sahil Kapur | 3/12/12*

Rep. Barney Frank (D-MA) told TPM the that House GOP has lost his vote for their bill repealing the Medicare cost-cutting Independent Payment Advisory Board after proposing to offset it with medical malpractice reform.

Frank is one of some 20 Democrats cosponsor of the IPAB-repeal bill, but said the GOP's medmal offset is a bridge too far that will alienate other Dems as well. Asked whether he'll vote for it now, Frank said, "Of course not."

"It's typical of their irresponsible approach. They talk about wanting to have bipartisan cooperation but they don't want it," Frank told TPM on Monday. "They have a lot of Democratic support to repeal [IPAB]
and they know it. They were dangerously close to having some bipartisanship and they couldn't accept that."

"They're taking two very different issues and putting them together in an effort to coerce Democrats," he added. "This is nothing more than an overreach to appease the right wing."

Frank said he opposes IPAB because he believes other federal programs, most notably the military, should be cut to balance the budget, as opposed Medicare providers. He emphasized that hospitals, which could face cuts under IPAB, are "major sources of employment" and shouldn't be on the hook.

He added that he supports some cost-cutting policies in Medicare such as asking wealthier seniors to pay higher premiums.


**The Hill**

**Health law board repeal bill raises concerns with trial lawyers**

*The Hill | By Julian Pecquet | 03/12/12*

The powerful trial lawyers' lobby has come out in force against a bill to repeal the healthcare reform law's cost-cutting board because of the way it's paid for, possibly depriving House Republicans of a unique chance to deal a bipartisan blow to President Obama ahead of the November election.

To pay for their repeal of the Independent Payment Advisory Board (IPAB), House leaders have proposed coupling it with legislation capping medical malpractice damages when it comes up for a vote next week. Tort reform has long been a Republican priority, but linking the two bills is likely to cause a number of defections among the 20 Democratic co-sponsors of IPAB repeal while diluting the GOP's message about the unelected board's lack of accountability.

"House Leadership has proposed to pay for … a bill that proponents say will restore accountability and protect patients' rights — by attaching … a bill that will strip away patients' legal rights and limit accountability in the health care industry," said a spokeswoman for the American Association for Justice, formerly the Association of Trial Lawyers of America.

The tort reform bill, introduced by Rep. Phil Gingrey (R-Ga.), has already cleared the House Judiciary and Energy and Commerce committees. It would cap non-economic damages at $250,000; create a safe harbor from punitive damages for products that meet Food and Drug Administration safety requirements; and put in place a three-year statute of limitations for medical malpractice claims.

Republicans, for their part, argue that tort reform will achieve the cost-cutting goals of the IPAB by cutting doctors' malpractice costs and reducing defensive medicine. The bill would cut federal healthcare spending by $48 billion over 10 years and reduce the deficit by $57 billion, according to the Congressional Budget Office, more than enough to cover the $3 billion cost of repealing the IPAB.
They argue that medical malpractice meets Democrats' request for a pay-for that didn't involve cutting provisions of the healthcare reform law. And they point out that Obama in last year's State of the Union address said he would be willing to look at Republican ideas to bring down the cost of healthcare, such as medical liability reform.

"We hope Congressional Democrats will be open to this idea as well," said a spokeswoman for the Energy and Commerce Committee.


**House GOP To Offset IPAB Repeal With Medical Malpractice Reform, Vote Next Week**

*Talking Points Memo | By Sahil Kapur | 3/12/12*

House Republican leadership has opted to offset the $3.1 billion cost of repealing the Medicare cost-cutting Independent Payment Advisory Board (IPAB) with Rep. Phil Gingrey's (R-GA) medical malpractice reform bill, an aide confirms.

The House is poised to vote on the bill next week.

The move runs the risk of alienating some of the Democrats -- and perhaps 10th Amendment Republicans -- who want to repeal IPAB but oppose federal caps on malpractice damage awards. But the legislation is widely expected to fail in the Democratic-led Senate either way.

http://www.cq.com/alertmatch/154675284

**House GOP Weighs Curbs on Malpractice Suits to Offset IPAB Repeal Cost**

*CQ Today | By Melissa Attias and Emily Ethridge | 3/9/12*

House Republicans are planning to use an amended measure to restrict medical malpractice lawsuits as a way to offset the cost of abolishing a board created by the 2010 health care law to restrain Medicare spending, according to a GOP leadership aide.

A bill (HR 452) to scrap the Independent Payment Advisory Board (IPAB) is expected to reach the House floor during the week of March 19, when the chamber returns from its current recess. The Congressional
Budget Office estimates that the legislation would increase federal direct spending by $3.1 billion over 10 years.

Laena Fallon, a spokeswoman for the office of Majority Leader Eric Cantor, R-Va., said the House will offset the cost using an amended version of a measure sponsored by Phil Gingrey, R-Ga. As approved by the Energy and Commerce Committee last May, the bill (HR 5) would impose caps on some damages in malpractice lawsuits, limit attorney fees and establish a statute of limitations for filing health care lawsuits. The CBO estimated that the approved version of the bill would save the government about $57 billion over 10 years in part by reducing spending on Medicare, Medicaid and health insurance for federal workers.

The IPAB legislation sponsored by Tennessee Republican Phil Roe would scrap the 15-member board created by the health care law (PL 111-148, PL 111-152) to make cost-cutting recommendations if Medicare spending exceeds target growth rates. But offsetting the cost with changes in the medical liability system could undermine support for the IPAB repeal bill, which has 20 Democrats among its 234 cosponsors.

Frank Pallone Jr. of New Jersey, the top Democrat on the Energy and Commerce Health Subcommittee, backed the repeal bill when it was approved by the subcommittee on Feb. 29 but voted against approval of Gingrey’s measure in May.

Some Republican lawmakers also oppose the liability legislation, arguing that it would impinge upon states’ rights. “If you’re a true believer in the 10th Amendment, then why are we not allowing the states to continue to create their own laws and decide what’s in their best interest for their residents?” Nebraska Republican Lee Terry asked during the Energy and Commerce markup.

The Ways and Means Committee approved Roe’s bill by voice vote March 8, two days after the Energy and Commerce panel endorsed the measure. The committees did not include offsets for the cost of the bill.

Under the health care law, the board’s cost-cutting recommendations would take effect automatically unless legislation was enacted to achieve equivalent savings.

Board members would be nominated by the president and confirmed by the Senate to serve six-year terms.

The board’s opponents are concerned about ceding congressional authority over Medicare to unelected appointees, and about the potential for excessive cuts and the rationing of care.

Proponents say the medical malpractice legislation would result in lower medical liability insurance premiums and reduce the use of health care services because providers would feel less pressure to order tests in order to avoid lawsuits. Reduced health insurance costs would save the government money on insurance subsidies.

Cornyn’s Approach

Across the Capitol, a Senate IPAB repeal bill (S 2118) from Texas Republican John Cornyn has a very different offset. That measure would increase the amount of money that must be returned under the overhaul’s system for reclaiming overpayments of subsidies given to help consumers buy coverage in the state insurance exchanges.
Similar adjustments were used to help pay for a law (PL 112-9) to strike an unpopular tax-reporting requirement from the overhaul and to pay for a 2010 law (PL 111-309) that blocked a cut in Medicare physician payment rates.

President Obama has repeatedly called for strengthening the advisory board and is unlikely to accept any legislation to repeal it.

House Democrats say GOP IPAB plan hurts bipartisanship

*Politico Pro* |  *By Matt DoBias*  |  3/9/12

For Democrats, House Republicans didn't choose the worst possible offset to pay for repeal of the Independent Payment Advisory Board.

They chose the second worst.

Republican leaders plan to tie legislation that restricts some medical liability lawsuits to what previously was a stand-alone bill to repeal the IPAB, a move that is certain to antagonize Democrats who previously supported the repeal measure.

The new GOP tack, confirmed to POLITICO on Friday, is surprising for a number of reasons. First, the bill they chose to ride along with the IPAB package scores astronomically high. Sponsored by Rep. Phil Gingrey (R-Ga.), the CBO said it could save more than $57 billion over the next decade, when only about $3.1 billion is needed to pay for IPAB repeal.

And secondly, the decision turns a bipartisan bill into a partisan one.

One Democratic aide called it "pure political posturing."

"This move shows how purely political their motivations are," the aide added.

Some Democrats may have sensed this coming. After learning about the cost of IPAB repeal this week, some of the Democrats who wanted to abolish the board warned that their vote would hinge on how the GOP planned to make up the difference.

They were worried that the Republicans would take the money from the health care reform law — a nonstarter for the Democrats.

So Republicans landed on the Democrats' other sore spot — tort reform.

The news won't go over well with anti-IPAB Democrats — or likely any Democrats, for that matter — who have strenuously opposed caps on medical malpractice lawsuits. The idea comes up year after year — and always gets shot down.
Among other things, Gingrey's bill sets a limit on when a person can sue for a medical injury, and limits non-economic damages to $250,000. It also places restrictions on how much lawyers can recoup.

Democrats have shown some willingness to test some alternatives to the current malpractice system and the ACA cleared the way for state experimentation. But not caps on damages.

Rep. Phil Roe's proposal to repeal the IPAB was a rarity in the House. The Republican from Tennessee had courted more than 20 Democrats in his effort to roll back one of President Barack Obama's favorite tools to keep health care costs in check. Repeal has passed two committees on bipartisan voice votes.

Now those Democratic numbers will be considerably lower, and what could have been a highly visible vote, timed to coincide with the ACA's two-year anniversary and the start of the Supreme Court hearings this month, instead could end up a GOP-only affair.

But that may not be a bad thing. The House clearly has the votes to repeal the payment advisory board. And overhauling the current medical liability rules has been a top priority for the GOP.

If the two bills move together, it will still be a statement vote for Republicans even if they do lose Democrats. Democratic leaders in the Senate said they don't plan to call up the bill once it clears the House, and even if they did, the White House would prove a backstop to repeal.

"Our job is to pass bills," a congressional GOP aide said, adding that both bills have broad support from provider groups.