

CONFERENCE OF CHIEF JUSTICES

Resolution 2

Urging the United States Senate to Respect State Policies and Principles of Federalism when Considering the “Protecting Access to Care Act of 2017” (H.R. 1215) and any other Legislation Aimed at Reforming Health Care Liability Systems

WHEREAS, the Conference of Chief Justices, in fulfilling its leadership role for state judicial systems, has consistently taken positions in opposition to proposed policies that threaten principles of federalism or that seek to preempt proper state court authority; and

WHEREAS, in fulfilling the above-mentioned responsibilities, the Conference has adopted many resolutions urging Congress and the federal executive branch to respect constitutional principles of federalism, separation of powers, and the states’ traditional role as the primary source of tort and contract law, including these resolutions:

- *In Support of the Efforts by the U.S. Congress to Promote Respect for Principles of Federalism and Separation of Powers (2008);*
- *Urging the United States Congress to Consider State Policies and Principles of Federalism with Regard to Reforming Health Care Liability Systems (2009);* and

WHEREAS, the United States House of Representatives on June 29, 2017, adopted the Protecting Access to Care Act of 2017 (H.R. 1215) to create uniform national rules, substantive and procedural, with respect to “health care lawsuits” in both state and federal courts; and

WHEREAS, the Protecting Access to Care Act of 2017 would, if enacted, federalize in significant ways many litigation practices established by state law, and the Act includes provisions to: (1) limit the amount damages that can be awarded for pain and suffering and all other non-pecuniary losses no matter how many parties in a case; (2) eliminate the collateral source evidentiary doctrine; (3) limit contingency fees for attorneys; (4) institute uniform qualifications for persons to testify as experts in health care lawsuits; (5) establish a 3-year statute of limitations; (6) immunize from liability any healthcare provider who dispenses a medical product approved or cleared by the Federal Drug Administration; (7) impose procedural requirements before filing health care claims; and (8) expressly preempt certain state statutes, rules, and decisions; and

WHEREAS, the foregoing litigation practices are typically determined in states by courts and legislatures that are better situated than the federal government to determine and

control the impact of healthcare litigation in their communities;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices urges Congress, during its consideration of the Protecting Access to Care Act of 2017 (H.R. 1215) and any other legislation aimed at reforming health care liability systems, to recognize and honor principles of federalism -- particularly the fact that state constitutions vest state legislatures and courts with responsibilities and authority over substantive law and procedural rules employed in state courts; and

BE IT FURTHER RESOLVED that the Conference urges the United States Senate, before acting on any legislation regulating health care liability systems, to determine whether and how such proposals might preempt or conflict with state constitutions, statutes, court rules, or case law.

Adopted as proposed by the CCJ Civil Justice Committee at the CCJ/COSCA Annual Meeting in August 9, 2017.