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December 17, 2021

The Honorable Charles Schumer
Democratic Leader
United States Senate
322 Hart Senate Office Building
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker of the House
United States House of Representatives
1236 Longworth House Office Building
Washington, DC 20515

The Honorable Mitch McConnell
Republican Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Kevin McCarthy
Republican Leader
United States House of Representatives
2468 Rayburn House Office Building
Washington, DC 20515

Subject: H.R. 5376, Sec. 138518, Expenses in Contingency Fees Cases

Dear Leader Schumer, Speaker Pelosi, Leader McConnell and Leader McCarthy:

On behalf of the Health Coalition on Liability and Access (HCLA), a coalition of associations and businesses representing physicians and other health care providers, hospitals, medical liability insurers, employers, and health care consumers, we are writing to urge you to remove Sec. 138518, Expenses in Contingency Fees Cases, from the Build Back Better Act (H.R. 5376).

The Internal Revenue Service generally bars lawyers working on a contingency fee basis from deducting litigation-related expenses until a case resolves. In such arrangements, attorneys advance the costs of a lawsuit in return for a share — typically 30% to 40% — of the client's eventual settlement or award. If there is no recovery, the attorneys can then deduct these expenses.

However, in a significant reversal from this policy, Sec. 138518 would amend 26 U.S. Code § 62 and allow attorneys working on a contingency fee basis to deduct any expenses paid or incurred in the course of pursuing and litigating a lawsuit — even though the expenses may ultimately be reimbursed. According to the Joint Committee on Taxation, the result would be a loss of \$2.5 billion in federal revenue, with no discernable value to the taxpayers.

As members of HCLA have long stated, our legal system is in dire need of reforms to better ensure access to justice. We support initiatives to resolve liability claims without resorting to

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litigation, to speed the resolution of claims, and to ensure victims are reasonably compensated. Unfortunately, Sec. 138518 would accomplish none of these worthwhile goals, and in fact, would provide no substantive benefit to either claimants or defendants in the litigation process.

We, therefore, urge you to remove Sec. 138518 from H.R. 5376.

Thank you for your consideration.

Sincerely,



Michael C. Stinson, Chair
Medical Professional Liability Association



Katie O. Orrico, Vice Chair
American Association of Neurological Surgeons



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