HEALTH COURTS GAIN NEW MOMENTUM IN CONGRESS

President Obama’s Expressed Support for Them
Could Provide the Basis for Bipartisan Agreement

New York, NY—February 18, 2015—The creation of specialized health courts is gaining new momentum on Capitol Hill. Earlier this month three prominent Members of Congress introduced an alternative to the Affordable Care Act, which includes the creation of health courts. While the future of that plan is unknown, the inclusion of health courts is significant, because health courts have previously been endorsed by President Obama. Health courts could thus emerge as a point of bipartisan agreement.

The three Members of Congress are Sen. Orrin Hatch (R-UT), Chairman of the Senate Finance Committee; Rep. Fred Upton (R-MI), Chairman of the House Energy and Commerce Committee; and Sen. Richard Burr (R-NC), a member of the Senate Finance Committee. They have proposed the Patient Choice, Affordability, Responsibility, and Empowerment (CARE) Act to replace the current health law. Included in the nine-page summary of its provisions is the following language: “States could also elect to establish a state Administrative Health Care Tribunal, or ‘health court,’ presided over by a judge with health care expertise who can commission experts and make the same binding rulings that a state court can make.”

Health courts have previously been the subject of bipartisan agreement. Both President Obama and his 2012 Republican challenger Mitt Romney endorsed them. Mitt Romney advocated the creation of health courts in an op-ed in *USA Today*. President Obama had previously endorsed the creation of health courts in a letter to Congressional leaders released by The White House on March 2, 2010.

In addition, the National Commission on Fiscal Responsibility and Reform endorsed the creation of health courts, as have three other bipartisan commissions: the Committee for a Responsible Federal Budget (at the New America Foundation); the Debt Reduction Task Force of the Bipartisan Policy Center; and *Esquire* magazine’s Commission to Balance the Federal Budget.

The concept of health courts has been championed by Common Good—the nonpartisan government reform coalition—working in conjunction with experts at the Harvard School of Public Health. Under Common Good’s model, health courts would have judges dedicated full-time to resolving health care disputes. The judges would make written rulings to provide guidance on proper standards of care. These rulings would set precedents on which both patients
and doctors could rely. To ensure consistency and fairness, each ruling could be appealed to a new Medical Appellate Court.

Health courts are aimed not at stopping lawsuits but at restoring reliability to medical justice. Special courts have long been used in American justice in areas of complexity where reliability requires judges, who can make consistent rulings from case to case, rather than juries, which have no authority to set predictable precedents. In the early republic, America had special admiralty courts. Today, there are special courts for tax disputes, family law, workers’ comp, vaccine liability and a wide range of other specialized areas.

The public sees the need for reliable health care justice—and for health courts in particular. A nationwide poll conducted in 2012 by Clarus Research Group revealed that 66 percent of voters support the idea of creating health courts to decide medical claims. The health court concept has also been endorsed by virtually every legitimate health care constituency, including medical societies, patient safety organizations and consumer groups like AARP.

In the past, the creation of health courts has been blocked in the U.S. Senate by aggressive opposition from a single special interest—the trial lawyers, who benefit handsomely from the current erratic system of medical justice and held great sway with the previous Senate leadership.

“The public would benefit enormously—saving tens of billions of dollars—from the reliable medical justice that health courts would provide,” said Philip K. Howard, Founder and Chair of Common Good. “With the new Senate leadership and President Obama’s endorsement of health courts, let’s hope that the public interest will now be put ahead of the trial lawyers.”

For more information or to talk with Common Good Chair Philip K. Howard, please contact Miranda Barbot at 212-576-2700 x264 or mbarbot@goodmanmedia.com.

Common Good (www.commongood.org) is a nonpartisan government reform coalition dedicated to restoring common sense to America. The Founder and Chair of Common Good is Philip K. Howard, a lawyer and author of The Rule of Nobody (to be published in paperback next month by W.W. Norton) and The Death of Common Sense. The Rule of Nobody sets forth a vision for fundamental government overhaul.

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