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Boehner's Big Gift to the Drug Industry

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It's always fun to see what politicians try to bury in fine print. I like to read the normally boring and often endless "definitions" section of legislation that others may gloss over when trying to understand the guts of a bill. Take, for example, the several hundred-page House Republican health care bill introduced Tuesday as the "Amendment In The Nature Of A Substitute Offered By Mr. Boehner Of Ohio."

One of the bill's chief right-wing selling points is its section on medical malpractice. To proponents of legislation like this, dealing with malpractice is never actually about solving the problem of malpractice. Medical negligence kills at least a hundred thousand people every year and injures ten times more, costing the economy tens of billions of dollars annually. What they mean is weakening the legal rights of patients, lessening the accountability of incompetent doctors and unsafe hospitals, and giving more money to the insurance industry.

As Keith Olbermann put it Tuesday night, "The Boehner bill protects medical and insurance companies preventing juries from awarding you too much money for malpractice. It will cap those malpractice costs, costs which the Congressional Budget Office just found out contribute to the rising cost of care to the tune of merely one-half of one percent."

Yes, that is certainly true. The bill has all kinds of severe and cruel restrictions on the legal rights of patients injured by reckless, unsafe medical care - severe caps on compensation, provisions that guarantee many injured patients will be shut out of court altogether, and others types of punishment for patients. Not even the Congressional Budget Office believes these laws will save more than 0.5 percent in health care costs, which is likely a significant exaggeration.

But what Olbermann and most others miss, understandably — because who ever reads the fine print — is that Mr. Boehner has decided to gift every one of those liability limits to the pharmaceutical companies, as well. In addition to ensuring that incompetent doctors, unsafe hospitals, HMOs and abusive nursing home are off the hook for killing and maiming many

patients, he has listed “drug[s], device[s], or biological product[s] intended for humans” as well.

I could go in a few directions at this point. So I'll point you in the direction of *New York Times* columnist Bob Herbert, who [wrote about this very issue](#) a few years ago when the Bush Administration was pushing similar legislation. (Notably, these kinds of bills were rejected by the U.S. Senate five times.) Here's what Herbert wrote then:

Vioxx, Celebrex, Prozac. ...

With all the problems and the bad publicity that drug companies have been facing recently, you might think that this would not be a good time for the Bush administration to toss yet another bonanza their way.

But the administration is like an ardent lover in its zeal to shower the rich and powerful with every imaginable benefit. So tucked like a gleaming diamond in proposed legislation to curb malpractice lawsuits is a provision that would give an unconscionable degree of protection to firms responsible for drugs or medical devices that turn out to be harmful.

...

The Democratic leader in the Senate, Harry Reid of Nevada, was blunt on the matter. He said, “Congress should not be giving a free pass to big drug companies at a time when millions of Americans may have had their health put at risk by pharmaceutical giants.”

Given the number of unsafe drugs and devices on the market since he wrote this, I would call these views eminently apropos.