

March 21, 2016

The Honorable Bob Goodlatte Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

The Honorable John Conyers, Jr. Ranking Member  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Re: Groups Oppose H.R. 4771, the “Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2016.”

Dear Chairman Goodlatte and Ranking Member Conyers:

The undersigned consumer, health and public interest groups strongly oppose H.R. 4771, the “Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2016.” This bill would limit the legal rights of injured patients and families of those killed by negligent health care. The bill’s sweeping scope covers not only cases involving medical malpractice, but also cases involving unsafe drugs and nursing home abuse and neglect.

Even if these provisions applied only to doctors and hospitals, recent studies clearly establish that its provisions would lead to more deaths and injuries, *and* increased health care costs due to a “broad relaxation of care.”<sup>1</sup> Add to this nursing home and pharmaceutical industry liability limitations, significantly weakening incentives for these industries to act safely, and untold numbers of additional death, injuries and costs are inevitable, and unacceptable.

The latest statistics show that medical errors, most of which are preventable, are the third leading cause of death in America. This intolerable situation is perhaps all the more shocking because we already know about how to fix much of this problem. Congress should focus on improving patient safety and reducing deaths and injuries, not insulating negligent providers from accountability, harming patients and saddling taxpayers with the cost, as H.R. 4771 would do.

For example, this bill would establish a permanent across-the-board \$250,000 “cap” on compensation for “non-economic damages” in medical malpractice cases. Such caps are unfair and discriminatory. University of Buffalo Law Professor Lucinda Finley has written, “certain injuries that happen primarily to women are compensated predominantly or almost exclusively through noneconomic loss damages. These injuries include sexual or reproductive harm, pregnancy loss, and sexual assault injuries.” Also, “[J]uries consistently award women more in noneconomic loss damages than men ... [A]ny cap on noneconomic loss damages will deprive women of a much greater proportion and amount of a jury award than men. Noneconomic loss damage caps therefore amount to a form of discrimination against women and contribute to unequal access to justice or fair compensation for women.”<sup>2</sup>

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<sup>1</sup> See, Bernard S. Black, David A. Hyman and Myungho Paik, “Do Doctors Practice Defensive Medicine, Revisited,” Northwestern University Law & Economics Research Paper No. 13-20; Illinois Program in Law, Behavior and Social Science Paper No. LBSS14-21 (October 2014); Bernard S. Black and Zenon Zabinski, “The Deterrent Effect of Tort Law: Evidence from Medical Malpractice Reform,” Northwestern University Law & Economics Research Paper No. 13-09 (July 2014).

<sup>2</sup> Lucinda M. Finley, “The 2004 Randolph W. Thrower Symposium: The Future Of Tort Reform: Reforming The Remedy, Re-Balancing The Scales: Article: The Hidden Victims Of Tort Reform: Women, Children, And The Elderly,” *Emory Law Journal*,” 53 *Emory L.J.* 1263, Summer, 2004.

Other provisions are just as problematic. The proposed federal statute of limitations, more restrictive than a majority of state laws, lacks complete logic from a deficit reduction angle since its only impact would be to cut off meritorious claims, forcing patients to turn to the government for care. The bill would not only cap punitive damages, which hold corporations accountable for their most reckless or deliberately harmful acts, but also completely immunize manufacturers of certain drugs and devices from punitive damages. The bill would repeal joint and several liability even though the Congressional Budget Office says this could increase, not lower, costs.

H.R. 4771 would overturn traditional state common law and would be an unprecedented interference with the work of state court judges and juries in civil cases. Its one-way preemption of state law provisions that protect patients (there are some exceptions for caps) makes clear that the intent of this legislation is not to make laws uniform in the 50 states. Rather, it is a carefully crafted bill to provide relief and protections for the insurance, medical and drug industries, at the expense of patient safety. We urge you to oppose H.R. 4771.

Very sincerely,

Alliance for Justice  
 American Association for Justice  
 Center for Justice & Democracy  
 Citizen Action/Illinois  
 Consumer Action  
 Consumer Federation of America  
 Consumer Watchdog  
 Consumers Union  
 Empowered Patient Coalition  
 Homeowners Against Deficient Dwellings  
 Illinois Alliance for Retired Americans  
 James's Project  
 Medical Error Transparency Plan  
 Mothers Against Medical Error  
 MRSA Survivors Network  
 National Association of Consumer Advocates  
 National Consumer Voice for Quality Long Term Care  
 National Consumers League  
 National Women's Health Network  
 New Solutions: A Journal of Environmental and Occupational Health Policy  
 NY Public Interest Research Group  
 Peggy Lillis Foundation  
 Prevent Retinopathy of Prematurity.org  
 Public Citizen  
 PULSE Colorado  
 PULSE of America  
 Quinolone Vigilance Foundation  
 Tara Lynn De Rogatis Foundation  
 Texas Watch  
 US PIRG