

June 12, 2017

The Honorable Paul Ryan
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Re: Groups Urge You to Vote NO on H.R. 1215.

Dear Speaker Ryan and Leader Pelosi:

The undersigned consumer, health, labor, legal and public interest groups strongly oppose H.R. 1215: The “Protecting Access to Care Act of 2017.” 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 H.R. 1215 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.”¹ 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. 1215 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. For example, 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.

¹ See, Bernard S. Black, David A. Hyman and Myungho Paik, “Damage Caps and Defensive Medicine, Revisited,” J. Health Econ. (January 2017); 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).

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.”²

Other provisions in H.R. 1215 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 repeal joint and several liability even though the Congressional Budget Office says this could increase, not lower, costs.

H.R. 1215 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) 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. 1215: The “Protecting Access to Care Act of 2017.” Thank you.

Very sincerely,

NATIONAL GROUPS

AFL-CIO

American Federation of State, County and Municipal Employees (AFSCME)

American Federation of Teachers

Aging Life Care Association

Alliance for Justice

Alliance for Retired Americans

American Association for Justice

American Association of Directors of Nursing Services

American Association of Nurse Assessment Coordination

Annie Appleseed Project

Autistic Self Advocacy Network

Brain Injury Association of America

Center for Independence

Center for Justice & Democracy

Center for Medicare Advocacy

Christopher & Dana Reeve Foundation

Communication Workers of America

Consumer Action

Consumer Federation of America

Consumer Watchdog

Daily Kos

Families for Better Care

² Lucinda M. Finley, "The Hidden Victims Of Tort Reform: Women, Children, And The Elderly," Emory Law Journal, 53 Emory L.J. 1263, Summer, 2004.

Gerontological Advanced Practice Nurses Association
 Hartford Institute for Geriatric Nursing
 Homeowners Against Deficient Dwellings
 Justice in Aging
 Leahslegacy.org
 Long Term Care Community Coalition
 Mothers Against Medical Error
 NALLTCO, National Association of Local Long Term Care Ombudsman
 National Association of Consumer Advocates
 National Association of Directors of Nursing Administration in Long Term Care
 National Center for Health Research (NCHR)
 National Consumer Voice for Quality Long-Term Care
 National Consumers League
 National Disability Rights Network
 National Education Association
 National Gerontological Nursing Association
 National Medical Malpractice Advocacy Association
 National Women's Health Network
 Nursing Home Victim Coalition, Inc.
 Our Mother's Voice
 Patient Safety America
 Public Citizen
 Public Justice
 Public Justice Center
 Public Law Center
 Quinolone Vigilance Foundation
 The Empowered Patient Coalition
 The Impact Fund
 United Automobile, Aerospace and Agricultural Implement Workers of America International Union
 United Spinal Association
 Women's Institute for a Secure Retirement (WISER)

STATE GROUPS

Arkansas State Independent Living Council
 California Advocates for Nursing Home Reform
 Center for Advocacy for the Rights & Interests of the Elderly (PA)
 Chatham Advisory Committee for Long Term Care Adult Care Homes and Family Care Homes (NC)
 Citizen Action/Illinois
 Connecticut Center for Patient Safety
 Disability Rights Center of Kansas
 Elder Justice Committee of Metro Justice of Rochester (NY)
 Friends of Residents in Long Term Care (NC)

Greater Boston Legal Services, on behalf of our clients (MA)
Idaho Federation of Families for Children's Mental Health
InterHab, Inc. (KS)
Iowa Statewide Independence Living Council (SILC)
Kansas ADAPT
Kansas Advocates for Better Care
LTC Ombudsman Services of San Luis Obispo County (CA)
Massachusetts Advocates for Nursing Home Reform
Michigan Long Term Care Ombudsman Program
Montana Independent Living Project, Inc.
NYPIRG
PULSE of Colorado
Residential Facilities Advisory Committee, State of Oregon
Rhode Island Long Term Care Ombudsman Office
Texas Watch
Voices for Quality Care (LTC) (MD & DC)
Washington Advocates for Patient Safety
Washington Civil & Disability Advocate
WISE & Health Aging (CA)