

September 15, 2020

Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

Honorable Chuck Schumer
Minority Leader
United States Senate
Washington, DC 20510

Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, DC 20515

Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, DC 20515

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

The undersigned patient safety groups and individuals strongly oppose the misnamed “Safe to Work Act” (S. 4317). This legislation would present unwarranted, onerous and discriminatory burdens on every patient injured by negligent health care for the next five years whether the patient is a catastrophically-injured baby or a senior citizen neglected in a nursing home. It is a harsh and mean-spirited bill that will harm the most vulnerable and severely injured American patients.

The bill’s sweeping scope covers not only claims involving COVID-19, but also claims having nothing to do with direct COVID-19 care, including care provided in non-emergency conditions. The bill states that any malpractice case brought in state court can be removed to federal court, where they have no business being because the cases are brought under state law by parties from the same state or locality. A federal judge is then forced to make factual determinations whether to allow the case to proceed before the patient is even allowed discovery.

The patient must show that the health care provider’s conduct amounts to “gross negligence,” which is defined to resemble the crime of reckless homicide. This is an impossible burden. If the case even survives at that point, the patient faces a range of additional procedural and evidentiary hurdles. And then even if patient wins, there is no right to non-economic damages *at all*. For patients on Medicare or Medicaid, the mandatory insurance offset may leave them with no compensation for economic loss as well.

In sum, this bill contemplates a system so biased and unfair for injured patients that even the most obvious case of medical malpractice is unlikely to go forward for the next five years. This would amount to immunity for negligent health care providers, hospitals, nursing homes and their insurers.

It is well known that medical negligence occurs at alarming rates in this country. Studies show that liability for harm induces safer care and relaxing liability leads to more unsafe care. When legitimate cases are blocked from proceeding and negligence in hospitals and nursing homes is not properly exposed, patient safety suffers.

In addition, this legislation, which makes it impossible for injured patients to obtain adequate compensation for negligent care, will destroy yet another safety net for many vulnerable children and families during this pandemic. We urge you to oppose this bill.

Very sincerely,

Patient Safety Advocates

Joleen Chambers, Patient Representative,
Texas Healthcare Safety Advisory
Committee, Dallas, TX

Alicia Cole, Hospital-Acquired Infection
Survivor, Patient Safety Advocate, Sherman
Oaks, CA

Kathy Day RN, member, Patient Safety
Action Network, Bangor, ME

Helen Haskell, President, Mothers Against
Medical Error, Columbia, SC

Marian Hollingsworth, The Patient Safety
League; member The Patient Safety Action
Network, California

John T. James, PhD., Patient Safety
America, Houston, TX.

Patricia Kelmar, JD, Health Care Campaigns
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M. Christian John Lillis, Executive Director,
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Mary Ellen Mannix, MRPE, HSRM, RYT,
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Evelyn McKnight, patient advocate, The
Evelyn and Thomas McKnight Family Fund
for Patient Safety

Lori Nerbonne, New Hampshire Patient
Voices, Bow, NH

Robert E. Oshel, Ph.D. Retired Associate
Director for Research and Disputes,
National Practitioner Data Bank

Dan Walter, Author, Patient Safety
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Yanling Yu, Washington Advocates for
Patient Safety, Seattle, WA

Organizations

Alliance for Justice

American Association for Justice

Asian Pacific American Labor Alliance,
AFL-CIO

Center for Justice & Democracy

Consumer Action

Consumer Federation of California

Consumer Watchdog

Consumers for Auto Reliability and Safety

National Consumers League

National Council on Independent Living

National Employment Law Project

National Employment Lawyers Association

People's Parity Project

Public Citizen

Public Justice

Texas Watch