



215 Pennsylvania Avenue, SE • Washington, D.C. 20003 • 202/546-4996 • www.citizen.org

Protecting Access to Care Act of 2017 (H.R. 1215) **Public Citizen OPPOSES**

Overview

In 1999, the prestigious Institute of Medicine (IOM) stunned the nation by reporting that between 44,000 and 98,000 patients were dying every year because of avoidable medical errors. However, fewer than 15,000 patients (or survivors) that year received a medical malpractice payment on behalf of a doctor. In 2016, the British medical journal, BMJ, concluded that medical errors are the third leading cause of death in the United States, behind only heart disease and cancer.

Despite these alarming statistics, Republicans in Congress have for almost twenty years introduced dozens of bills to strip away the rights of medical malpractice victims to receive full justice in court, based on the spurious rationale that there would be massive cost-savings due to halting unnecessary litigation. Those seeking to blame the legal system for “out of control” healthcare costs invariably turn to the theory of “defensive medicine.” This concept refers to tests and procedures that doctors allegedly provide to protect themselves against potential litigation. Defensive medicine cannot be definitively measured, but multiple studies have found that it contributes relatively insignificantly—2 percent or less—to the scope of overall healthcare costs.

H.R. 1215 is a prime example of a bill that contains a treasure trove of goodies for lobbyists of the insurance and health care industries.

Why Public Citizen Opposes

H.R. 1215 takes the unprecedented step of preempting a broad swath of state medical malpractice laws—an area in which federal law provides no remedy and has been historically left to the states. In addition, the bill would:

- Arbitrarily cap damages that compensate victims for injuries whose value is hard to quantify such as loss of limb or sight, severe or permanent disfigurement, pain and suffering due to the death of a child. These caps disproportionately affect women, children, and individuals with disabilities who may lose substantial income over the course of their life due to injury;

- Create a federal time limit for a victim’s ability to bring a claim against a wrongdoer and prohibit states from having statutes of limitations that are longer. This would reduce the amount of time that victims currently have in many states to file a lawsuit;
- Make it harder for a victim to receive full compensation for their injuries by eliminating the doctrine of joint and several liability for recovering damages. Under current law, if a negligent doctor and hospital are both sued and one cannot pay, the victim will still receive their rightful compensation. If H.R. 1215 passed and the doctor declared bankruptcy, for example, the victim would not receive their just compensation;
- Restrict a victim’s right to freely contract with their attorney when determining fees. Medical malpractice cases often require a great deal of upfront costs by an attorney, so limitations on fees will hinder effective representation (plus, the bill places no such restrictions on a defendant, usually an insurance company or hospital, and their lawyers); and
- Exclude a broad segment of the medical industry from liability, such as doctors, dentists, pharmacists, drug makers and manufacturers, health insurance companies, nursing homes, and assisted living facilities. In practice, this means that both a doctor and pharmacist could be let off the hook for negligently proscribing drugs, or a device manufacturer would escape liability even if their product turned out to be defective.

The Real Problem

Rather than limit the rights of medical malpractice victims to receive just compensation for their injuries, proponents of H.R. 1215 should focus on the real problem. Recently, Public Citizen released a report, “[The Medical Malpractice Scapegoat](#),” showing that the real problem in the American health care industry is preventing avoidable medical errors. The report also debunks the myth about “out of control” medical malpractice payments and illustrates how medical liability costs are at or near the lowest levels on record.

What’s Next

The entire House of Representatives is expected to vote on H.R. 1215 on the floor soon, and may proceed to the Senate from there. Members should strongly oppose this damaging bill because it will make it harder for victims to receive fair compensation for their injuries, make it easier for wrongdoers to escape responsibility for their actions, and weaken the civil justice system in America.

Contact

Remington A. Gregg
Counsel for Civil Justice and Consumer Rights
Public Citizen’s Congress Watch
202.454.5117
rgregg@citizen.org