ConsumersUnion°

POLICY & ACTION FROM CONSUMER REPORTS

June 13, 2017

Dear House Member:

Consumers Union, the policy and mobilization arm of Consumer Reports, urges you not to support H.R. 1215, the so-called "Protecting Access to Care Act of 2017." We are concerned that this bill would put patient safety at higher risk, by significantly undermining the accountability of those who provide patients with health care.

Preventable medical errors are the third-leading cause of death in the United States, behind only cancer and heart disease, with an estimated 440,000 deaths each year following a medical error or hospital-caused infection during a hospital stay.¹ Addressing this problem must be a national priority. And although policies to promote and require safer practices are key to this effort, that is insufficient. We cannot assign a government monitor to every hospital operating room, every doctor's office, every nursing home, every other health care facility or provider or insurer or device maker. Effective protection should also include enabling patients and their families to hold those who provide health care products and services accountable for errors and abuses that cause harm. H.R. 1215 would unfortunately take several major steps backward from this goal. It arbitrarily shields preventable errors – and even intentional abuses – from accountability to consumers under the law.

Among the bill's anti-patient provisions are the following:

- The bill twists an important protection found in many state laws into a new legal *hurdle*. The standard legal protection allows patients who do not discover their injury until much later, sometimes many years after the medical procedure or intervention, to still have a chance to seek legal help. But in the bill, the limited three-year period in which an injured patient can seek legal help is actually further *shortened* if the patient discovers the injury before that time to one year. The only time the consumer is "protected" by the longer three-year period is when the consumer *hasn't discovered the injury*.
- The bill cuts off a patient injured as a young child if their family fails to bring legal action on their behalf, long before they are old enough to legally act on their own behalf *at age 8*.

¹ Consumer Reports, Medical Errors Are the 3rd Leading Cause of Death in the U.S., May 4, 2016, http://www.consumerreports.org/doctors-hospitals/medical-errors-third-leading-cause-of-death/; BMJ, Analysis: Medical Error—The Third Leading Cause of Death in the US, 2016, http://www.bmj.com/content/353/bmj.i2139; Consumer Reports, Survive Your Hospital Stay, May 2014, http://www.consumerreports.org/cro/magazine/2014/05/ survive-your-hospital-stay/index.htm; James, JT, A new, evidence-based estimate of patient harms associated with hospital care, J. of Patient Safety, Sept. 2013, http://journals.lww.com/journalpatientsafety/pages/articleviewer.aspx?year=2013 &issue=09000&article=00002&type=abstract.

- The bill arbitrarily caps so-called "non-economic loss" which sweeps in essentially every resulting harm that is not loss of salary or additional medical expenses at \$250,000 for the patient's lifetime, punishing patients with the most devastating, life-altering injuries.
- The bill undercuts patients in situations in which carelessness or abuse by several health care providers combines to injure the patient. It arbitrarily "divides" blame among those actors, and then if one of them evades accountability, the others who caused the injury are excused from having to step up to make up the difference, and the burden falls on the injured patient.
- The bill forces the injured patient to take the amounts received for future expenses resulting from the injury in periodic payments, spread over perhaps many years, which may not match up with the patient's actual medical and living needs as they arise, and would in many instances further reduce the amount the careless or abusive health care provider actually pays.
- The bill excuses health care providers from any responsibility of looking into the safety and effectiveness of any medication or medical product, so long as it has been approved by the FDA. Under the bill, this also includes medications and products "cleared" by the FDA, which could include medications and products brought to market without ever undergoing any formal FDA consideration.

The definitions in H.R. 1215 are written so broadly as to sweep in not only doctors and other medical professionals, hospitals and clinics, but also every entity that contributes in any way to making any health care product or service available, including pharmaceutical manufacturers, health device and product manufacturers, insurance companies, pharmacists, nursing homes, assisted living facilities, mental health treatment centers, and drug and alcohol rehabilitation facilities, among others.

H.R. 1215 will do nothing to strengthen protections for patients. It goes in the opposite direction, by excusing the health care industry from accountability for carelessness and even intentional abuse, and shifting the burden for shouldering the consequences of what can be devastating injury to the injured patients, their families, their employers, their insurance companies, and taxpayers.

We urge you to oppose it.

Respectfully,

Jeorge V. F

George P. Slover Senior Policy Counsel Consumers Union