



NATIONAL CONFERENCE *of* STATE LEGISLATURES

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June 13, 2017

The Honorable Paul Ryan
Speaker of the House
U.S. House of Representatives
H-232 The United States Capitol
Washington, D.C. 20515

The Honorable Nancy Pelosi
Democratic Leader
U.S. House of Representatives
H-204 The United States Capitol
Washington, D.C. 20515

Re: H.R. 1215, "Protecting Access to Care Act of 2017"

Dear Speaker Ryan and Leader Pelosi:

On behalf of the National Conference of State Legislatures (NCSL), we write to express opposition to the consideration of H.R. 1215, the "Protecting Access to Care Act of 2017." This bill, not only violates the tenants of the 10th amendment but also will preempt state laws that do not meet federally mandated standards, thereby removing states' well established and traditional sovereignty in the area of medical malpractice that have been in place for decades. NCSL is concerned about this bill on two levels—the process by which this bill comes before the Committee and its substance.

H.R. 1215 was first introduced on Friday February 24th with markup following a mere four days later on Tuesday February 28th. There was no prior hearing on the content of this preemptive legislation and it is notable that no state policymakers were consulted prior to moving this bill through the Committee despite its preemptive nature. There was no attempt by the Committee to learn about or respect the diversity of state laws in the area of medical malpractice. This bill was also not referred to the House Committee on Oversight and Government Reform subcommittee on Intergovernmental Affairs, which was formed to address federal preemption of state laws.

Substantively, H.R. 1215 is fundamentally flawed. Medical malpractice, product liability and other areas of tort reform are areas of law that have been traditionally and successfully regulated by the states. Since the country's inception, states have addressed the myriad of substantive and regulatory issues regarding licensure, insurance, court procedures, victim compensation, civil liability, medical records and related matters. In the past two decades, all states have explored various aspects of medical malpractice and products liability and chosen various means for remedying identified problems. Over the past several years, states have continued to revise and refine their medical malpractice laws and procedures.

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H.R. 1215 is rife with federal preemption notwithstanding the “state flexibility” language riddled throughout the bill. This language is deceptive and only grants “flexibility” to states with more restrictive provisions than those in H.R. 1215. The areas of federal preemption include:

- **Statutes of Limitation.** All states have established statutes of limitations for medical malpractice law suits. H.R. 1215’s federally mandated statute of limitations of 3 years after the date of injury or 1 year after the claimant discovers the injury, and the more stringent limitations on minor child injuries, would preempt approximately 47 states.
- **Severall Liability.** H.R. 1215’s requirement that the imposition of severall liability based on percentage at fault would unjustly preempt 26 jurisdictions that allow for joint and severall liability.
- **Noneconomic Damages Cap.** Despite “state flexibility” H.R. 1215’s proposed noneconomic damages cap would automatically preempt 17 jurisdictions, which do not have a damage award limit or cap, and jeopardizes some of the 35 jurisdictions that have a limit or cap but that may not meet the stringent \$250,000 mandated cap.
- **Periodic Payments for Future Damages.** Section 6, which requires periodic payments for future damages, would force 20 states to comply with this federal mandate, including states that have previously held such provisions to be unconstitutional. Impacted states include Alabama, Arizona, Arkansas, Georgia and New Hampshire.

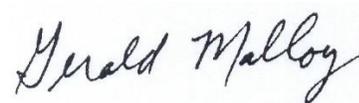
We respectfully urge you to vote against passage of H. R. 1215. NCSL’s opposition will extend to any bill or amendment that directly or indirectly preempts any state law governing the awarding of damages by mandatory, uniform amounts or the awarding of attorney’s fees. Our opposition also extends to any provision affecting the drafting of pleadings, the introduction of evidence and statutes of limitations. Furthermore, NCSL opposes any federal legislation that would undermine the capacity of aggrieved parties to seek full and fair redress in state courts for physical harm done to them due to the negligence of others.

Thank you for your consideration of NCSL’s concerns. For additional information, please contact Susan Parnas Frederick (susan.frederick@ncsl.org) or Danielle Dean (danielle.dean@ncsl.org) in NCSL’s Washington, D.C. office.

Respectfully,



Senator Craig Tieszen, South Dakota Co-Chair, NCSL
Committee on Law, Criminal Justice and Public Safety



June 13, 2017

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Senator Gerald Malloy, South Carolina
Co-Chair, NCSL
Committee on Law, Criminal Justice and Public Safety
CC: Members of the U.S. House of Representatives