

## Oppose H.R. 1215: It's Bad for Long-Term Care Residents

The House of Representatives is considering legislation, H.R. 1215, the so-called *Protecting Access to Care Act*, which will significantly strip away an individual's rights to justice through the courts in the event they are harmed or killed by a health care provider, including nursing homes, assisted living facilities, rehabilitation facilities, doctors, hospitals, and pharmaceutical companies.



*Mr. H, father, grandfather, decorated U.S. Army veteran, entered a nursing home after his dementia and Parkinson's disease made it too difficult for his family to care for him at home. He died after the Director of Nursing incorrectly reinserted his feeding tube, failed to verify its positioning in accordance with facility policy, and nursing staff failed to re-evaluate the feeding tube's placement despite Mr. H crying out in pain, bleeding from the insertion site, and presenting significant change in condition. Due to the misplaced feeding tube, tube feedings and medications had gone into Mr. H's peritoneum<sup>1</sup> rather than his stomach, causing peritonitis<sup>2</sup>. Mr. H experienced horrific pain and suffering for over 21 hours.*

*What consequences were imposed on the facility and staff for the extreme injury, pain, and suffering of Mr. H? **NONE.** No citation from the state survey agency. No fine. No other penalties. No revocation or probation of the nursing home's license. No criminal prosecution. No action by the nurse licensing board.*

*The **ONLY** way Mr. H got justice was in court when his family filed a lawsuit alleging negligence and the nursing home and staff were held accountable.*

H.R. 1215 would make it much more difficult for victims like Mr. H and his family to receive justice and to hold negligent parties responsible for their actions.

### **H.R. 1215:**

- Caps non-economic damages ("pain and suffering," such as paralysis or trauma) to \$250,000, which would be mandated in states even where such caps are unconstitutional.

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<sup>1</sup> Peritoneum is the thin membrane that lines the abdominal wall and covers the organs inside

<sup>2</sup> Peritonitis is an inflammation of the peritoneum

- Mandates a Statute of Limitations – the amount of time a person has to file a lawsuit – that is more restrictive than most state laws.
- Prohibits patients from receiving the full award from a jury in a lump sum, instead allowing damages over \$50,000 to be paid periodically, leaving patients vulnerable and without the necessary resources to access care.
- Repeals state joint liability for economic and non-economic damages – taking away an individual’s ability to bring one lawsuit against each of the entities responsible for their injuries and having the fault apportioned among them. The result is that taxpayer-funded programs will end up paying for the patient’s ongoing care needs, rather than the entity that caused the injuries.
- Interferes with the contractual agreement between an individual and their attorney, making it more difficult for residents and families to secure adequate legal counsel, yet no similar limits are placed on the entity that committed the harm.
- Provides immunity to any health care provider licensed to prescribe or dispense a prescription drug, even if it were negligently prescribed or administered.

This bill **eliminates rights and protections from individuals**, like Mr. H, who have been seriously injured or killed, while maintaining protections for nursing homes, assisted living facilities, hospitals, doctors, insurance companies, pharmaceutical companies, and other health care providers.

**Instead of “Protecting Access to Care,” which is the written objective of the bill, H.R. 1215:**

- Ø **Takes away rights currently available to patients and families**
- Ø **Weakens the accountability of negligent and incompetent health care providers**

## **SAY NO TO H.R.1215**

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*The National Consumer Voice for Quality Long-Term Care was founded in 1975 to advocate for quality care and quality of life for consumers in all long-term care settings.*