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Big Pharma Worms Its Way Into Congress' Medical Malpractice Bill

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While the nation pays close attention to the Senate's health care bill this week, the U.S. House of Representatives intends to do more egregious harm to everyday people who encounter the health care system. On Wednesday, the House will vote on H.R. 1215, a bill that has languished for three months due to unprecedented [progressive](#) and [conservative](#) opposition. Between the cruel original bill, and the harsh [amendments](#) that will be added to the bill on Tuesday (no Democratic improvements will be allowed), H.R. 1215 would quite literally immunize the health care industry for most kinds of misconduct, from horrendous medical malpractice in hospitals, to nursing home abuse and neglect, to sexual assault by doctors.

Let's assume all this bill did was make it impossible for patients severely harmed by a hospital's negligence to bring a case or be adequately compensated. The bill would impose a federal "cap" on what are known as "non-economic" damages, awarded for injuries like permanent disability, mutilation, trauma, loss of a limb, blindness, sexual or reproductive harm, and other types of suffering and pain. H.R. 1215 would federally-mandate that if you suffer the most severe non-economic injuries, they are worth exactly \$250,000 (no matter what a local jury finds). This is what your baby's suffering would be worth if she were severely burned and disfigured in a surgical fire (like little [Dahlia Ramirez](#) of Illinois), or what your own life would be worth if, say, your "good" testicle were removed by an incompetent surgeon, condemning you to a lifetime of horrible pain (like [Steven Hanes](#) of Pennsylvania). In both Illinois and Pennsylvania, such compensation caps are unconstitutional, as they are in many states. The House leadership doesn't care. H.R. 1215 would force them on everyone.

It is true that in 26 states, lawmakers have already written such caps into state law (although few are as harsh as this one, and many are constitutionally-questionable). Add to these laws the myriad of other medical malpractice "tort reforms" already on the books,

and it becomes clear that health care providers have more liability protections for negligence or recklessness than any other group in the nation.

Yet as bad as many of these state laws are for patients, almost none of them limit the liability of reckless drug companies. In fact, the vast [majority](#) of states believe it's wrong to cap liability for manufacturers of unsafe drugs and medical devices. Yet, H.R. 1215 would do that, too. We know this simply by looking at the bill's buried definition of "non-economic damages," applying the \$250,000 cap to cases involving "the provision or use of (or failure to provide or use) health care services or medical products." "Medical products" are further defined as a "drug, device, or biological product." It is pretty clear what's intended. And the bill has even more provisions to limit this giant industry's liability for causing harm.

Burying drug industry immunity in federal medical malpractice bills is nothing new. In the early 2000's, when the Bush Administration was pushing similar legislation (the U.S. Senate rejected at least five such bills), legendary *New York Times* columnist Bob Herbert [wrote](#) of another drug industry provision hidden in a similar bill:

So tucked like a gleaming diamond in proposed legislation to curb malpractice lawsuits is a provision that would give an unconscionable degree of protection to firms responsible for drugs or medical devices that turn out to be harmful.... The Democratic leader in the Senate, Harry Reid of Nevada, was blunt on the matter. He said, "Congress should not be giving a free pass to big drug companies at a time when millions of Americans may have had their health put at risk by pharmaceutical giants."

Organized medicine [is not clamoring](#) for this bill and why would they? Doctors' premiums and malpractice claims are about the [lowest in history](#). This law would have no impact on health care costs, except make them [go up](#). And it will certainly add to the misery of children like [Dahlia Ramirez](#), whose preexisting condition was caused by the very health care system that should have protected her, and whose responsibility this bill would eliminate.

But even more than that, H.R. 1215 is one huge, deceptive gift to the pharmaceutical industry.