

3-1-2017

Congress Moves To Punish Anyone Using The ACA And Medicare

Joanne Doroshow

Congress Moves To Punish Anyone Using The ACA And Medicare

House Republicans are hoping to dismantle the Affordable Care Act by punishing those who benefit from it.

By Joanne Doroshow, Contributor

Executive Director, Center for Justice & Democracy at New York Law School

Feb 26, 2017, 05:44 PM EST | **Updated** Mar 1, 2017

This post was published on the now-closed HuffPost Contributor platform. Contributors control their own work and posted freely to our site. If you need to flag this entry as abusive, [send us an email](#).



ANADOLU AGENCY VIA GETTY IMAGES

Those who think Congress is weakening its anti-Obamacare, anti-Medicare resolve aren't paying attention. Instead of beginning with repeal and replace bills, however, Congress has shifted focus to punishing anyone who benefits from these laws. And it's happening right now.

On February 28, 2017, the U.S. House Judiciary Committee [will markup and vote on](#) a rushed piece of legislation, H.R. 1215, covering anyone who receives health care through a "federal program, subsidy, or tax benefit." At a minimum, that means the Affordable Care Act, veteran and

servicemember health plans, Medicare and Medicaid (i.e., the elderly, poor and disabled). Beyond this, the full scope is unclear because the bill has not been examined in a single legislative hearing.

ADVERTISEMENT

According to H.R. 1215, punishment would begin if you (or your child or loved one) were harmed by an unsafe hospital or nursing home, in some cases injured by an unsafe drug or medical device, or even sexually abused by a doctor. If you tried to seek compensation or accountability in court, you would be forced into an inferior and cruel system of justice created just for you by lobbyists and career politicians in Washington DC.

This bill, H.R. 1215, the so-called “Protecting Access to Care Act of 2017” (more like the Protecting Access to *Unsafe* Care Act of 2017) is the brainchild of congressional [Republicans](#) who say they want government out of health care. Ironically, this bill is nothing if not federal mandates, including eliminating civil justice rights guaranteed by state governments. These mandates include taking power away from local juries to decide individual cases, and consolidating that power in the hands of DC politicians.

Among H.R. 1215’s many harsh provisions is a federal mandate on the value of a life. This appears in the form of an across-the-board \$250,000 “cap” on compensation for “non-economic” injuries (like paralysis, trauma, reproductive harm), which would be mandated in states even where such caps are unconstitutional. That same cap would apply whether a parent lost a child, a senior citizen were harmed in a nursing home, or a family breadwinner were permanently disabled due to reckless medical care.

Other provisions include:

- A federally-mandated statute of limitations — the time limit for someone to file a meritorious lawsuit — which is more restrictive than a majority of state laws.

ADVERTISEMENT

- Federal repeal of state collateral source rules, meaning a wrongdoer can reduce their obligation to compensate a patient by the amount of disability, workers compensation or other insurance received, to which a patient has a right.

- Federal repeal of state joint and several liability laws, meaning that the injured patient — not other fully-responsible wrongdoers — would have to cover the cost of an injury if one of the fully-responsible wrongdoers cannot pay.

- A federally-mandated prohibition against a severely-injured patient receiving a full jury award in a lump sum, leaving the patient undercompensated while the insurance company gets to sit on the money and pocket the interest.

- Federal interference with an individual's right to contract with their own attorney on fees (while the insurance company or hospital that committed malpractice has no such restriction).

- A federally-mandated ban on including a hospital, nursing home or health care provider in a case against a drug company over an unsafe drug, even if the provider negligently prescribed or administered the drug and is jointly responsible for causing injury or death.

ADVERTISEMENT

Medical errors are [the third-leading cause](#) of death in America, behind heart disease and cancer. Enact this bill, and watch “medical errors” rise to number one or two.

If you need any evidence, take a look at what’s happening in Texas, which has some (but not all) of these laws already. Texas attracts neurosurgeons like Christopher Duntsch, who was just [sentenced](#) by a jury to spend the rest of his life in prison:

For weeks, jurors heard the accounts of patients who had been maimed or paralyzed in horribly bungled surgeries. Kellie Martin and Floella Brown died... “So why didn’t he stop?” ... “Because of greed. Because he owed people a lot of money. He wanted to live the high life and a neurosurgeon makes big bucks. Why didn’t he stop? Because he had no conscience. He doesn’t care what he has left in his wake.”

But there’s another reason why he didn’t stop: a Texas law that severely caps damages, just like H.R. 1215 would do. As attorney Chris Hamilton [explained](#), without this law, “Duntsch would not have been allowed to keep operating on patients. It is almost certain there would have been a significant liability lawsuit against one of the hospitals for an early patient... I cannot imagine a circumstance where the hospitals would not have kicked out a doctor like this much sooner.”

Yet this isn’t the only case of a butcher brain surgeon in Texas. A few years ago, there was another guy, Dr. Stefan Konasiewicz. After being disciplined in Minnesota, Konasiewicz made a bee-line for Texas where he [continued to harm patients as he operated on their brains](#).

ADVERTISEMENT

But we don’t even need horrendous anecdotes like this to prove the point. Researchers studying patient safety in states with “caps” (like Texas) [found](#) “consistent evidence that patient safety generally falls” after caps are enacted. That’s because medical malpractice liability gives providers an incentive to be careful.

H.R. 1215 is the sixth anti-civil justice bill in less than two months coming out of the U.S. House Judiciary Committee, not a single one of which has

had a hearing. As lobbyists and politicians scheme to strip Americans of their legal rights, [they are hoping no one notices](#). If they succeed on any of these bills, it will be open season on American families and small businesses that are harmed by super-rich industries or reckless health care.

[As I've said before](#), “woke America, these ‘under the radar’” issues need your attention. Time to add them to the long list of things that need ‘resisting.’”