

PARCA

Ensuring Patients' Access to Care

February 28, 2011

Representative Fred Upton
Chairman Ranking
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Representative Henry Waxman
Minority Member
Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, DC 20515

Representative Joe Pitts
Chairman Ranking
Subcommittee on Health
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Representative Frank Pallone
Minority Member
Subcommittee on Health
Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairmen and Ranking Members,

We, the undersigned organizations, in the interest of protecting patient choice and encouraging lower overall costs through greater competition in the health care marketplace, have come together to express our concern for the Healthcare Truth and Transparency Act of 2011 (H.R. 451) introduced by Rep. John Sullivan (R-OK). As with similar legislation introduced into previous congresses, we remain concerned that this measure would only serve to impose an unnecessary and costly burden on this nation's health care providers and would do so by asserting federal control over anti-fraud matters already well regulated by the states and other agencies.

The alleged aim of the legislation is to ensure that patients receive accurate health care information by "...prohibiting misleading and deceptive advertising or representation in the provision of health care..." While we fully agree that patients ought to receive accurate health care information, commercial fraud and misrepresentation of professional licensure and services – including health care – are already prohibited by laws enforced by statutes in all 50 states, territories and the District of Columbia. Further, it is illegal in every state, and enforced by federal and state authorities, for any person (or entity) to identify or portray themselves as being able to practice any of the professions where a license or certification is required, without holding that license or certification.

Further, the bill would unnecessarily authorize the Federal Trade Commission (FTC) to launch a new federal program targeting deceptive and misleading practices by certain health care professionals. We have yet to see evidence of the need for such an effort, and the FTC already has extensive and well-established authority under Section 5 of the Federal Trade Commission Act to insure that healthcare providers do not disseminate false, unsubstantiated, or otherwise deceptive claims. In addition, nearly all states have enacted what are commonly known as "little FTC acts." These state-enacted consumer protection statutes often are modeled after existing federal law and are enforced by state courts.

States have long exercised their constitutional authority to protect the public from misleading or deceptive commercial representations by health care providers and other businesses. There is no need for additional federal authority in this area that would confuse or diminish states' constitutionally recognized police powers.

In *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975), the U.S. Supreme Court asserted this state right when it affirmed “we recognize that the states have a compelling interest in the practice of professions within their boundaries, and that as part of their power to protect public health, safety and other valid interests, they have broad power to establish standards for licensing practitioners and regulating the practice of the professions.” Provisions governing licensure law in the various states, such as in the Commonwealth of Virginia, clearly and specifically prohibit healthcare providers from “performing any act likely to deceive, defraud, or harm the public.” (§54.1-2915(16) Code of Virginia) In addition, many other federal and state statutes and regulations already prohibit the intentional misrepresentation of a healthcare provider’s status and credentials. Furthermore, the “all payor felony provisions” established under the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (18 U.S.C. §1347) imposes penalties up to life imprisonment for such prohibited actions.

We agree that individuals who are not qualified and/or not appropriately licensed, or certified to provide healthcare services should not be permitted to serve patients. We also believe, however, that H.R. 451 does no more to ensure patient protection than those statutes and regulations already in place. Further, we are concerned that H.R. 451, if enacted, could prove costly to individual health care providers and to the overall health delivery system by adding another layer of federal bureaucracy with a new mandate to root-out an unfounded problem. In the interest of protecting patient choice and encouraging lower overall costs through greater competition in the healthcare marketplace, we encourage you to neither co-sponsor nor vote for the Healthcare Truth and Transparency Act (H.R. 451), legislation that unnecessarily asserts greater federal control over matters already well regulated by the states.

Sincerely,

The Patients’ Access to Responsible Care Alliance (PARCA)

American Academy of Audiology • American Association of Nurse Anesthetists • American Chiropractic Association • American College of Nurse Midwives • American Occupational Therapy Association • American Optometric Association • American Physical Therapy Association • American Podiatric Medical Association • American Psychological Association • American Speech-Language-Hearing Association • National Association of Social Workers

CC: Representative John Boehner, Speaker
Representative Nancy Pelosi
Representative John Sullivan

PARCA is a coalition of organizations that represent the interests of millions of patients and non- MD/DO health care providers. It aims to provide federal policymakers with access to information from all areas of the health care community, in order to assist in the formulation of responsible, well-rounded health care policy. The coalition is committed to quality, cost-effective care, and ensuring patients have options in the delivery of such care. For more information, contact PARCA.Coalition@gmail.com.