

July 30, 2013

The Honorable Fred Upton, Chairman
Energy & Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Henry Waxman, Ranking Member
Energy & Commerce Committee
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton and Ranking Member Waxman:

Thank you for incorporating the language of H.R. 1473, the Standard of Care Protection Act, into the Medicare Patient Access and Quality Improvement Act of 2013 (H.R. 2810). We ask you to keep this important provision in the bill as it moves through markup this week.

As you well know, in recent years quality standards have come to play an increasing role in determining healthcare providers' payments. H.R. 2810 continues this trend by expanding the implementation of quality measurements into the system which will replace the Sustainable Growth Rate (SGR) formula. We share your commitment to optimizing patient outcomes and look forward to a new payment system which helps achieve that goal.

The rule of construction provided in Section 5(c) of H.R. 2810 ensures that federal quality measurements will not be confused with questions about medical negligence. It does this by simply clarifying that federal healthcare guidelines or regulations which were not specifically designed to establish a standard of care should not be interpreted as creating a standard of care. This provision neither changes current medical liability laws, nor alters, in any fashion, the way courts currently determine if an act of medical negligence occurred. It merely ensures that provisions of federal healthcare law are used only as intended – not to either generate new lawsuits or protect providers from claims of negligence.

Standards of care and quality measurements are very different issues. The rule of construction in Section 5(c) appropriately demonstrates Congressional intent to help provide the highest quality healthcare possible without altering our legal standards.

We greatly appreciate all of your efforts to include Section 5(c) in the Medicare Patient Access and Quality Improvement Act, and for ensuring that this important provision remains in the bill going forward.

Sincerely,

American Academy of Dermatology Association
American Academy of Otolaryngology— Head and Neck Surgery
American Association of Neurological Surgeons
American Association of Orthopaedic Surgeons
American Congress of Obstetricians and Gynecologists
American Society of Plastic Surgeons
American Tort Reform Association
Congress of Neurological Surgeons
Cooperative of American Physicians
Federation of American Hospitals

NORCAL Mutual Insurance Company
MAG Mutual Insurance Company
Medical Liability Mutual Insurance Company
Physicians Insurance A Mutual company
PIAA
ProAssurance Corporation
Texas Alliance for Patient Access
Texas Medical Liability Trust
The Doctors Company

cc: All Committee Members