March 25, 2015

The Honorable John Boehner
1011 Longworth House Office Building
Washington, DC 20515

The Honorable Nancy Pelosi
235 Cannon House Office Building
Washington, DC 20515

Dear Speaker Boehner and Leader Pelosi:

On behalf of the American Bar Association and its over 350,000 members, I write to you regarding H.R. 1470, the SGR Repeal and Medicare Provider Payment Modernization Act of 2015. The ABA respectfully urges you to exclude nursing and skilled nursing facilities from the “Rule of Construction Regarding Healthcare Providers Standards of Care” currently contained in the bill.

The ABA and its Commission on Law and Aging have long advocated for enhancing the rights of nursing home patients. We believe that long-term care systems should provide procedural fairness and assure appropriate quality for patients, and we oppose the use of mandatory, binding, pre-dispute arbitration agreements between a long-term care facility and a resident because preserving access to the civil justice system helps protect residents from abuse by holding bad actors accountable.

Unfortunately, the proposed “standards of care” provision in H.R. 1470 may have severe consequences for residents of nursing homes by making it more difficult for them to seek justice through the courts. Making it harder for nursing home residents and their families to enforce standards of care guaranteed under the Nursing Home Reform Law of 1987 assuredly does not help improve the quality of care; to the contrary.

The safety of more than one million nursing home residents relies on critical minimum requirements for nursing homes established by The Nursing Home Reform Law and its corresponding regulations. These requirements recognize a minimum level of care that each resident should receive for a nursing home to participate in the Medicare and Medicaid programs and for each resident to attain or maintain the highest level of well-being. They include important protections such as the right to be free from physical and chemical restraints, periodic assessments of each resident’s physical and psychological well-being, prevention of pressure ulcers and other avoidable poor care outcomes, provision of adequate nutrition and hydration, access to specialized rehabilitative services, and the right to be free from mental and physical abuse.

The “standards of care” provision within the proposed SGR Repeal and Medicare Provider Payment Modernization Act would make it more difficult for vulnerable nursing home residents and their loved ones to establish a case of negligence in a lawsuit by
arguing that there was a violation of national requirements. The ability to hold substandard facilities accountable through the civil justice system for cases of poor care, neglect, and abuse is essential for quality nursing home care for everyone. Government studies have repeatedly shown that state inspection agencies fail to cite or penalize facilities for harming residents, even when they find serious injuries; furthermore, many violations are never discovered by regulatory authorities. Often the courts are the only recourse for consumers trying to hold nursing homes responsible for their actions. Less accountability inevitably leads to poorer quality care and greater abuse and neglect.

We therefore respectfully urge you to remove this harmful language from H.R. 1470 and encourage you and your staff to work with the various stakeholders to address the need for a comprehensive system of care and support for Americans with long-term care needs. The ABA stands ready to assist you in these efforts.

Sincerely,

Thomas M. Susman