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# Senate

The Senate met at 2 p.m. and was called to order by the Honorable JOHN W. WARNER, a Senator from the State of Virginia.

## PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious God, without whom we can do nothing of lasting value, but with whom there is no limit to what we can accomplish, we ask You to infuse us with fresh strength and determination as we press forward to the goal of finishing the work which needs to be done before the upcoming recess. Help the Senators to do all they can, in every way they can, and as best they can to finish well. Inspire us to follow the cadence of Your drumbeat.

Strengthen the Senators in the week ahead. Replace any weariness with the second wind of Your Spirit. Rejuvenate those whose vision is blurred by stress, and deliver those who may be discouraged. In the quiet of this moment, we return to You, recommit our lives to You, and receive Your revitalizing energy.

Dear Father, we thank You for the life of Oliver Powers of the Recording Studio. We pray for his family as they and we grieve his physical death. We accept the psalmist's reorienting admonition, ''Wait on the Lord; be of good courage, and He shall strengthen your heart; wait, I say, on the Lord!''—Psalm 27:14. In the name of our Lord and Saviour. Amen.

## PLEDGE OF ALLEGIANCE

The Honorable JOHN W. WARNER led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, June 25, 2001.*

*To the Senate:*

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN W. WARNER, a Senator from the State of Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,
*President pro tempore.*

Mr. WARNER thereupon assumed the chair as Acting President pro tempore.

## RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Chair recognizes the distinguished assistant majority leader.

## SCHEDULE

Mr. REID. On behalf of Senator DASCHLE, I announce to the Senate that we are going to resume consideration of the Patients' Bill of Rights. We were on it all last week. There will be no rollcall votes today. We have rollcall votes scheduled tomorrow at 11:30 a.m. in relation to the Grassley motion to commit and the Gramm amendment regarding employers. We are still scheduled to finish this bill by the end of this week.

Senator DASCHLE has also indicated he wants to give every consideration to the supplemental appropriations bill. The way Senator STEVENS and Senator BYRD have been working, it should not take too long to do that. We have pending the organizational resolution.

The main item we wish to complete this week, however, is the legislative matter we are now considering, the Patients' Bill of Rights. The prayer given by our fine Chaplain indicated we should all join together and complete the work that is at hand. The work at hand is the Patients' Bill of Rights.

## RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

## BIPARTISAN PATIENT PROTECTION ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 1052, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1052) to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans, and other health coverage.

Pending:

Frist (for Grassley) motion to commit to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions with instructions to report back not later than that date that is 14 days after the date on which this motion is adopted.

Gramm amendment No. 810, to exempt employers from certain causes of action.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina.

Mr. EDWARDS. Mr. President, we come back today to resume debate on a very important bill to the people of this country, the Bipartisan Patient Protection Act, which we spent the better part of last week debating. It is an issue about which we have talked a great deal over the course of the last few years in the Senate. Let me discuss what the McCain-Edwards-Kennedy bill does and the reason it is important.

Fundamentally, the reason we need this bill is that the law needs to be taken from being on the side of the

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

HMOs and put on the side of patients and doctors so health care decisions in this country are, in fact, being made by people who are trained and have the experience to make them, those being the doctors, the health care providers, for the families who are so dramatically affected by those decisions.

The purpose of this legislation is to provide certain substantive and enforceable rights to families and to children who need quality health care. For example, we provide specifically that if a member of a family or child needs to see a specialist, particularly outside the HMO plan, they can have access to that specialist.

Second, we ensure that patients who need access to clinical trials will have access to those clinical trials. Clinical trials are often the places of last resort, places where the cutting edge of medicine is being researched, and we want to be sure patients who have exhausted alternatives and need access to clinical trials—all federally approved clinical trials, including FDA clinical trials—will have access. We specifically provide that benefit in this bill.

Third, women should have access to an OB/GYN as their primary care provider. Many women rely on OB/GYNs as their primary care providers. We provide that right in our legislation.

Fourth, we want to make sure patients have access to emergency room care. If a family suffers an emergency crisis and needs to go directly to the hospital, the nearest hospital, we don't want people to first have to call the HMO, call the 1–800 number and get permission to go to the nearest emergency room. There have been many horror stories of families that could not go to the nearest emergency room because they couldn't afford it and the HMO would not pay for it. We want to be sure families have that right.

With this group of rights we wish to provide for patients and families across the country, we want to make sure every individual and family who is covered by health insurance, covered by HMO coverage, is in fact covered by this legislation. Our bill does that.

These rights do not mean anything unless they are enforceable, unless they have the force of law behind them. Without the force of law behind them, they are not a Patients' Bill of Rights; they are a patients' bill of suggestions. We want to provide a meaningful way for patients to receive the rights we are giving.

We provide several stages. If the HMO overrules the doctor and says, whatever your doctor says, I don't believe that treatment, that care, is needed, the first step is that the patient can then go through an internal review within the HMO to try to get that decision reversed, hopefully finding a group of people within the HMO who are willing to be more objective and support the decision the doctor has provided. If that is unsuccessful, the second stage is an independent review process, a panel of physicians with expertise who can look at the medical situation and decide whether or not that care should have been provided in the first instance. Last, if the patient has been injured and if these other areas have been tried, including the appeals process, the patient can take the HMO to court.

There are several stages: First, the HMO hopefully will make the right decision, in which case none of this will be necessary; second, if they don't, an internal review within the HMO to reverse the decision that has already been made; third, if that is unsuccessful, to go to an independent group of doctors who can reverse the decision of the HMO. That is independent, meaning not connected to the patient, not connected to the treating doctor, not connected to the HMO. So you have an impartial group that can reverse the decision. All of that occurs before a case goes to court.

If in fact it becomes necessary for the case to go to court, we simply want the HMOs—that for many years now have been privileged citizens that, like diplomats, get a kind of immunity in this country—we want the HMOs treated just as everybody else.

If they are going to reverse or overrule decisions that are being made by doctors, we want them to be treated exactly the way the doctors are treated; that is, if they make a medical judgment, reverse the decision of a doctor, their case will go to the same court as the doctor's case. Their case would be subject to the same State court limitations on recoveries as is the doctor's. So we leave that issue to State law.

But the bottom line principle is, No. 1, HMOs should not continue to be privileged citizens. They ought to be treated as all the rest of us. There is no reason in the world that they are entitled to be treated better than everybody else.

No. 2, if they are going to be in the business of reversing doctors, overruling doctors, making health care decisions, then they ought to be treated exactly the same way the doctors are treated.

Our legislation providing real and meaningful rights, providing a way to enforce those rights, and as a matter of last resort providing for patients to go to court if in fact they have been hurt and they have no other choice, is supported, we believe, by a majority of this body, we believe a majority of the House of Representatives, and importantly, by the American Medical Association, and virtually every health care group in America.

There is a reason for that. It is because the people who have been fighting for patient protection, the people who have been fighting for HMO reform to change this system we have in this country and to give patients more power to put the law on their side, are supporting our bill because we have real rights that are enforceable. It is a bill where the patient, along with the patient's doctor, gets to make most health care decisions. They have more control over their health care decisions. If the HMO does not do the right thing in the beginning, they have a way to do something about it to get those decisions overruled or changed.

There has been some discussion over the course of the last 2 days on the pending amendment, the issue of employer liability. We start, I think, in principle, in agreement with the President of the United States. The President said in his written principles that he did not want employers to be held responsible in litigation—I am paraphrasing now—unless they actually made individual health care decisions. That is what our bill does.

The reason for that is very simple. No. 1, we want to protect employers. In principle, we agree about that. No. 2, if an employer, in fact, overrules an HMO and stands in its shoes, or overrules a doctor, then and only then under our bill can they be held responsible, or if they overrule the HMO with respect to how the plan applies. Basically, what we have done is we have put a wall around employers unless they step into the shoes of HMOs and start making health care decisions.

Issues have been raised. They have been raised in this debate by Senator GRAMM with his amendment. Issues have been raised by employers around the country with whom we have been talking and with whom we will continue to talk. As a result of those discussions, consistent with the principle that both the President of the United States and we have established, we have worked and we have had meetings, I will tell my colleagues, over the last few days. On Friday, for example, I met with a number of Senators from both sides of the aisle, Democrat and Republican, to try to address the language, to try to craft language that will deal with concerns that people have about this issue—a bipartisan compromise on this issue. We are continuing to work on that compromise. There are a number of Senators involved. We will continue to work on it.

But the amendment that is pending is at the extreme. It is inconsistent with the principles established by the President of the United States; it is inconsistent with our legislation, which is supported by virtually every health care group and consumer group in America. It is more extreme than the Norwood-Dingell bill that passed the House of Representatives last year. It is out there at an extreme.

We believe there is a better, more reasonable middle-of-the-road approach that will provide maximum protection to employers and at the same time not completely eliminate patients' rights. That is what we are working on. We are working on crafting language.

This is one of the issues on which we agree in principle with the President; that is, we start with the idea we would like to see employers protected unless they are overruling doctors and making individual health care decisions. Of

course, the vast majority of employers in this country never do that. They turn over the handling of the day-to-day operation of their health care plan to the people they are paying and leave it in their hands. When they do that, they will not be exposed to responsibility.

The bottom line is, what we have done in our legislation is consistent with what the President's principle provides. Even with that, since additional concerns have been raised about employers, since it is an issue about which we agree as a matter of principle, we are continuing to work with both Republican and Democratic Senators to craft a compromise which we hope a vast majority of the Members of this Senate will be able to support when we propose it.

That issue, the issue of employer liability, as I indicated, is an issue on which I think we have substantial agreement. It is an issue I think we can resolve to the satisfaction of a majority of the Senate. We believe our bill as presently constructed does that. But in the spirit of trying to have strong bipartisan support for this bill, we have continued to work on it, and we will continue to do so.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Chair recognizes the distinguished Senator from New Hampshire.

Mr. GREGG. Mr. President, the Senator from North Carolina has outlined and characterized the situation. I would like to speak to some of the points he made and then specifically speak to a variety of issues.

To begin with, much of what the Senator said we agree with, I agree with, and I think everybody agrees. There is no issue over access to emergency rooms. There is no issue over access to OB/GYNs. All those issues have been agreed to. They were agreed to last year. They were agreed to this year.

There is no issue about the need to make sure that when someone is injured by their HMO or their provider or their insurer, they have recourse. There is no issue about that. Everybody is in agreement.

The issues come down in the classic way, in the classic line, to ''The devil is in the details.'' The bill as brought forth by Senator MCCAIN, Senator EDWARDS, and Senator KENNEDY is essentially a ''let's go to court'' bill. It is not a Patients' Bill of Rights bill. I have referred to it as a ''lawyers who want to be millionaires bill,'' and I have referred to it in other terms, but essentially it is a lawyers' rights bill. It creates an incredible number of new opportunities to bring lawsuits.

We just happened to go through and outline some of these and this chart shows them. First, you can sue your employer. Under this proposal as it is structured. That should not be our goal. Our goal should not be to create lawsuits against the employers in the country. I noticed my colleague always used the term ''health maintenance'' organization, HMO. It is a pejorative—or it has become pejorative. I never heard him use the word ''employer.'' Yet for the 56 million people who are covered by self-insured plans—plans where the employer is the one who gets sued—the fact is, you can sue the employer. What is the practical effect of that? We know the practical effect is a lot of employers are going to drop their insurance so the people who have insurance today will not have it tomorrow if this bill is passed because the employers are going to say: Hey, I am not in the business of being sued for health care problems. If a doctor makes a mistake, I don't want to be sued. If I make a product and make a mistake, I understand I will be sued, but I don't want to be sued if a doctor or nurse or pharmacist or hospital makes a mistake. I don't want to be put out of business for that.

We are talking about mom-and-pop employers. We are talking about employers who have 10, 15, 20 employees.

The average cost of a malpractice suit is $77,000. So you have a situation where their whole profit for the year may be wiped out. Maybe you are running a small grocery store or a restaurant or a gas station. You will be wiped out because you will have to defend the suit even though you had nothing to do with it as an employer.

This bill as structured has massive liability for employers. They can be sued in the Federal court or in the State court, which is really ironic.

Brand new causes of action: There are almost 200 new causes of action under this bill for ministerial activities under which an employer may make a mistake. The damages are unlimited under those causes of action. It is not $100 or $200. It is not a fine from the Labor Department as it is under present law or a fine from HHS as is under present law. There is a new private cause of action that accrues against the employer for not sending the proper forms or for not informing you or for not sending you the right magazine. For anything that is under HIPAA or anything under COBRA or anything that is under ERISA, they are suddenly liable as the employer under this bill. They are brought in under this bill, and they are liable. There are 200 new causes of action.

The damages under this bill are unbelievable. Obviously, it is a bill written by the trial lawyers because there are no limitations on economic, noneconomic, or punitive damages. By putting on a new title, they are trying to go around with this classy, misty, ''special assessment'' In Federal court, there is a limit of $100 million in punitive damages. Of course, they do not tell you that you can go to State courts, and in most States there is no limit on damages. This new ''special assessment'' is just window dressing.

Punitive damages are uncapped, economic damages are uncapped, and noneconomic damages are uncapped.

This is a lawyer's fantasy world. It is similar to a lawyer walking into Disney World to pick their forum, their most interesting forum, State or Federal. They can pick hundreds of suits. They can pick unlimited damages—economic, noneconomic.

You are going to see employers dropping their health insurance like hotcakes as a result of this; you can go straight to court.

I heard the Senator from North Carolina say: Internal appeal process, you have an external appeal process. Then, under very similar certain circumstances you can go to court. Hey, with this bill you can go straight to court.

There isn't a good lawyer in this country who would not skip the external appeals process the way this bill is structured. This is probably the single biggest problem this bill has because it is the external appeals that will settle most of the differences a patient has with their employer—whether it is an employer or an HMO—because, if you have a good external appeals process with medical expertise and independent resources, and if you require the two parties to pursue that external appeal, then at the end of the external appeal the odds are very good that the resolution is going to be fair, the parties are going to accept it, and you won't have a court action. I suspect court actions would be rare with a good external appeals process.

A good external appeals process is one such as in the Nickles bill last year or such as is in the Frist-Jeffords bipartisan bill. It is a tripartisan bill. It is tripartisan because there is an independent, a Republican, and a Democrat on the Frist-Breaux-Jeffords bill, which essentially says you can skip the external appeals and go to court. But all you get when you do that is an opportunity to get your problem taken care of. You don't get awards. You don't get awards for going to court. You essentially get taken care of, which is appropriate if you have a situation where the injury is immediate and the harm is continuing. You should be able to go to court during the external appeals process and get that taken care of, if it is necessary. That is the way the Frist-Breaux bill is written.

The way their bill is structured, you go to court, period. You don't even bother with external appeals. You allege your harm. They claim it is not alleged anymore. But, essentially, it is alleged, and you are in court. You get your damage claim going; you start suing like crazy. You pick the forum that is best, the jury that is the best, the courts that are best, and the best States, and you are off and running in the court system.

That is the way this bill is intentionally structured. It is not an unintentional event. This bill is intentionally structured in order to get more lawsuits, and in order to get more opportunities to create lawsuits. It couldn't be done for any other reason.

When you look at this list, ''statute of limitation''—what statute of limitation? For all intents and purposes, they

have no statute of limitation under this bill because you can essentially bring a cause of action after 180 days. The external appeals process is eliminated. All you have to do is claim that you have just found the injury and you are off and running again. Ten years after the event, the statute of limitation is almost irrelevant under this bill.

As I mentioned, forum shopping, picking your forum, is a classic lovefest for plaintiff's lawyers.

The first thing you are taught in the trial practice courses when you go to law school is forum shopping. That is black letter education in law school. I was there. I know. I even passed that course. I think I put down ''forum shopping'' on every answer.

This bill puts it right at the top of the list, as you might expect. Two bites at the apple: You can sue in both courts. They are not happy enough with forum shopping.

The avarice of the trial bar in designing this bill is almost humorous it is so aggressive. They weren't happy to just put in forum shopping, which doesn't exist today. They had to go with simultaneous forums. You can bring the lawsuit in both courts. You can go to State and Federal at the same time. It is lawsuit Disney World.

Of course, you can bring multiple lawsuits. I sue, you sue, and everybody sues under this bill.

You can have class action suits, which is something you can't have under present law. There is a very good reason for that under federal law.

What is the practical effect? This is the bottom line. With all of these lawsuits, you end up with a bill that, if it were to pass, according to OMB's estimates, would cause 4 million to 5 million people to become uninsured. According to the CBO estimate, it is 1.3 million. Either way, it is a huge number of people.

They don't get patients' rights under this bill. They get no insurance under this bill because their employers are not going to be able to afford or justify giving that benefit in exchange for all the lawsuits to which they would be subjected.

What is going to happen in the real world? The bigger employers will say: All right, I know you need health insurance, but we can't manage it anymore because we just can't take the adverse risk of all of these lawsuits. So we are going to give you some money as one of your compensation functions, and you can take that money and go into the market and buy your insurance.

The only problem is that the employer's insurance plan is inevitably going to have been much better—much better for the employees than what they can go out and buy with the dollars or the voucher they are given by the employer because the employees will be out there with one voucher trying to buy their insurance in an open market, and they won't have a whole lot of market force behind them. But an employer that maybe employs 50, 100, or even 15,000, 20,000, or maybe even 50,000 people, has huge market clout. They can get better rates, and therefore they can get better options. They can maybe get eyeglass options or drug options or a variety of other options that the employees can't get with the voucher they are going to be given by large employers.

A lot of people may not lose their insurance altogether, but the quality of their insurance under this bill is going to drop radically.

Then there are the other people who do not use employers. They are self-insurers who do not have a lot of employees. There are 100, 50, 35, or 20 people. These employers are going to say to their employees: We are sorry; we can't afford it at all. We can't afford it at all.

You are going to have a lot of people without any insurance, period.

That is the practical effect of this. There are negotiations going on. There are ways to fix this. They are not radical. They are not reactionary. They are reasonable. In fact, they are so reasonable that they have been put forward by Senators FRIST, BREAUX, and JEFFORDS. As I said, it is a tripartisan bill. They have a liability section which makes sense. It is not just limited to designated decisionmakers. It is a much broader term than that. It goes to this whole issue of external appeal. It goes to the issue of punitive damages and to the issue of forum shopping. It goes to the issue of bringing in all these causative causes of actions under COBRA, ERISA, and HIPAA which are not appropriate in this bill.

So if you want to fix this bill—I hear the other side saying that on occasion; I am not sure if they really mean it. But if they want to really fix the bill, just take the Frist-Breaux-Jeffords language en bloc in the area of liability and put it in the bill. The bill would be fixed in the area of liability and external appeals. Do we see them doing that? No.

There was some discussion in this Chamber earlier about this pending amendment by the Senator from Texas, who I see is in the Chamber. The discussion from the other side essentially was: OK, you say you don't want employers to be liable. Texas law does not allow employers to be liable, so let's adopt the Texas law.

Why was that amendment offered? Because the other side of the aisle specifically said they wanted to have a bill that was almost identical to Texas law. In fact, the Senator from North Carolina used those terms. He said: This bill, as structured, is almost identical to the Texas law. So the Senator from Texas said: If it is almost identical to Texas law, let's just put the Texas law language in, which is what his amendment does; it puts the Texas law language in. And it is pretty reasonable. It is the Texas language. So now the bill would not be almost identical; it would be identical.

Since a number of the Members on the other side of the aisle said: We want the Texas law, we want what President Bush had in Texas, the Texas law is acceptable and what President Bush had in Texas, the Senator from Texas said: OK, we will put the Texas law in as an amendment. If the two are the same—and the two are the same—everybody will vote for this. We will not have to have a rollcall vote on it; we can have a voice vote.

I think you will find it is opposed by Senators on the other side of the aisle. The simple fact is, their law does not exempt employers, as does the Texas law. Their law does not exempt the lawyers. Theirs makes the employers, carte blanche, liable and opens up all kinds of opportunities to sue them, without caps, with punitive damages, and in whatever form they want to choose. The Texas law does not allow that to happen. The Texas law does protect the employer and does limit damages.

So I look forward to the vote on this amendment. I think it will test whether or not the statements coming from the other side of the aisle—that they want the Texas law—are backed up by a vote.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. THOMAS). The distinguished Senator from North Carolina.

Mr. EDWARDS. Let me respond briefly to some of the comments made by my colleague from New Hampshire.

This is the same tired old rhetoric the HMOs have been trotting out for years now to keep any kind of reform from occurring. They are now, by the way, spending many millions of dollars on lobbyists and public relations campaigns, and on television, to try to defeat any kind of reform.

These are the same arguments we have heard before. We need to get past that. We need to get to talking about providing real protections and real rights for patients. That is what Senator MCCAIN and I did. We worked for many months on this legislation to address many of the issues about which my colleague has just talked but nothing ever changes. No matter what we bring to this Chamber by way of patient protection, we hear these same arguments made. Let me speak to just a couple of those arguments briefly.

First, on the issue of forum shopping, cases going to State court, I say to my colleague from New Hampshire, he should see what the Chief Justice of the U.S. Supreme Court, by way of the Judicial Conference of the United States, which the Chief Justice heads, said about this issue. He specifically said in a written letter dated March 3, 2000:

> The Judicial Conference urges Congress to provide that, in any managed care legislation agreed upon, the state courts be the primary forum for the resolution of personal injury claims arising from the denial of health care benefits. . . .

What we have done in our bill is exactly what the Judicial Conference of

the United States has said should be done. We have done what the American Bar Association says should be done; we have done what the Attorneys General of the United States say should be done; and we have done what the U.S. Supreme Court said, in the Pegram decision, should be done.

I know it is a wild idea that Senator MCCAIN and I have decided to adopt the consensus of every objective group in America on this subject, including the U.S. Supreme Court. I am telling you, they would complain no matter what we did, because this is the rhetoric of antireform. That is what this argument is about.

Ultimately, this debate evolves into a very simple question: Are we going to do something about this problem or are we going to continue to kill reform legislation? We have to make a decision about whether we are going to make progress or whether we are going to obstruct progress.

Another issue my colleague raises is the issue of caps and whether there are limitations on recovery. He had his chart, which is not here anymore, that had lots of information about unlimited lawsuits and that there were to limitations. I sy to my colleague, what we have done, that he does not like, is we have treated HMOs exactly the same way as every doctor, every hospital, and everybody else in America is treated.

All of the rest of us, everyone listening to this debate, whether on television or in person, is treated exactly the way we treat HMOs in this bill. They do not like that. HMOs, I am sure, would like to maintain their privileged status. That is why they are spending millions of dollars to try to defeat our legislation with respect to the specific issue of employers.

I say to my colleague, the President of the United States—the Republican President of the United States—and I am reading from his written principle—says:

Only employers who retain responsibility for and make final medical decisions should be subject to suit.

Mr. WARNER. Mr. President, will the Senator entertain a question on that point?

Mr. EDWARDS. I will, yes.

Mr. WARNER. Having had some modest comparison to my distinguished colleague in the trial courtroom, I know that is a key phrase. I am not sure just how it is going to end up, or not end up, in the legislation, depending on the amendments, but I think it would be helpful to have some legislative history on what the meaning is of an employer participating in the medical decisions of an employee.

Let's take the example of a small employer. Most often, that employer has a great deal of personal contact with his employees, has a great deal of empathy for the employee or his family stricken with some type of problem.

Suppose I were an employer, and my longtime secretary appears to be ill, and I say: I think we had better go to the hospital. So I drive her to the hospital. Maybe some other employee in the firm drives her. Then, while in the hospital, I went to call on her, and somehow I am involved in the discussion as to whether or not an operation should be performed.

What are the circumstances by which the employer could be drawn into this type of litigation? Depending on how the bill is finally written and the law is enacted, it could well be that an employer henceforth just almost has to sever all personal relationships with employees for fear of getting drawn into a legal case.

I say to the Senator, it would be helpful, based on his experience, if he would elaborate on that issue and, indeed, point to other references in the debate or elsewhere so that we might have a legislative history to guide those who are going to follow this law in the future.

Mr. EDWARDS. I thank the Senator for his question. I think the Senator is concerned about some of the same issues others have raised and on which we have been working. I think it is a legitimate question.

I say to the Senator, what we did in our bill is have language that was intended to protect employers unless they stepped into the shoes of the HMO and actually made a medical decision essentially overruling the HMO. That was conceptually what we did in our bill, and that is conceptually what the President says in his principle.

But the practical question which the Senator asked is a legitimate question. That is the reason, I say to the Senator, we are working with our colleagues across the aisle—Republicans and Democrats—to try to craft appropriate language, because we do not want to create a disincentive. We want to protect employers, particularly the small business employers about which the Senator is talking. But I say to the Senator, it is not just the small employers.

Although they are a very small part of the population of employers in this country, we also have self-insured, self-administered plans where basically the employer is the only entity managing the health care of its employees.

What we want to do is try to find a way to provide some protection also for those employers. Those are the kinds of issues—the question the Senator asked, which is a very fair question, and the issue I just raised of the self-employed, self administered plan—those are the kinds of issues we are trying to address without leaving the patient or the employee completely out in the cold.

I do believe there is a way to do that. It requires some work and creativity, but it can be done. Our goal in this process is the same. We want employers to be protected; we want to provide maximum protection actually for the employers without completely leaving the employee out, for example.

The problem with completely carving out the employer, as this amendment does, is that in some cases you may have an employer, a large employer, where they are a self-insured and a self-administered plan. Let's say a bookkeeper says, we are not paying for the test for the child of an employee; that child suffers some serious consequence from that. Under this carve-out, there is nowhere that child could go because there is no HMO. It is a self-insured, self-administered plan. Under the President's language, which says ''only employers who retain responsibility for and make final medical decisions should be subject to suit,'' there would be somewhere for that child of that employee to go.

What we are trying to do—and I think it can be done—is to fashion language that provides maximum protection for the employer but at the same time doesn't leave that small group of employees that would be impacted by it completely out in the cold.

Mr. WARNER. Mr. President, I thank my colleague

Let's talk about a large employer. I am simply the manager of a section with maybe seven or eight employees, but they are good friends. They have worked with me for a very long time. One suddenly becomes ill. Were I to drive that person to the hospital and in any other way participate in trying to alleviate the pain and suffering of the moment, would that then subject my overall firm to liability by virtue of my actions, say, as a good Samaritan?

Mr. EDWARDS. That kind of unintended consequence is exactly what we want to avoid. The issues the Senator from Virginia is discussing in this colloquy are the same kinds of issues that have been addressed by employers to us and my colleagues who are working to try to fashion language to solve the problem the Senator raises and the problem raised in the earlier example and to make sure, for an employer that has improperly been brought into a case—if they have been brought into a case and they don't belong in the case, we provide a mechanism, a procedural mechanism that they can get out of the case so they don't get dragged through a court proceeding when they don't belong there.

Those are the kinds of issues that need to be addressed, that we are attempting to address, and I believe we will find a solution to, consistent with the principle the President has laid out and the principle in which we believe.

Mr. WARNER. I thank my colleague.

Mr. EDWARDS. Mr. President, what we have done in the McCain-Edwards-Kennedy bill is structured a system that, unlike my colleague describes, is actually intended to avoid cases going to court. If we didn't want to avoid cases going to court, we would not first have an internal appeal and then have an independent external appeal. What we have learned from experience is the majority of cases get resolved. In Texas, California, and in Georgia, for

the three examples, when that system is in place, most cases get decided by that system. I think in Georgia and California there actually hasn't been a single lawsuit filed. That is good because the purpose is to get treatment to patients.

But there will be rare cases where the HMO does something inappropriate, wrongful, and, as a result, somebody gets hurt. It is not right, under our system of justice, for a family to be responsible for the rest of their lives to pay for that. If the HMO is responsible, they should be held accountable, just as all the rest of us. That is the reason we have set up this system the way it is.

What we have ultimately is real rights that are enforceable through an internal review, then an external review, and then, if necessary, if someone gets hurt, the case can go to court. And the cases that go to State court, where the HMO is treated just as everybody else, are subject to whatever State laws and caps apply to those kinds of cases. So there are, in fact, limitations. The rhetoric that there are no limitations is, in fact, not true.

The majority of States in this country have limitations on recoveries. And as the judicial conference suggested, as the American Bar Association suggested, as the State attorneys general suggested, we have sent those cases to State court, to a place where there are limitations on recovery but where we treat the HMOs not as privileged citizens anymore but just as all the rest of us. To Senator MCCAIN and me, as we worked on this, it seemed the fair, right, and just thing to do—that HMOs get treated the same as everybody else. If they are going to make medical decisions, they ought to be treated as the doctors whom they are overruling. That is exactly what the structure of this bill is.

My colleague said something that was incorrect a few minutes ago. He said that all you had to do to avoid the appeals process and go straight to court was to allege that you had irreparable harm. That is not the case. That word does not appear in our legislation. But if, in fact, someone has died as a result of what an HMO has done to them, we thought it was a little unreasonable to make the family of someone who has already died go through an appeal before they could go to court. There is not much reason for them to be exhausting administrative remedies. We think we have a commonsense approach, one that works.

The model of California, Georgia, and Texas, and other States shows that these laws work. They give patients rights. They don't result in a lot of litigation. In fact, in those three States, in spite of the rhetorical arguments being made that people will lose their health insurance, in those three States, while those laws have been in place with real patient protection, the number of uninsured has gone down, not up. So at least the evidence, according to the three models we have used, is that people think this system works. Lawsuits are not created by it. In fact, they are avoided.

Third, the number of uninsured, at least in those three jurisdictions, has not gone up. In fact, it has gone down.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I have to say that when I listen to the Senator from North Carolina, I almost always agree with what he says, but when I read his bill, A, I never find it does what he says, and, B, I never agree with it.

First of all, when the Senator chastised some for saying his bill simply required that there be an allegation in order to escape the external review process, that was not a figment of the imagination of critics or paid lobbyists or special interest groups, as if special interest groups and the trial lawyers don't also support the Senator's bill, as if only special interests oppose it and none supports it. But no one made that up. That is a word on page 149 of the previous version of their bill.

In fact, I raised this very issue over and over again, and the Senator and his cosponsors changed their bill to drop the word. This was not a word made up by anybody. This was a word that appeared in the original bill.

Now as for treating HMOs like everybody else, I find it a strange assertion that they are treated like doctors and hospitals. Let me explain why. First of all, I refer to the bill that is before us, the McCain-Edwards-Kennedy bill, and specifically to the section related to suing employers: ''Cause of action against employers.''

I begin with the assertion that this bill treats doctors and hospitals exactly the way it does HMOs.

In fact, the Senator says, by putting these cases back in State court, they are treated the same. Surely, the Senator must be aware that under State law, for example, in Texas and in California there are limits on liability for doctors and for hospitals, but there are no limited liabilities for health plans or employers under State law either in Texas or in California.

So to assert that by putting these cases that arise under Federal law—ERISA is a Federal law—by putting them back into the States they are being treated exactly the same as doctors and hospitals is factually inaccurate, because State laws often do impose liability limits on doctors and hospitals, but almost never do they impose liability limits on employers, or insurance companies, or HMOs.

Finally, so I can get on to my point, let me say that when the Senator says his bill treats doctors and hospitals exactly the same as it treats HMOs, I find that an interesting assertion. I turn to page 148 of his bill and I see an exclusion. In fact, on line 12, 148, it says: ''Exclusion of Physicians and Other Health Care Professionals.'' This is in the section on liability for employers. I will go into that in some detail.

I want to make this point. At the end of this section on liability for employers, it has two specific carve-outs where entities are treated very differently from employers. The first entity on line 12 is physicians: ''No treating physician or other treating health care professional of the participant or beneficiary, and no person acting under the direction of such a physician or health care professional, shall be liable under paragraph (1),'' which is the paragraph related to employer liability.

And then on page 149, there is an exclusion for hospitals. It says: ''No treating hospital of the participant or beneficiary shall be liable under paragraph (1).''

So on page 148 it exempts the treating physician. On page 149, it exempts the hospital from the same liability section for the employer. But then, to just be absolutely certain that no one is confused, let's come down to the bottom of page 149 and see if employers are treated the same and HMOs are treated the same as doctors and hospitals. It says: ''Nothing in paragraph (6),'' which is the exclusion for physicians, ''or (7),'' which is the exclusion for hospitals, ''shall be construed to limit the liability . . . of the plan, the plan sponsor, or any health insurance issuer,'' and the plan sponsor, of course, is the employer.

So to say that this bill treats doctors and hospitals the same way it does insurance companies, HMOs, and employers, sounds very good and reassuring. The problem is that it is not true.

Now let me begin and make the point I want to make. First of all, I send three letters to the desk and ask they be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL FEDERATION
OF INDEPENDENT BUSINESS,
*Washington, DC, June 22, 2001.*

HON. PHIL GRAMM,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR GRAMM: On behalf of the 600,000 small-business owners who are members of the National Federation of Independent Business (NFIB), I am writing to express our strong support for your amendment to provide an employer liability exemption modeled after the Texas managed care legislation. As you are well aware, groups on both sides of the issue agree that under Texas law, employers are explicitly exempt from liability. We will work diligently to ensure that members on both sides of the aisle support your amendment—especially those who specifically stated that they do not want employers to be held liable for voluntarily offering health care to their employees.

Small-business owners are already being forced to drop health-care as a result of the high cost of premiums; of the 43 million uninsured Americans, 26 million (61%) are small business owners and their employees. The most recent Kennedy/McCain/Edwards proposal actually increases the likelihood that more small employers and their families will join the ranks of the uninsured. For

the first time, it would authorize several new bases for lawsuits that could be initiated under federal law for unlimited damages. Employers could be sued in both state and federal courts. Their proposal does not preclude any employer from being named as a defendant in the growing number of cases that are now being filed as class action lawsuits.

If Congress enacts any legislation that exposes employers to unfair lawsuits, many small-business owners would stop offering health insurance altogether for fear that one lawsuit could wipe out their business. Even if employers are shielded from lawsuits, imposing liability on health plans would lead to higher premiums, which would then be passed on to employers and their families. Small-business owners and their employees simply cannot afford to supplement the income of wealthy trial attorneys. Fifty-seven percent of small businesses said in a recent poll that they would drop coverage rather than risk a suit that will undoubtedly threaten the livelihood of their business. It's easy to see why, given the fact that the average cost for a business to defend itself from a lawsuit is $100,000.

Again, I commend you for your continued support on behalf of small-business owners and their employees. We look forward to working with you to ensure that employers are not penalized for voluntarily offering health-care benefits to their employees.

Sincerely,

DAN DANNER,
*Senior Vice President.*

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U.S. CHAMBER OF COMMERCE,
CONGRESSIONAL & PUBLIC AFFAIRS,
*Washington, DC, June 22, 2001.*

*To the Members of the U.S. Senate:*

As the world's largest business federation representing more than three million employers and organizations of every size, sector and region, the U.S. Chamber of Commerce is greatly concerned about the liability provisions of S. 1052, the Kennedy-McCain ''Patient Protection Act of 2001'', that expose employers to lawsuits and unlimited damage awards.

The U.S. Chamber of Commerce strongly supports the amendment offered by Senators Phil Gramm and Kay Bailey Hutchison to S. 1052 that would exclude employers from lawsuits for the actions of the health plans they sponsor. It should be noted, however, that this amendment, on its own, does not address other fundamental flaws in the underlying legislation, nor will it protect employers from the huge liability costs imposed on health plans by this proposal.

Employers voluntarily provide health coverage to 172 million Americans, at an average cost of $6,351 per working family. While this amendment exempts employers from being party to a lawsuit, the cost of open-ended liability on health plans will ultimately be borne by businesses and working families. Furthermore, self-insured health plans directly pay the cost of damages and litigation out of their bottom line, even if they use a third-party administrator to make claims decisions.

Given our sluggish economy, employers will not be able to bear the passed-on costs of litigation and unlimited damage awards. Much of those costs will also be borne by employees, who, studies show, are increasingly turning down their employers' offer of coverage because they cannot afford the higher monthly premiums and out-of-pocket deductibles, coinsurance and copayments. Our health care system does not need any more litigation. In addition to supporting the Gramm-Hutchison amendment, we urge you to remedy the onerous liability provisions of S. 1052 so that employers can fully benefit from the protection offered them by the Gramm-Hutchison amendment.

Because of the importance of this issue to working families, the small business community and the American economy, we urge you to support the Gramm-Hutchison amendment to S. 1052. The Chamber will consider using votes on or in relation to Gramm-Hutchison for inclusion in our annual ''How They Voted'' ratings.

Sincerely,

R. BRUCE JOSTEN.

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AMERICAN BENEFITS COUNCIL,
*Washington, DC, June 22, 2001.*

Hon. PHIL GRAMM,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR GRAMM: The Senate will soon vote on your amendment to limit the liability of employers under the Kennedy-McCain version of the Patients' Bill of Rights.

We strongly share your view that the Kennedy-McCain bill is fundamentally flawed and should not be enacted. It is certain to drive up health costs well beyond the double-digit increases that employers are already facing, increase the numbers of uninsured Americans and place all employer-sponsored group health plans under the constant threat of unlimited liability and inconsistent decisions made by separate state courts.

The Gramm amendment responds directly to one of the primary concerns raised by both large and small employers throughout the long debate over this legislation. there can be no doubt that many employers who voluntarily offer this highly valuable benefits to employees will be unwilling or unable to do so in the future if the Kennedy-McCain bill is enacted. There is no subtle way to express how profound and destructive the threat of constant litigation and unlimited damages would be to our nation's employer-sponsored health benefits. systems.

Support for the Gramm amendment would be a vote in favor of preserving health benefits sponsored today by employers and a vote in favor of the millions of Americans who rely on health benefits through their employer today. However, it should also be clear that even if an amendment is approved to shield employers from direct liability, our position on the bill itself remains firm and unchanged. The Kennedy-McCain bill is an extreme measure that should not be enacted and the bill would still impose unacceptably high burdens on the health plans and others involved in administering employer-sponsored health benefits for which employers themselves would ultimately shoulder the higher costs.

We commend you and your supporters for offering this amendment to protect employers from the excessive liability that would result from the Kennedy-McCain bill. We urge the Senate to move next to comprehensively cure the problem that this bill poses by rejecting the Kennedy-McCain proposal and enacting a sound Patients' Bill of Rights that meets the President's principles and can be signed into law.

Sincerely,

JAMES A. KLEIN,
*President.*

Mr. GRAMM. The first letter is from the National Federation of Independent Business on behalf of 600,000 small businessowners in America. They have endorsed the amendment I have offered that will be voted on tomorrow, which exempts employers from being sued under this bill.

The second letter is from the Chamber of Commerce of the United States, the world's largest business federation, representing over 3 million employers, making this vote a key vote for the Chamber of Commerce.

Finally, the third letter is from the American Benefits Council, which is in support of this amendment.

Let me try to explain briefly what this is all about. These are complicated issues and they are very easy issues to get confused. Let me start with the Federal bill, since there has been so much talk about it. Let me be sure that everybody knows exactly what we are talking about. This is S. 1052, which is the pending bill that was originally authored by Senator MCCAIN, for himself, Senator EDWARDS, Senator KENNEDY, and others.

I will start on page 144 of the bill. A lot has been said about suing employers. Almost everything that has been said has been that you can't sue employers. I want to just go through the bill very briefly, lest there be any doubt about the fact of whether or not you can sue employers, and try to explain the concern that I have that the National Federation of Independent Business has, and that the U.S. Chamber of Commerce has about this bill, and the fact that it would expose employers to liability.

Let me remind my colleagues that employers are not required by law to provide health insurance to their employees. There is no Federal or State statute anywhere that requires that employer benefits be provided. Employers provide benefits because they choose to, because they care about their employees, or if they believe that in order to be competitive in getting good employees and holding them they have to provide benefits, they decide to do it on a voluntary basis. So the cause of not just concern, but alarm, in the business community is that under this bill it will be possible to sue not the insurance company, not the HMO, not the people who are practicing, such as doctors and hospitals, but you will be able to sue the employers.

Let me start with the language of the bill. This bill has in this section, as it does in many other sections, language that is very confusing and misleading. I want to give a simple example. Look on page 144, on line 5, it says: ''Exclusion of Employers and Other Plan Sponsors,'' which implies that they are excluded, that you can't sue employers. And then in section (A), line 7, it says: ''Causes of Action Against Employers and Plan Sponsors Precluded.'' Read that sentence. You say you can't have a cause of action against employers and plan sponsors; they are specifically precluded. That is exactly what the headline says.

And then it says: ''Subject to subparagraph (B),'' and that is where you become concerned because up here it says you can't sue them. The next line is ''Subject to subparagraph (B)''—I will come back to that—''paragraph (1)(A) does not authorize a cause of action against an employer''—just as

clear as the rising Sun. You can't sue employers. But when you get down to subparagraph (B), it says: ''Certain Causes of Action Permitted,'' and then it says: ''Notwithstanding subparagraph (A),'' which is what I just read, ''a cause of action may arise against an employer or other plan sponsor.''

In other words, paragraph (A) says you can't sue them and paragraph (B) says you can sue them. And then you have seven pages of ifs, ands, and buts about whether you can or cannot sue employers, and under what circumstances you can sue them.

And then, obviously, it gets pretty complicated. The question comes down to, what would a judge say? What would a jury say? What would some very smart plaintiff's attorney be able to do with this language?

Then the problem gets even greater because you get down to the use of terms that don't jump out at you as triggering other things. But when you understand how they fit into Federal law, they say you can sue employers. I will give you an example. On line 18 of page 145, it says you can't sue the employer except when the employer directly participates—and let me read the whole paragraph:

Direct Participation in Decisions.—For purposes of subparagraph (B), the term ''direct participation'' means, in connection with a decision described in clause (i) of paragraph (1)(A) or a failure described in clause (ii) of such paragraph. The actual making of such decision or the actual exercise of control . . .

It does not jump out at you that ''exercise of control'' means anything. It does not unless you know that under ERISA, which governs all employer benefits under Federal law, the employer is always deemed to exercise control over employee benefits.

There are 7½ pages of ifs, ands, and buts, but there is a lot of language that when it is brought into the context of existing Federal law it creates the strong potential that employers could be sued and could be sued for nothing other than simply having tried to join with their employees in buying health insurance and conducting activity that had to do with operating their business, appointing employees to interface with their health plan, their insurance company, their HMO.

Then, as if anybody would doubt the intention of this bill, it has this extraordinary section on page 148 and 149, having created this liability for employers, and then in 7½ pages talking about when you can sue them and when you cannot sue them, it then comes down and excludes physicians, excludes hospitals, and then it says:

But nothing in excluding physicians or excluding hospitals can be construed as excluding employers.

If our colleagues on the other side of the aisle wonder why it is that employers are alarmed, all they have to do is to look at the language of their bill in the context of ERISA to understand that we have a very real potential for employers to be sued.

The Texas Legislature, which has been held out to be a standard for patients' rights—in fact, if I am not wrong, Senator EDWARDS said on ABC ''This Week'':

The President, during his campaign, looked the American people in the eye in the third debate and said: ''I will fight for Patients' Bill of Rights,'' referencing the Texas law. Our bill is almost identical.

Identical to what? The Texas law. Let me make it clear it is not identical. Under the bill before us, it clearly says employers can be sued. It has 7½ pages of circumstances under which they can be sued. It uses language that ties in to ERISA that suggests they might be sued, and then it excludes doctors and hospitals but specifically does not exclude employers from being sued.

That is what the bill before us does. What does the Texas law do? The Texas Legislature, when it debated and passed the Patients' Bill of Rights, did not believe that all employers were good people. It did not believe there would never be an incident where employers would do the wrong thing. It did not believe that. They debated this extensively, but they did believe they had put together a system of checks and balances.

In fact, this bill, the Republican alternative, the Breaux-Frist bill, every HMO bill, every Patients' Bill of Rights bill that has been introduced, is really modeled after State plans. One of the most prominent of those plans is the Texas plan.

In Texas they concluded there was no way they could write it that would not guarantee that employers would not be subject to being sued other than to simply exempt employers from being sued.

What they said was, in very simple terms:

This chapter—

Which relates to liability in their bill—

does not create any liability on the part of an employer.

There are no 7½ pages of ifs, ands, or buts after this clause. There is no paragraph below it that says notwithstanding this provision they can be sued. This is the language of the Texas law. It does not create any liability on the part of an employer.

Let me review some of the points that have been made where people say you need to be able to sue the employer. Let me remind my colleagues that the Texas Legislature did not believe that for a minute that there would not be some employers who would be bad actors, but they concluded that the benefits of letting people sue the employer were much smaller than the potential cost because of the fear that employers might drop health insurance. In fact, I think the success of the Texas law bears out their belief that, under the Texas law, they would be better off not to allow the suits to be filed against the employer.

Some people have said: What if somebody showed up at the emergency room and the employer called up and said don't let them in? Under the bill before us and every bill that has been introduced, we have a prudent layperson standard. The emergency room is going to get paid if the person, as a prudent layperson, believes they were in danger of being harmed or dying.

What would the attending physician in an emergency room in Omaha, NE, do if some employer called up and said, my employee, Joe Brown, is coming in there, he thinks he is sick, I don't want him treated? The physician would say: Thank you, and hang up because he has no control over who is admitted to the emergency room and the HMO is required to pay.

What about the case where the employer actually tries to intervene in the decision being made by the HMO? It has been suggested that perhaps you could have it so the employer is not the final decisionmaker and would be exempt. I remind my colleagues, who is the final decisionmaker under S. 1052? Who is the final decisionmaker under Breaux-Frist? Who is the final decisionmaker under the Nickles bill? Who is the final decisionmaker under the original Kennedy bill? The final decisionmaker is an independent review panel made up of health care professionals who are independent of the health plan. How is the employer supposed to affect them? The employer can have no effect over them. By definition, under every one of these bills, the employer is not, cannot be the final decisionmaker.

I am not saying, and the Texas Legislature did not say, there were no bad employers, but what they said is what little benefit you might get by discouraging an employer from trying to interfere in a health care plan for which they are at least partially paying; whatever benefits you might get from that, you already have protections with internal and external review, but the cost of making the employer liable is so high that it is not worth it.

Let me conclude because I see my dear colleague from West Virginia is here. I know a lot of other people want to speak. I want to make this point. It is not hard for me to envision—I hope it is not hard for my colleagues to envision—that there are a lot of little businesses all over America that scrimp and sacrifice to cover their employees with health insurance.

I often talk about a printer from Mexia, Dicky Flatt, a friend of mine, an old supporter of mine from a little town in Mexia, TX. He is an old-fashioned printer. He never quite gets that blue ink off the end of his fingers.

He has about 10 employees, including his wife, including his baby son, and he probably has 8 or so other employees at any one time.

They work hard to try to provide health insurance. But there is no way, shape, form, or fashion, Dicky Flatt is

going to hire a lawyer to go through this bill. Once he hears from NFIB that he might be sued, he is going to be forced to call his 10 employees together and say: Look, I love you guys. You helped me build this business. But my father and my mother worked a lifetime to build this business. I have worked in it. My wife has worked in it. My brother worked in it. His brother's wife worked in it. My son works in it. And I am not going to put it all at risk in some courtroom because I might be sued because I helped you buy health insurance.

Our colleagues assure us, we are not after Dicky Flatt. But the problem is, they have 7½ pages of language under which Dicky Flatt could be sued. A lot of this language is pretty confusing. I am not a plaintiff's attorney, but it is pretty confusing to me and I have to figure it is very confusing to Dicky Flatt, a printer in Mexia.

Everybody talks about how good the Texas law is and how similar this bill is. I thought with all of the imperfections, I would offer an amendment that does exactly what the Texas law did. One of our colleagues pointed out that under Texas law health insurance coverage has gone up, not down. In Texas they did not believe that all 1 million employers were good, well intending people. They decided, whatever you get by allowing a person to try to sue the few who are bad, when people already have checks and balances against bad employers with internal and external review—an external review where the employer could have no impact, that whatever the benefits are of suing the employer, the cost in terms of inducing good employers to drop health coverage was more.

I am sure everybody understands unintended consequences. I don't believe for a minute the authors of this bill are trying to sue Dicky Flatt. I don't believe it. I don't believe they have evil intent. I have never thought that, never said it, and I don't believe it.

The point is, could the law produce the unintended consequence? It is complicated enough, it is contradictory enough, that I believe it might force good people such as Dicky Flatt, who might call the emergency room if one of his employees were taken to the emergency room, but it would be to say: He is coming; do everything you can to help him. Would that be intervening? If he called up and said: ''I want to tell you that Sarah Brown got her finger caught in this machine and it pulled her hand in, and, my God, she is on the way there and she is bleeding something awful. Get ready. And I want you to do everything you can. Don't worry about cost, I will do whatever I can to help,'' is that intervening? I don't know. And he won't know. Therefore, he might cancel his health insurance.

I believe this is the safe way to do it. I am not saying I will not look at alternatives or we might not be able to work something out, but I am asking my colleagues, don't believe that perfection has been achieved, that there is no way the current bill can be improved. If we could change 5 or 6 things in this bill, we would get 80 Members, maybe 90 Members to vote for it. This is something that needs to be changed. This is something that needs to be fixed.

I know there are a lot of clever people who think we can still do it and still sue and protect Dicky Flatt. I am not sure. All I know is the Texas Legislature, after debating this, decided they were not sure and the safest thing to do was to not allow him to be sued.

I yield the floor.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The Senator from West Virginia.

Mr. BYRD. Mr. President, has the Pastore rule run its course for the day?

The PRESIDING OFFICER. No, it has not. It will expire at 5:04.

Mr. BYRD. I ask unanimous consent to speak out of order, notwithstanding the Pastore rule.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I understand the Senator from Michigan wishes to speak. If I may be recognized, I would like to speak for not to exceed 20 minutes, but I yield to the Senator from Michigan for not to exceed 5 minutes, and not have that 5 minutes charged against my time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. STABENOW. Mr. President, I thank my friend and colleague for yielding to me for a moment to bring this discussion back to what this is really all about.

First, I say to my friend from Texas, I am happy to share with his constituent of whom he spoke, on page 146 of the legislation, specifically what is meant by employers being exempted from lawsuit. It is very specific. I think we could satisfy his concerns if he were to read the bill and have an opportunity to discuss it with us. I welcome an opportunity to do that.

I will take a moment and share what happened in Michigan a few hours ago. I went back to the great State of Michigan to be with a large number of constituents who were very concerned about this legislation, people who have been involved in the health care system, doctors and nurses, and family members who have had situations occur in their own family with themselves or their children or their parents that have caused them to support this legislation, the underlying bill that is before the Senate. They believe this is critically needed because of the need to guarantee the health insurance is paying for results in health care for their families.

I will comment as I did on Friday about a situation about which my colleagues on the other side of the aisle talked, small business owners. There is a small business owner with whom I have worked very closely, a man named Sam Yamin, who, in fact, had a situation where he had to go to an emergency room himself.

He owned a tree trimming business and had a severe accident with a chain saw and was rushed to an emergency room. The physicians were ready to operate, to save his leg, to save the nerves in his leg. They called the HMO and the HMO said, we are sorry; you are at the wrong emergency room. They packed him up, him and his wife, and moved him across town. He spent 9 hours on a gurney in the other emergency room and did not receive treatment until he literally pulled a telephone out of the wall because he was in such great pain. He ended up getting the most limited treatment. They simply sewed up his leg.

Why do I mention that? I mention that because Sam Yamin lost his business. He is a business owner who lost his business. He is a business owner who is now not only permanently disabled but, I found out today, is terminally ill. Sam Yamin did not deserve that. He paid for insurance. He was a business owner who had insurance and assumed in an emergency he could go to the nearest emergency room.

Now what happens? He and his wife Susan are flooded with bills. Does he have any recourse to go back to the HMO to hold them accountable for what happened for him and his family? No, he does not.

That is not right. That is what this bill is about. We want better medical decisions. Sam Yamin does not want the right to sue just to sue. He wanted emergency health care. He wanted an operation on his leg. He wanted to be able to go back to work in his business. That is what he wanted. I truly believe that unless we hold HMOs and insurance companies accountable for the decisions they are making, we will not get that kind of guarantee of health care. We want better medical decisions. That is what we want. We know the States that have enacted these kinds of protections don't have the lawsuits being talked about. They have better medical decisions. That is what we are looking for. We want to make sure decisionmakers know they better pay attention; they better get it right; they better give people the health care they are paying for; otherwise, they will be held accountable.

That is what this is about. That is why it is so important and that is why I am going to come to the floor every day and speak on behalf of Susan and Sam Yamin and all the other families in Michigan who are counting on us to get this right.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I thank the Presiding Officer. I also thank the majority whip for his courtesy.

Mr. President, I am speaking on a subject that is not germane to the debate this afternoon.

The PRESIDING OFFICER. The Senator from West Virginia.

## NATIONAL MISSILE DEFENSE

Mr. BYRD. Mr. President, the President has recently concluded his trip to Europe, where he attempted to convince European leaders of the need for the United States to deploy a national missile defense system. It seems that our friends in Europe still have the same reservations about this apparent rush to a missile shield, and I can understand why. While I support the deployment of an effective missile defense system, there are a number of reasons why I believe it is not as easy to build such a system as it is to declare the intent to build it.

One cannot underestimate the scientific challenge of deploying an effective national missile defense system. The last two anti-missile tests, performed in January and July of 2000, were failures. In response to these failures, the Department of Defense did the right thing. The Department of Defense took a time-out to assess what went wrong, and to explore how it can be fixed. The next test, scheduled for July of this year of our Lord 2001, will be a crucial milestone for the national missile defense program. All eyes will be watching to see if the technological and engineering problems can be addressed, or if we have to go back to the drawing board once more.

It must also be recognized that no matter how robust missile defense technology might become, it will always—now and forever—be of limited use. I fear that in the minds of some, a national missile defense system is the sine qua non of a safe and secure United States. But the most sophisticated radars or space-based sensors will never be able to detect the sabotage of our drinking water supplies by the use of a few vials—just a few vials—of a biological weapon, and no amount of anti-missile missiles will prevent the use of a nuclear bomb neatly packaged in a suitcase and carried to one of our major cities. We should not let the flashy idea of missile defense distract us from other, and perhaps more serious, threats to our national security.

If deployment of a missile defense system were to be expedited, there is the question of how effective it could possibly be. Military officers involved in the project have called a 2004 deployment date ''high risk.'' That means that if we were to station a handful of interceptors in Alaska in 2004, there is no guarantee—none, no guarantee that they would provide any useful defense at all. Secretary of Defense Donald Rumsfeld has downplayed this problem, saying that an early system does not have to be 100 percent effective. I believe that if we are going to pursue a robust missile shield, that is what we should pursue. I do not support the deployment of a multi-billion dollar scarecrow that will not be an effective defense if a missile is actually launched at the United States.

The New York Times has printed an article that drives this point home. The newspaper reports on a study by the Pentagon's Office of Operational Test and Evaluation that details some of the problems that a National Missile Defense system must overcome before it can be considered effective. According to the New York Times, the authors of this internal Department of Defense report believe that the missile defense program has ''suffered too many failures to justify deploying the system in 2005, a year after the Bush administration is considering deploying one.''

The article goes on to state that system now being tested has benefitted from unrealistic tests, and that the computer system could attempt to shoot down inbound missiles that don't even exist. If the Department of Defense's own scientists and engineers don't trust the system that could be deployed in the next few years, this system might not even be a very good scarecrow. Let the scientists and engineers find the most effective system possible, and then go forward with its deployment.

Let us also consider our international obligations under the Anti-Ballistic Missile (ABM) Treaty of 1972. The President has begun discussions with Russia, China, our European allies, and others on revising the ABM Treaty, but so far the responses have been mixed. I suggest that it is because our message is mixed. On one hand, there is the stated intent to consult with our allies before doing away with the ABM Treaty. On the other, the Administration has made clear its position that a missile defense system will be deployed as soon as possible.

It is no wonder that Russia and our European allies are confused as to whether we are consulting with them on the future of the ABM Treaty, or we are simply informing them as to what the future of the ABM Treaty will be. We must listen to our allies, and take their comments seriously. The end result of the discussions with Russia, China, and our European allies should be an understanding of how to preserve our national security, not a scheme to gain acceptance from those countries of our plan to rush forward with the deployment of an anti-missile system at the earliest possible date.

What's more, Secretary of State Colin Powell said this past weekend that the President may unilaterally abandon the ABM Treaty as soon as it conflicts with our testing activities. According to the recently released Pentagon report on missile defense, however, the currently scheduled tests on anti-missile systems will not conflict with the ABM Treaty in 2002, and there is no conflict anticipated in 2003. Why, therefore, is there a rush to amend or do away with the ABM Treaty? Who is to say that there will not be additional test failures in the next two and a half years that will further push back the test schedule, as well as potential conflicts with the ABM Treaty?

There is also the issue of the high cost of building a national missile defense system. This year, the United States will spend $4.3 billion on all the various programs related to missile defense. From 1962 to today, the Brookings Institution estimated that we have spent $99 billion, and I do not believe that for all that money, our national security has been increased one bit.

The Congressional Budget Office in an April 2000 report concluded that the most limited national missile defense system would cost $30 billion. This system could only hope to defend against a small number of unsophisticated missiles, such as a single missile launched from a rogue nation. If we hope to defend against the accidental launch of numerous, highly sophisticated missiles of the type that are now in Russia's arsenal, the Congressional Budget Office estimated that the cost will almost double, to $60 billion.

We have seen how these estimates work. They have only one way to go. That is always up.

However, that number may even be too low. This is what the Congressional Budget Office had to say in March 2001: ''Those estimates from April 2000 may now be too low, however. A combination of delays in testing and efforts by the Clinton administration to reduce the program's technical risk (including a more challenging testing program) may have increased the funding requirements well beyond the levels included in this option [for national missile defense systems].'' Is it any wonder that some critics believe that a workable national missile defense system will cost more than $120 billion?

Tell me. How does the Administration expect to finance this missile defense system? The $1.35 trillion tax cut that the President signed into law last month is projected to consume 72 percent of the non-Social Security, non-Medicare surpluses over the next five years. In fact, under the budget resolution that was passed earlier this year, the Senate Budget Committee shows that the Federal Government is already projected to dip into the Medicare trust fund in fiscal years 2003 and 2004. The missile defense system envisioned by the Administration would likely have us dipping into the Social Security trust funds as well—further jeopardizing the long-term solvency of both Federal retirement programs. This is no way to provide for our nation's defense.

I must admit that I am also leery about committing additional vast sums to the Pentagon. I was the last man out of Vietnam—the last one. I mean to tell you, I supported President Johnson. I supported President Nixon to the hilt.

I have spoken before about the serious management problems in the Department of Defense. I am a strong supporter of the Department of Defense. When it came to Vietnam, I was a hawk—not just a Byrd but a hawk. I

am not a Johnny-come-lately when it comes to our national defense.

As Chairman of the Appropriations Committee, I find it profoundly disturbing that the Department of Defense cannot account for the money that it spends, and does not know with any certainty what is in its inventory. These problems have been exposed in detail by the Department's own Inspector General, as well as the General Accounting Office. Ten years after Congress passed the Chief Financial Officers Act of 1990, the Department of Defense has still not been able to pass an audit of its books. The Pentagon's books are in such disarray that outside experts cannot even begin an audit, much less reach a conclusion on one!

Although it does not directly relate to this issue of national missile defense, I was shocked by a report issued by the General Accounting Office last week on the Department of Defense's use of emergency funds intended to buy spare parts in 1999. Out of $1.1 billion appropriated in the Emergency Supplemental Appropriations Act for Fiscal Year 1999 to buy urgently needed spare parts, the GAO reported that the Pentagon could not provide the financial information to show that 92 percent of those funds were used as intended. This is incredible. This Senate passed that legislation to provide that money for spare parts. That is what they said they needed it for. That is what we appropriated it for. Congress gave the Department of Defense over a billion dollars to buy spare parts, which we were told were urgently needed, and we cannot even see the receipt!

If the Department of Defense cannot track $1 billion that it spent on an urgent need, I don't know how it could spend tens of billions of dollars on a missile defense system with any confidence that it is being spent wisely.

As a member of the Armed Services Committee and the Administrative Co-Chairman of the National Security Working Group, along with my colleague, Senator COCHRAN, who was the author of the National Missile Defense Act of 1999, I understand that ballistic missiles are a threat to the United States. I voted for the National Missile Defense Act of 1999, which stated that it is the policy of the United States to deploy a national missile defense system as soon as it is technologically possible. Now, I still support that act. But I also understand that an effective national missile defense system cannot be established through intent alone. Someone has said that the road to Sheol is paved with good intentions. Good intentions are not enough. I think there might be a way toward an effective missile defense system, and it is based on common sense. Engage our friends, and listen to our critics. Learn from the past, and invest wisely. Test carefully, and assess constantly. But most of all, avoid haste. We cannot afford to embark on a folly that could, if improperly managed, damage our national security, while costing billions of dollars.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator from West Virginia withhold his request for a quorum?

Mr. BYRD. I withhold my suggestion.

## BIPARTISAN PATIENT PROTECTION ACT—Continued

AMENDMENT NO. 810

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. I thank my good friend and colleague from West Virginia and thank the Chair. I also thank my good friend from Iowa who has agreed to let me speak for a few minutes and who is also helping with the easel. He is what you would call a full service Finance Committee ranking member.

I am here today to talk about the Gramm amendment to the McCain-Kennedy patient protection bill. I have been in this Chamber before to talk about this issue as it affects small businesses.

In my role as ranking member, and formerly as chairman, of the Small Business Committee, I have had the opportunity to hear from lots of small businesspeople, men and women from around the country. There are an awful lot of them from Missouri who have called me to express their concerns. Let me tell you they have some very real concerns about this McCain-Kennedy bill.

The particular issue before us today deals with whether or not employers should be able to be sued through new lawsuits permitted by the McCain-Kennedy patient protection bill which is supposed to be targeted against HMOs.

We keep hearing how they want to sue the HMOs. Our colleagues on the other side of the aisle seem to be of two minds on this issue. Some adamantly refuse to admit that their bill actually permits litigation against employers at all. They claim that only HMOs can be targeted. That is simply flat wrong. This has been pointed out numerous times in this Chamber by me and by my colleagues who have actually read the language from the McCain-Kennedy bill, which I have before me.

I encourage any American who has been confused by the claims and counterclaims on whether the McCain-Kennedy bill allows any suits against employers to get a copy of the legislation. Go to the bottom half of page 144 and read the truth for yourself. Page 144 has the good news that:

> Subject to subparagraph (B), paragraph (1)(A) does not authorize a cause of action against an employer or other plan sponsor maintaining the plan. . . .

That is the good news.

The bad news is that part (B) says: ''Notwithstanding subparagraph (A), a cause of action may arise against an employer or other plan sponsor'' under certain clauses and pages and exceptions; and it goes from the bottom of page 144 to pages 145, 146, 147, and 148. That is how you can be sued if you are an employer.

There are some on the other side of the aisle who admit their legislation allows trial attorneys to go after employers but claim these lawsuits are only permitted in narrow circumstances. I give those colleagues and friends credit for greater honesty, but I fault them, nevertheless, for bad analysis because the fact is, the so-called employer exemption from lawsuits in the McCain-Kennedy bill is an extremely complicated and confusing piece of legislative language that will inevitably subject large and small employers to lawsuits and the high cost of defending them.

Before I came to this body, I practiced law. I know what a gold mine of opportunity rests in this language. Oh, boy, if I were on the outside and this were the law, and I wanted to sue an employer, this would be an interesting but not difficult challenge.

We all know you really cannot protect anyone 100 percent from being sued. For better or for worse, any American, with just a little help from a clever attorney, or just an average attorney, can file a lawsuit against any person or any business. The case may be dismissed almost immediately, but they can still file it.

What this means is, if we want to protect employers from frivolous litigation—and this is what everybody says they want to do—we need to give employers protection that will help them get the frivolous lawsuits dismissed immediately, before the lawyers' fees really start to build up. To get these immediate dismissals, you really need clear, distinctive language that makes 100 percent clear what types of lawsuits are and are not allowed.

How does the Gramm amendment make that clear distinction? By saying that you cannot sue your employer, period.

How does the McCain-Kennedy bill try to make a clear distinction on which they say employers can rely? They have a basic guideline that says employers can't be sued, but then they have four entire pages of exceptions, definitions, and clarifications that substantially weaken and confuse that protection. In those four pages there are enough ambiguous words, phrases, and concepts to keep trial attorneys in business for years.

If a plaintiff's lawyer is clever enough—and whatever else I think about them, I know my friends in the trial bar are clever—they are going to find ways to bring lawsuits against employers. In their zeal to get at deep-pocket employers, trial lawyers are going to poke and prod at every word of these four pages looking for weaknesses. Many, or most, will be able to find something to convince a judge not to dismiss a case. The result: A raft of new lawsuits against employers, added expenses, and an enhanced fear of being sued.

That scares the devil out of employers all across the country, as it should,

because if there is one thing our legal system has shown employers, it is that their fear is justified; they are not paranoid; they really are coming after them.

The cost to defend a single lawsuit can easily extend into the tens or hundreds of thousands of dollars. Particularly for these small employers, these expenses are difficult, if not impossible, to bear and could put them out of business. Even if the employer has some type of insurance to cover this legal exposure, the cost of insurance can be a scary prospect in and of itself.

I mentioned before in this Chamber I have received hundreds of letters from small businesses in Missouri. The first issue that almost all of them bring up is whether they can be sued under the McCain-Kennedy bill. Let me read just a few points from a few of them. Simply put, this issue is their No. 1 concern when it comes to patient protection legislation.

Here is one from a lumber company:

> We are currently extending health insurance coverage to our 25 employees. We pay two-thirds of the premium; employees pay one-third. At our last renewal, we were faced with an 18-percent increase, some years in the past being even greater. Future increases will force us to continue to offer less coverage. If Senator KENNEDY's bill passes, this may just be the nail in the coffin. We are willing to suffer with higher prices to an extent, as long as they are fair and justified, but we are not willing to open ourselves up to the liability that this bill may subject us to.

Here is another one, a small business, a fabricator:

> We are a small company with less than 25 enrollees in our health plan. With the increase in health care costs, utilities, and supplies, we are not making much of a profit. And if this continues, we may not be able to stay in business. We employ between 50 and 75 employees. We also do not see how an employer can be held legally responsible for medical court cases. We will eventually be forced, by Mr. Kennedy's bill, to cancel our health plans because of the liability and cost.

In fact, the National Federation of Independent Businesses—one of the strong voices for America's small businesses—believes so strongly about this amendment that they are going to list it as a key vote: Are you with us or are you against us? Small businesses are going to know by how our colleagues vote on this amendment.

For those folks fortunate enough not to be familiar with the ways of Washington, that means that they believe the vote on this amendment will be one of the most important votes cast during the entire year. They intend to use it in their evaluation of Senators' voting records.

All this begs the question: If employers are so well protected by the McCain-Kennedy bill, why are they so scared? Why is NFIB placing such a level of importance on this vote? Why are small businesses in Missouri sending me these letters? Is it because they are not protected? The answer is, they are not well protected.

The McCain-Kennedy bill made a halfhearted try and failed. I related last week several times what the running score was of small businesses that said that they would be forced by this measure to get rid of health care coverage for their employees. Here is today's total: 1,751. That is just a small sample nationwide. These are the number of employees whose employers have written us since they saw the details of the McCain-Kennedy legislation to say they don't want to be involved in tort reform roulette on health care costs. If McCain-Kennedy passes unamended, if their exposure is as written in this compendium of exceptions, exclusions and qualifications, they will terminate their health care plans. Total number of employees covered to date: 1,751.

I suggest that is just a microcosm of small businesses across the country. I have talked to others who have not written in. In our country, most employers voluntarily offer health care coverage, and they are the source of health insurance for the majority of Americans. Overwhelmingly, Americans are employed and get their health care coverage from their employer. The quickest way to destroy the system we now have is to create an atmosphere where employers stop their voluntary willingness to offer coverage. Sure, it is an important benefit, but who wants to be hauled into court if one of their employees has a medical or health care complaint?

Right now we have 43 million Americans who are not covered by health insurance. We have debated many measures in the Senate to find out how to cover those employees. I was terribly disappointed that on a party-line vote last week, this body voted to reject my effort to give 100-percent deductibility for self-employed people. We have been fighting to get that done for a long time. This is a tax bill. It is going to be a tax bill. There is no question about that. That tax provision to get more people covered should have been included.

What we are talking about now is expanding significantly the number of uninsured Americans. Sixty percent of the 43 million who are not covered now are employees of small business. We don't want to add to that number and add to the 43 million. Given the lottery nature of our current legal system, I can't think of anything that would make the employers more fearful and more likely to drop coverage than to say: Hey, you are not authorized to file suit against your employer but notwithstanding subparagraph (A), cause of action may arise against an employer or other plan sponsor, et cetera, et cetera, page after page.

If we want to avoid American businesses dropping coverage on a wholesale basis, employers need to be protected from lawsuits. That is quite simply what the Gramm amendment does. We need to get good health care coverage for all Americans. Yes, we need to give them internal and external appeals. We need to make sure they do not get shortchanged. If they get denied coverage, they need to go to another doctor who is independent, who could order their HMO or their health plan to provide them coverage. What they don't need is to start suing their employers because employers will drop health care coverage like a bad habit, if they think they are going to be subjected to a whole range of lawsuits as a result of the dissatisfaction of an employee with health care coverage.

I hope our colleagues will take a look at the impact of this on small businesses and their employees and accept the Gramm amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, if I could enter into a colloquy with my friend from North Carolina, the manager of the bill, I have been on the floor now for a week relative to this legislation. It is interesting to see how the scapegoats come and go.

Does the Senator from North Carolina remember last week that the big boogeyman was the fact that this was a disguise to get socialized medicine, that what the intent really was was to have this onerous bill pass and everyone would drop their insurance and we would have socialized medicine? Does the Senator remember that?

Mr. EDWARDS. I do remember that.

Mr. REID. Does the Senator remember that they were talking about a States rights issue; that it was none of the business of the Congress; that all of these States were doing a good thing; let them do what they want with how they handle patients and doctors. Does the Senator remember that debate?

Mr. EDWARDS. I do remember it.

Mr. REID. There was a significant period of time last week when there was some discussion about this legislation allowing HMOs to be sued, as if that were some novel approach to the law, to the world. Does my colleague remember that, when it was a surprise that they read the bill and, lo and behold, HMOs could be sued? Does the Senator remember that discussion?

Mr. EDWARDS. I do.

Mr. REID. The assertion regarding socialized medicine is, for lack of a better description, kind of foolish. Regarding States rights, they learned very quickly that wasn't much of a winner. Then the fact that they were surprised about the lawsuits, of course, that was a surprise that they were surprised.

I also was here, as the Senator from North Carolina was, when they spent a great deal of time talking about this novel concept they came up with, that you should be able to deduct 100 percent of the cost of an employer's health insurance. What they failed to tell us is that is something we have been pushing for a long time. In fact, it was put in the tax bill of the former chairman of the committee who is now present. That was put in the tax bill. Of course, it was taken out in conference. My colleague remembers that. As a result of

the games being played, that amendment was defeated.

Today, starting the second week of this debate, I now see a new ploy; that is, they suddenly are saying that now you can file lawsuits—and we are OK with that—but what you are doing is, all the employers in America are going to be sued as a result of having health insurance for their employees, and they are going to drop all their insurance.

With this as a background, I want the Senator from North Carolina to comment about the latest direction; that is, that employers will be sued to death.

Prior to addressing that, I want the Senator to recognize that I have been here longer than the Senator from North Carolina. I have heard this NFIB argument for almost 20 years. If you do this, the NFIB is going to send out a note that you are a bad legislator and they should not vote for you.

In my approximately 20 years in the Congress—I could be mistaken because I am sure once in a while they do it just to look good—I have never known the NFIB to support a Democrat. So all these threats about ''you do this and we are not going to support your candidacy,'' the vast majority of the time, the NFIB is a front for the Republicans. I am saying that; the Senator does not have to agree with me. To this Senator, the threats we have heard today that ''the NFIB is not going to support you'' is no threat to me. They have never supported me, no matter what I did or didn't do.

I would like the Senator to respond to the several questions I have asked. But prior to responding, I have the greatest respect for the senior Senator from Texas. He is a fine man, a good legislator. He has a Ph.D. in economics. He taught economics. If he were here—he knows me well enough and I know him well enough—I would say that with his being in the Chamber. As to his reference to his friend Dicky Flatt, which he uses all the time, I think Dicky Flatt and others better be very careful of people such as my friend, the senior Senator from Texas, giving legal advice. He can stand here and give some good economic advice, but the legal advice we should look at very closely. I think Dicky Flatt should look at that.

I ask my friend from North Carolina, to whom I can't give sufficient superlatives as being more than renowned in the law, a person who has made a reputation around the country as being a good lawyer, to give some comment to the Senate and to those within the sound of our voices as to what he thinks about these continual statements made today—in fact, people are reading the same information. The same person wrote the same speech for several people. I would like the Senator to tell me and the rest of the Senate the fear that an employer who has health insurance for his employee should have as a result of this legislation.

Mr. EDWARDS. I will respond to the Senator's question. I say to my colleague from Iowa, who has been waiting for some time, that I will be brief and I will yield the floor to my friend because he has been waiting to speak.

First of all, the arguments being used serially, one after another, are all arguments that have been trotted out by the HMOs for years now. They are the arguments they make to avoid any kind of reform. They like it just the way it is now. They are different than every other business entity or individual in America, and they want to maintain the status quo. The Senator knows very well that they are spending millions of dollars on lobbyists, public relations, and on television to defeat any kind of HMO reform. So these arguments go to a really fundamental question: Are we going to move forward or are we going to stay where we are?

There is a consensus in this country among the American people, among the Members of this body, among the Members of the House of Representatives, and among virtually every health care group and consumer group in America, that this needs to be done—''this'' being The Bipartisan Patient Protection Act.

There is a reason for that consensus—because we need to do something about this issue that has lingered for so long. For every day that passes, while we engage in what sometimes is high rhetorical debate on the floor of the Senate, there are thousands of American citizens, children and families, who are being denied the care for which they have paid.

Now, it is all well and good for us to have an academic discussion in the Senate about this issue. But there are families and kids all over this country who are not getting the tests they need, not getting the treatment they need, not getting the medical care they need because this legislation has not been passed.

Now, having said that, let me respond specifically to the Senator's question. First, as to the employer liability issue, the Senator knows that JOHN MCCAIN and I worked for months on it. There was a bill in the House of Representatives—the Norwood-Dingell bill—which passed and provided somewhat broader exposure of employers to liability. Senator MCCAIN and I worked, because we are concerned about this issue and we want employers to be protected, to draft our bill with that goal in mind.

President Bush has issued a written principle which is almost identical to our bill. He says, as we say, that unless an employer actually makes a medical decision on an individual patient, they should be exempted from liability. We believe that is what our bill does. The Breaux-Frist bill—the other bill—has another model, what is called a ''designated decisionmaker.'' But it also holds employers, through the designated decisionmaker, responsible where they make individual medical decisions.

So what we have is our bill, the Norwood-Dingell bill that already passed the House, President Bush's principle, and the Breaux-Frist bill, all of which start with a very simple concept; that is, employers ought to be protected unless they step into the shoes of the HMO and make medical decisions.

The only different position is that of Senator GRAMM in his amendment. His position is inconsistent with all those positions, including the President's, inconsistent with the legislation that passed the House, inconsistent with the Breaux-Frist bill. His position is the extreme position. What we are working on as I speak—and we worked on it this past week and over the weekend, Republican and Democratic Senators both—is language that we believe will be appropriate and will help provide more protection for employers.

But what can't be left out of this discussion is the patients; you can't forget the patients. I listened to my friend from Missouri speak a few minutes ago. I didn't hear the words ''patient,'' ''employees,'' or ''families'' spoken by him. I think his concern about employers is to be respected, and that is the reason we want to work together on this issue. We have to always keep in mind, when we are trying to protect employers, that we also have the rights of employees and patients to take into account.

So the right approach is an approach that allows us to provide maximum protection for the employers, without completely ignoring the interests and, in fact, protecting the interests of the patients at the same time. We believe that is what we do. We believe that is what the President has suggested.

There are issues in this debate about which there is great disagreement, but this is not one of them. This is one where regarding the President in his principle, us, and the Breaux-Frist proposal, there are minor differences between them. The bottom line is that all of those start with a simple concept and principle. It is a matter of making sure the language works in an effective day-to-day way.

Mr. REID. I heard the Senator say right now the legislation, in his estimation, protects employers, but if there can be more refinement to that, he will be happy to work with whoever can give him that language; is that true?

Mr. EDWARDS. That is true. We will continue to work on it, going forward. We are continuing to work on it as we speak. If we can find a way to maximize protection for employers with appropriate language and, at the same time, not ignore the interests of the patients, we will do that. I believe that can be done. So do Senators on both sides of the aisle who are talking about this particular issue.

Mr. REID. If, however, we didn't change it in any manner, you could still rest well at night that you and Senator MCCAIN had worked very hard

to take care of this issue on employer liability.

Mr. EDWARDS. We have. We worked long and hard. I believe we have protected employers from many of the concerns that those across the aisle and on both sides of the aisle have raised. But I am the first to say this is an issue on which we should work together to make sure we have language that works to protect America's employers.

I yield to my friend from Tennessee.

The PRESIDING OFFICER (Mr. HOLLINGS). The Senator from Tennessee is recognized.

Mr. THOMPSON. Mr. President, the Senator from Iowa has graciously agreed to let me hold forth here for just a few minutes. If no one has an objection, I ask unanimous consent that he be recognized immediately after me. I don't expect to take more than 5 minutes.

Mr. REID. Reserving the right to object, I could not hear the Senator.

Mr. THOMPSON. I will speak about 5 minutes and then the Senator from Iowa will speak for himself on how long he wants.

Mr. GRASSLEY. I intended to speak as long as I wanted to speak just as everybody else has been doing all afternoon.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. THOMPSON. Mr. President, I have been listening to the debate, and it sounds to me as if we are making progress with regard to this employer issue. We started out without a recognition that this bill provided substantial exposure to employers. The statements that were made by the sponsors of the bill were that they really didn't intend to hold employers liable, except under very limited circumstances. Now, apparently, they agree that perhaps there was more exposure there than was originally intended.

So, as I understand it, some discussions are taking place now to, hopefully, bridge the difference and provide additional protection for employers because what we are doing—what I understand the purpose of the legislation is—is to provide some judicial access, judicial relief against health care plans and against HMOs, and that the thrust of this legislation was not to hold employers liable because employers don't even have to provide these plans if they don't want to.

While it is all well and good to suggest that we give people new remedies and rights, we have to balance that out with the realization that it is going to have some repercussions.

If we go too far and do too much to penalize employers, they are going to walk away from health care coverage. Instead, as pitiful as some of these stories are that we have heard over the last several days about what has been done to individual patients, I hope we do not come back in a couple of years and have to listen to people who have no insurance at all because of legislation we passed driving employers—and small employers—out of the health care business. That is a real possibility, and nobody wants that. We need to be careful.

I suggest that if we really want to carve employers out of the lawsuit business, if we did not mean to cover employers, all we need to do is say so. All we need to do is provide an exemption for employers the same way we provide exemptions for doctors and the same way we provide exemptions for treating hospitals. We provide blanket exemptions for them, but we have to go through all these various pages of rigmarole and definition to try to figure out when an employer who is providing this health care coverage can be sued and when he cannot be sued.

The law of Texas has been upheld. The President's name has been invoked. The law of Texas has been used as an example. The law of Texas exempts employers from their plan.

The concern is there is a group of employers who are basically self-insured who handle these claims on the front end themselves. They do not hire this out. They do it themselves. I believe if you talk to professionals in the industry, they will say that some of the best plans with some of the most comprehensive coverage of any of the plans out there are these self-insured plans. One of the reasons may be that they cut out the middleman. They do not have an HMO to deal with at that stage of the game, and they provide good, comprehensive coverage for their employees.

By definition, they are making decisions on the front end. By definition, under this bill, from the day it is passed, they will have exposure. One might argue that is a good thing or one might argue that is not a good thing, but there is no question with regard to those plans, some of the better plans out there—because employers decided to provide these plans, they wanted to cover their employees, they wanted to do it themselves—that they will be exposed.

One has to ask oneself, what are they going to do the day after this legislation is passed? Are they going to continue to hold themselves for this kind of additional liability? Are they going to contract it out to a third person and pay the additional freight to get them to assume the liability, driving up costs all along the way? I do not know what they will do. I know what they will not do. They will not stand pat.

The things we do in this Congress have an effect on the lives of the American people, whether it be raising taxes, lowering taxes, or whatever. There will be some repercussions in terms of the behavior of these employers. I hope it is not to wind up with less coverage and fewer of these good plans.

One says: They are not going to have anybody to sue if you do not have HMOs and the employers are involved on the front end of it. This bill has set up an elaborate external review entity.

My colleagues say we do not talk enough about patients. This legislation sets up a review entity that allows an independent qualified individual or group of individuals to make decisions with regard to whether or not that employee is being treated fairly. That is a strong move in the direction for patient protections. If we stopped right there and did not do anything else, that would be a major move in this legislation, away from the simple ERISA coverage we have right now.

This bill spends 10, 12 pages setting up this external review process and the external review entity on how they have to be qualified, how they have to be independent, how we have the Secretary looking over their shoulder, all of which is designed to protect the patient.

Under this system, if the entity rules against coverage, then they can go to court and sue, or if he rules for coverage, it goes to another independent individual who is the independent medical reviewer. So there is another level of independent protection for the employee.

It is not as if they are out there hopeless and helpless and totally at the mercy of the employer. The employer may have had some discretion on the front end for sure and made some decisions for sure, but then he goes through this independent appeals process where people who have no relationship with the employer make the decisions as to whether or not there is coverage.

We have exempted doctors. We have exempted hospitals. HMOs are not different in this country from many other entities and entities that have been created in this bill. We exempt States from certain lawsuits. We exempt the Federal Government from certain lawsuits.

The Senator from North Carolina and I are exempted from the things we say in this Chamber. We are protected because there are tradeoffs. Everybody knows that. We make decisions because of public policy reasons to make tradeoffs. If we want to encourage certain conduct, we are willing to make tradeoffs the other way.

It is unfair, when we are in the context of a particular area, legislation dealing with health care, to pick and choose as to among whom we are going to make those tradeoffs, especially if we are giving exemptions to the people who are providing health care—doctors and hospitals—and we do not give exemptions for the people who are providing the health coverage, the employers.

That is the gist of what we are dealing with, and hopefully we can work out some agreement.

My bottom line is, if you do not want to cover employers, and if you believe we may be in danger of causing some good folks to say it is not worth the additional headache, it is not worth the additional exposure, it is not worth the

additional expense to set up different entities to protect ourselves, if we are concerned about that, we need to take that into consideration with any resolution, not to mention the exposure this bill has under other provisions of ERISA.

We have not even talked about that. At least I have not. I have not heard any discussion about that. Employers have exposure under COBRA, under HIPAA, under other areas of ERISA that have nothing to do with health coverage. They have employer exposure if they make any mistakes in dealing with that.

Remember we debated Kennedy-Kassebaum, and we decided people needed to have more portability with their insurance. We decided the fair thing to do was to give them more portability for their insurance and included a penalty of $100 a day plus injunctive relief for an employer who did not behave himself. We debated this liability issue then, and we decided not to do it.

Now what we are doing parenthetically in this HMO bill is bringing back Kennedy-Kassebaum and bringing back COBRA and saying in addition to these penalties we put on the employers when we considered that, we are now going to open that up to litigation and lawsuits. That is a major step, and it should be done only with maximum consideration, and it must be considered in the context of any treatment of employer liability in any compromise we might fashion.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I thank the Senator from Tennessee for what he just said. It was very good for me to let him respond to the other people who have spoken. I particularly suggest to the Senator from Tennessee that there is probably not as much concern on the part of the proponents of this legislation as to whether or not some of the self-employed plans will be abandoned if this bill passes because the Washington bureaucrat has an answer to that problem.

That problem is, we will do what President Clinton suggested in 1993 in his health care plan. We will mandate that every employer has to have insurance for their employee. Just mandate, don't worry about whether or not they can afford to do it. Just pass a Washington mandate that you have to offer this type of insurance.

However, 42 million people in America today do not have health insurance. That number will increase if this bill passes as it currently reads. There will be things done in this bill that will not cause that to happen, if people on the other side of the aisle are willing to compromise. However, if they don't compromise, for these 56 million people who are in self-insured plans, if some of those are abandoned by employers because they don't want the threat of a lawsuit hanging over their head, that number will be increased.

That was suggested in 1993. That was not well received.

It has been suggested after Senator BOND spoke that he never mentioned the word ''patient,'' as if he has no concern about patients being treated fairly and right. That is what Senator BOND's speech was all about. He was concerned that if this legislation passes as it is written, that employers that have self-insured plans—that don't have to offer those plans if they don't want to, but they do offer them because they want to have a good fringe benefit package for their employees—if they drop those for their employees, there are employees who will become patients some day who will not have coverage.

This bill is all about concern for patients. It is not about concern for employers. It is concern for employers that want to offer plans in a self-insured fashion, that they will be encouraged to do it as they have already done for 50-some million employees, and continue, and keep the plans viable.

Why would a family-owned ma-and-pa's plastic corporation, or a ma-and-pa's family-owned machine shop providing self-employed plans for employees, why would they jeopardize the continued existence of the family-owned business if they could be sued under this legislation? What they are going to do is protect what they worked hard for: building up a business, employing people, being the backbone of their local community. That is what the ma-and-pa plastic shop and the ma-and-pa machine shop is all about. They have created this business. Maybe it was created by a grandma and grandpa or mom and dad. It could be in its third generation. This is a family-held business that provides jobs, perhaps for dozens or hundreds of people. They want to provide fringe benefits for their employees, of which health insurance is the most important fringe benefit. They offer it in a self-insured fashion because that is the best way for them to do it. Why would we want to jeopardize it?

Senator BOND was followed by the remarks of the Senator from Tennessee, that this is what this legislation is all about, making sure employees have the fringe benefits of health insurance, with all Members imploring we want to do something for the 42 million people in America who don't have it. If we want to do something for the 42 million people who do not have insurance, and pass legislation as we did with tax credits to incentivize them to buy health insurance, why would we want to put in jeopardy the 50-some million people who already have it through self-insured plans?

It is talking out of both sides of Congress's mouth. On the one hand, we are concerned about 52 million people. We have legislation introduced to do something else about it; on the other hand, we are dealing with a piece of legislation that could put in jeopardy the health care plans of 50-some million people who already have what we think the other 42 million people ought to be encouraged to have.

It is concern over employees having health insurance, and giving those people, if they become patients, the treatment they deserve.

I don't hear concern about patients getting treatment. I hear concern about lawyers getting tribute. We should be concerned about the patient and protecting the self-employed health insurance plans that 50-some million people have as part of that process.

I hope we will consider the speeches by the Senator from Missouri, the Senator from Tennessee, to be speeches concerned about the employees and concerned about those people who become patients getting treatment. That is exactly to what they are speaking. I don't know how anybody could miss that point.

I didn't come to the floor to speak about that aspect of this bill. I came to the floor to speak about a motion filed by my friend, Senator FRIST, on Friday, to commit the bill before the Senate, the Kennedy-McCain bill, to the Health, Education, Labor, and Pensions Committee on one hand and the Finance Committee on the other hand, and to do it with specific instructions from the entire Senate that this bill be reported back to the Senate within 14 days. I come to this conclusion because I am troubled that the Kennedy-McCain bill has bypassed these relevant committees and has been brought directly to the floor without one hearing, without one markup, and most importantly, without the public input into this particular bill that every bill ought to have.

First, I strongly believe patients' protections are critical to every hard-working American who relies on the managed care system. We need a strong and reliable patients' rights bill, and I am supportive of this effort 100 percent. What we don't need is a bill such as the Kennedy-McCain bill that exposes employers to unlimited liability and either eliminates that insurance or dramatically drives up the cost of that health insurance or perhaps being cut back or eliminated. Instead, I believe we should protect patients by ensuring access to needed treatment and specialists, by making sure each patient gets a review of insurance claims that may be denied, and above all, by ensuring that Americans who rely on their employers for health care can still get this covered. I am confident we can reach these goals. However, the very fact that our leadership brought the Kennedy-McCain legislation directly to the floor, without proper committee action, violates the core of the Senate process.

I know my colleagues on the other side will waste no time in accusing me of delaying this bill. But the truth is, had the relevant committees been given the opportunity to consider Kennedy-McCain legislation in the first place, I would not be raising these objections. By bringing this bill directly

to the floor, the message seems to be very loud and clear that the new chairmen—meaning the people who just have become chairmen because of the Democrat majority in the Senate, and under new leadership—are somehow merely speed bumps on the road to the floor.

During my tenure as Finance chairman, Senator after Senator urged the committee process be upheld regarding tax legislation. I listened and I acted. I resisted strong pressures to bypass the Finance Committee as we considered the greatest tax relief bill in a generation. I forged a bipartisan coalition and a consensus, which I believe made it a much better bill. Ultimately, we were able to craft a bill that benefitted from the support of a dozen Members from the Democrat side.

The Finance Committee has proven it can operate in a bipartisan fashion and craft good legislation in a timely manner. We are committed under this motion to report legislation out of the Finance Committee in 14 days. The fact that the chairmanship of the committee has changed I do not believe will in any way affect our ability to work in a good, bipartisan manner. So I stand before the Senate as someone who has seen the importance of the committee process.

The Kennedy-McCain legislation treads on the Finance Committee jurisdiction in ways that are by no means trivial, so I will explain. The Kennedy-McCain bill reduces Federal revenues by $22.6 billion, something that should only be done if that motion comes from the Senate Finance Committee. Nearly one-third of this revenue loss is offset by changes in programs within the jurisdiction of the Finance Committee. Section 502 of the bill before us extends customs user fees generating $7 billion in revenue over 8 years.

You may recall when Congress first authorized these customs user fees, the avowed purpose was to help finance the cost of customs commercial operations and improvements. If these fees are to be extended—and I emphasize ''if''—it should be done in the context of a customs reauthorization bill. This is clearly an issue under the jurisdiction of the Finance Committee.

Most of my colleagues know firsthand the financial pressures put on the Customs Service. From Montana to Delaware to Massachusetts, Texas and California, there is a dire need for funds to modernize the Customs Service. Yet the Kennedy-McCain legislation diverts money intended for customs and uses it to pay for this bill. This is not what Congress intended when these customs fees were increased.

Before authorizing the collection of $7 billion in customs user fees, it seems to me the full Finance Committee should have an opportunity to carefully review, carefully analyze, and of course debate the implications of this move on the future of the Customs Service and customs modernization.

Anybody who has been through customs knows how much time is wasted there, how much gets by the customs officials because they do not have the electronic and technical equipment that is necessary to do their job right, in a fashion that does not inhibit the free and easy transiting of American citizens into and out of our country.

In addition, section 503 of the Kennedy-McCain bill delays payments to Medicare providers, which generate $235 million to help offset the losses of this bill.

No. 1, customs fees; No. 2, delaying payments to Medicare providers to the tune of $235 million.

Let me remind my colleagues, when they hold their town meetings, invariably they have to have people from doctors' offices, from hospital organizations, and from nursing homes already complaining, why doesn't the Federal Government pay its bills on time? Why are they a cash cow, an operating fund for the Federal Government while they are borrowing money at the local bank to keep their operation going because the Federal Government does not pay its bills on time?

It is ironic that while many of us are spending significant amounts of our time working to improve Medicare's effectiveness and efficiency, this bill actually takes steps to exacerbate the frustrations so many providers already experience with delayed payments in Medicare today. So, as you can see, the provisions of this bill go a long way to undermine the Finance Committee's jurisdiction, not only on customs but also in the area of Medicare.

In this first action by new leadership, the committee system and the committee jurisdiction are being tossed aside. I have heard once or twice from the other side that the justification of this behavior is based on the patients' rights debates in 1999, 2 years ago. There is continued talk about how the 1999 patients' rights bills were rammed through this Senate by Republicans.

I want to say that is simply not the case. In 1999, the patients' rights legislation underwent a series of hearings in the Health, Education, and Labor Committee, and ultimately there were 3 days of markup. Let me repeat: 3 days of markup in the Health, Education, Labor, and Pensions Committee. Only after the bill was reported out of committee was it then brought up.

Let me hear no discussion on this point. There is no justification for the conduct we are having on this bill. It is a fact that the Kennedy-McCain bill before us today has never undergone the committee process that the 1999 Patients' Bill of Rights did.

Finally, let me repeat that for those who argue that this is just a delaying tactic, they are simply wrong. The motion to commit instructs the Health, Education, Labor, and Pensions Committee on the one hand and the Finance Committee on the other to report this legislation within 14 days. I repeat, if this bill had been handled properly through the committee in the first place, this motion would not have been necessary.

This motion is not about delaying, it is about ensuring that we have a good patients' rights bill with bipartisan support that is subject to the benefits of the committee process and that the jurisdictions of the Health, Education, Labor, and Pensions, and the Finance Committees are respected. In other words, it pursues a point of view I tried to raise so much when we had the tax bill on the floor in late May. As I managed that bill, I said I hoped the work of Senator BAUCUS, on the part of Democrats, and myself on the part of Republicans, would bring a bipartisan bill before this committee that would serve as somewhat of an example of not only what can be done in an evenly divided Senate to promote good public policy but to promote good public policy in a divided body. Obviously, it must be done in a bipartisan way.

We showed that it could be done in the largest tax bill to pass this body in 20 years. If we did it on taxes, surely we can do it on a Patients' Bill of Rights. I say that not just for the Finance Committee. It is my belief the Health, Education, Labor, and Pensions Committee can do that as well on their part, serving 100 Senators rather than having just a handful of people in this body decide the committee system ought to be thrust aside in the case of a Patients' Bill of Rights, and bringing a bill directly to the floor of the Senate.

I have talked a lot about jurisdiction, but I want to talk about why I am raising these jurisdiction issues because that is a very important point.

For me, the question isn't about inside baseball kind of topic like jurisdiction, which is necessarily important. But it is about two deeper issues that are even bigger than this bill.

I know the public watching this debate, as we are told, is pretty disturbed when they only hear about Members of the Senate talking about the intra-institutional issues. That is what I have been talking about today to some extent. But on the other hand, I know the people of this country are interested in making sure that we protect patients' rights when they are up against the insurance company and feel hopeless about the insurance company not giving them the proper treatment which they are entitled to. The proper treatment the doctor-patient relationship demands. People want to know that what we are doing is improving their life.

So I spend a little bit of time on intra-institutional procedure to say that having this bill go through the Health, Education, Labor, and Pensions Committee on the one hand, and the Finance Committee on the other hand, has something to do with drawing up a piece of legislation that will get these patients the protections to which they are entitled.

What I am talking about can be summed up in two related questions.

The first is: Why are we here? The second is: What is my specific role with respect to the people I serve in my State of Iowa and each Senator in their respective States in the larger national interest of seeing that patients are protected when they are up against an insurance company?

The first question gets at our role as Senators with respect not only to this bill but any legislation. The second refers to our role as committee Members.

So the first question: Why are we here?

Just like the other 99 Members of this body, I wake up every morning and thank the people of my State for the privilege of representing them here in the Senate. Every action I take is an effort to improve the lives of folks back home. Many times I improve it by reducing the role of the Federal Government in their lives. As a conservative, that is generally my preference. On the other hand, there are times that Federal legislation is needed to expand the Federal role to help on a particular problem. This is an example—the Patients' Bill of Rights.

With respect to any legislation but not just this one, if I believe it helps folks back home, I am going to push as hard as I can to see that the legislation becomes law. There is no more satisfying event than seeing the fruits of our labor revealed in ways that changes the lives of real folks back home.

When I approach an idea and I think it is a good idea, my goal is to get it across the goal line. That is true with respect to this bill, the Patients' Bill of Rights.

I think at this particular point in history the American people want results, and particularly on this issue. They want less partisanship, more action, and more thoughtful debate. People in Iowa expect Republicans and Democrats to work together, and to work together in conjunction with the President of the United States to get things done. They expect us as their Senators to do the same thing.

Iowans expect us to refrain from playing partisan politics and to be serious legislators.

I offer that as friendly political advice to many colleagues, particularly those on the other side of the aisle who seem to be visiting Iowa frequently these days. In fact, a surprising large number of Democrat Senators are coming to Iowa.

I approach the tax cut bill as a serious legislative effort. My goal was to work with Republicans and Democrats to get a bill out of the Finance Committee. With Senator BAUCUS' support I did so. That bill improved President Bush's basic proposal.

With respect to the particular policy areas that is the focus of the Patients' Bill of Rights, I start off with a view of how I can make good public policy become law. That particular policy is the arena of Senator KENNEDY on the one hand, and Senator GREGG on the other in the Health, Education, Labor, and Pensions Committee.

If my motion is agreed to, it is up to Senators KENNEDY and GREGG to use the Health, Education, Labor, and Pensions Committee to process the bulk of this legislation through their committee. That is their call.

This legislation faces a potential Presidential veto. That potential Presidential veto doesn't need to be there. It doesn't need to be hanging over our head as a cloud as we work on legislation.

That is where the committee process is very important because maybe the product of the Health, Education, Labor, and Pensions Committee markup would not face a potential Presidential veto. Maybe some of the ambiguities that we have heard debated on the floor of the Senate this afternoon would be cleared up.

Does anyone really think that by following regular order and going through the committee process the bill before us would be in worse shape? Would we have better known the administration's position if it had been in committee? Would we be sitting here wondering where this bill might be going, as we have heard countless numbers of Senators talk about how we can work out a compromise?

Would we be hearing something more compelling from the bill's advocates other than that anyone who opposes the bill is delaying this bill?

I guess one could argue that there is not much use in delaying a bill that the President is going to veto; that we ought to just quickly pass it.

With the proper preparation and the proper compromise—and the committee system is the place to do that—we could avoid a veto, and we should work to avoid a veto.

You can understand that the Finance Committee knows how to do this. Senator BAUCUS and I put a bill out, and we defeated all of the amendments to destroy that bill—close to 50—over the course of 3 days on the floor of this Senate. So it can be done right in committee.

I would like to go back to the question of why we are here in this particular shape.

I tell the folks in Iowa who sent me here that I am trying to get a Patients' Bill of Rights that we will have signed; in other words, that doesn't have a potential veto hanging over its head as the bill we are debating today does. We would get a bill that would become law and provide them with real protections; most importantly, a bill to guarantee treatment for patients, not tribute for attorneys.

In my view, bad process has impaired what could otherwise be a good product, a bipartisan, broadly supported Patients' Bill of Rights.

But, once again, my motion defers the exact language of the bill to the Members of the Health, Education, Labor, and Pensions Committee to resolve these issues. That is the place it should be done.

My second question: What is my specific role as a committee member?

My role is to best use my position as a senior Republican on the Finance Committee to protect and to promote policies that help Iowans and the Nation at large. I have a responsibility to advance and to protect policy interests within the jurisdiction of the Finance Committee.

There are policy implications in this legislation that are within the jurisdiction of my committee, the Finance Committee. These policies deal with three major subjects of the Finance Committee: trade, Medicare, and tax.

It is my responsibility to Iowans and also to my Finance Committee members and to Members of the Senate as a body to be vigilant on these Finance Committee matters. I cannot let these things slip by, nor should I let them slip by. That would be very easy to do. But it would also be very irresponsible.

My motion provides the Finance Committee with the opportunity to do its job on trade, Medicare, and healthcare-related tax issues. This bill affects each of these to some extent.

So I note that I am in some pretty good company when it comes to the value of the committee process.

I would like to refer to a couple quotes that illustrate the importance of my point that we should not bypass the relevant committees of jurisdiction. These quotes come from Members who are very critical of the way the Senate acted by bypassing the Budget Committee on the budget resolution process a couple months ago.

I remind those Senators of some of their comments about the importance of going through the committee process in the Senate. These comments, as I said, were related to the budget. Now let me quote the new chairman of the Budget Committee, Senator CONRAD. This is a quote from a couple months ago:

> I think it would be a profound mistake for us to miss the chance to have the Budget Committee do what it was designed to do, which is to make the work of the larger body easier because of the concentration of efforts of the members of the committee on the responsibility they have.

I quote the distinguished Senator from West Virginia, the now-chairman of the Senate Appropriations Committee. He always shows great eloquence and devotion to this institution in his comments:

> Why have we seen fit in our constitutional system to have committees? Why? If we are going to have committees, why don't we have markups on bills and let Republicans and Democrats hammer it out, hammer out the measure on the anvil of free debate? Why does any chairman want to say to the committee, I am not going to have a markup, period?

These comments are relevant no matter whether Democrats or Republicans are in the majority in this body. Now, in a sense, since the changes of 3 weeks ago on the chairmanships and the majority of this body, the shoe is on the other foot. I will be curious to

see whether these Members, and others who were so critical of the budget resolution process, will stick to the same rationale now that the committee process is being short-circuited for a measure they might be supporting.

I bring up these comments because they reflect a well-founded sentiment of two very serious legislators whom I respect, Senator BYRD and Senator CONRAD. The committees are kind of like laboratories or, as Senator BYRD said, like anvils. They are a place to test ideas. They are a necessary part of serious—and I underline the word ''serious''—legislating.

Senator CONRAD indicated that there is a concentration of member knowledge and expertise in each of these committees. Is it exhaustive? Absolutely not. Am I saying that a bill cannot be improved with amendments on the floor? Of course, no legislation is perfect from that standpoint. But my point is, the legislative product, especially on something as important as health care, should start in the relevant committee.

So my motion would allow the Finance Committee to assert its proper role.

Let's turn to the specific Finance Committee matters that are implicated with this legislation and, hence, the reason for my motion to commit. The first is trade. As I said previously, the customs user fees have been extended to offset the cost of the Patients' Bill of Rights. We are talking about money that was raised by the Senate Finance Committee. Customs fees—getting in and out of the country, getting your baggage inspected, getting your boxes inspected—that money was raised to help the Customs Service and particularly for their modernization. Now they are talking about taking some of that money and putting it over here to finance a Patients' Bill of Rights. So should customs people be concerned? Should the Senate Finance Committee be concerned because we have jurisdiction over that legislation? Should passengers and travelers in and out of the United States be concerned when they are in long lines to go through customs? Of course they should be concerned.

The Finance Committee authorizes and oversees the Customs Service. Customs may not be as politically compelling right now as a Patients' Bill of Rights, but it is very important to all of our constituents. Millions of us, and our goods, come through customs. Customs also protects our people from the entry of illegal products. For instance, customs checks for illegal drugs. Also, customs protects our farmers and consumers from diseased plants and animals.

Just think of the ground zero attitude that is taken by customs today to make sure that the BSE disease, the mad cow disease, prevalent in England and Europe does not come into the United States.

We need to have a customs operation that protects America. It is to be done at the point of entry. The amount of money we spend on that, and the technology our customs employees have, has something to do with whether or not they can do their job right and protect us. The quality of the Customs Service affects us all. So those of us on the Finance Committee do not approach customs matters haphazardly.

As those of you who have traveled recently know, customs systems modernization is a problem we have to tackle. If we are to extend the fee, we should modernize the Customs Service. Customs fees should not be used to finance a Patients' Bill of Rights.

The Health, Education, Labor, and Pensions Committee has had no hearings on Customs fees. There is a reason for that. The committee does not have jurisdiction over the Customs Service. Yet here we are with a bill that has not even been through the Health, Education, Labor, and Pensions Committee, and that bill is offset by a revenue source from another committee, our Finance Committee. Any Finance Committee member should be disturbed with this usurpation of our jurisdiction. Any Finance Committee member who supports this action has ceded away his or her role with respect to an important Finance Committee matter.

The bottom line is, the Finance Committee, including all 20 of its members, has a duty to our constituents, and all of America, to make sure that the Customs Service isn't dealt with in a faulty manner. To the degree that we ignore this duty, we are being negligent. Again, that is the main reason for my motion: To let the committee members do our job.

There is a second Finance Committee policy item covered by my motion. This legislation moves the payment date for certain Medicare providers by just one day. No big deal? Put it in its context. Medicare reform is something we are talking about right now in the Finance Committee. It is an important topic, particularly because we want to give a prescription drug program to seniors under Medicare. Payment structure and dates are important questions that should be considered in the context of Medicare policy, not as some sort of an offset—which is the word we use—for unrelated legislation, because, in fact, this is an offset for an unrelated subject, the Patients' Bill of Rights.

We ought not to mess with Medicare this way. This bill, pulled from the calendar by the majority leader, gets around Senate rule XV. That rule provides a point of order if one committee treads on the territory of another committee. The reason for the rule is to allow committees, such as the Finance Committee, with the expertise on a subject, such as Medicare, to develop the policy first.

Why would Senate leaders, who expect the Finance Committee, in a bipartisan way, to report out a prescription drug bill for senior citizens connected with the Medicare Program, and, hopefully, with some dramatic improvements in Medicare, expect us to do that but not ask our advice on changing the payment date for Medicare?

We ought to develop it within a policy context by the people on the committee who know how to do it and do it right. Then again, as with trade, my motion preserves the right of the Finance Committee to deal with Medicare. It would allow Finance Committee members to review the change in Medicare provider payment dates and make judgments of whether such a date change is sensible or not.

As I said before, all of us have heard complaints from doctors, hospitals, and nursing homes that the Federal Government never makes Medicare payments timely. Our health providers already feel as though they are financing the Federal Government because of these late payments. This bill exacerbates that problem by creating further delays. The Finance Committee understands this problem. We will do it right if it needs to be done. My motion simply lets the Finance Committee members do the job they were appointed to do by the 100 Members of the Senate.

Now I turn to the third Finance Committee policy area implicated by this legislation, and that is the tax policy area. There are no Tax Code changes in this bill. The history of this legislation is an important element. The history of this legislation is that an important element is greater health care affordability and access. That objective has, in past legislation, been met through tax incentives.

This bill's principal sponsor, for instance, the Senator from Arizona, Mr. MCCAIN, recognized the importance of these tax incentives in the debate, as you heard him speak eloquently over the last several days. I also happen to believe that tax incentives for health care access and affordability are a very important part of health care reform. They are the basis for helping 42 million Americans who do not have health insurance today to get some health insurance. To this end, I have, for instance, proposed changes in the tax treatment of long-term care insurance and expenses.

Some might ask: Why, if I support health care-related tax cuts, did I oppose Senator HUTCHINSON's amendment on self-employed insurance? Well, it is a very good question, one I should be responsive to and answer.

The answer is, most obviously, that Senators HUTCHINSON and BOND have an excellent proposal, one I strongly support as a policy of their amendment. But I opposed the amendment last week because the underlying bill is not a Finance Committee bill. In this case, the underlying bill is not a tax bill. So the third reason for my motion is to provide the Finance Committee with its rightful opportunity, through its tax-writing powers, to add a health care-related tax cut title to this legislation.

If this bill had gone through our committee, that would have been done. Or if it hadn't gone through our committee but we had had time, our committee would have voted out such an amendment, I am sure. There is no doubt that Senator HUTCHINSON's amendment, along with a number of other good health care-related tax cuts, would be on the floor right now being debated as part of this package.

Once again, my motion let's us do this legislation the right way, by letting the Finance Committee members do their job. From that standpoint, again, I stress the bipartisanship of the Senate Finance Committee.

At my urging, Chairman BAUCUS agreed to consider a package of health care-related tax cuts in an upcoming Finance Committee markup. So even if my motion fails, we will be back on the Senate floor in the near future with a Finance Committee package of health care-related tax incentives.

In explaining the reason behind my motion, I talked about what the Finance Committee might or might not do if this motion is adopted. Just as importantly, I believe there are some serious negative implications if my motion is defeated in terms of how the Senate does the people's business. Let me turn to a couple hypotheticals to illustrate the problem my motion gets at. These hypotheticals, hopefully, will disturb all Members.

Turn the clock back a couple months and hypothesize that Senator LOTT, with my cooperation, were to move a version of the Finance Committee's education tax relief proposal. Also, let me say that the revenue loss from those tax cuts were offset by a change to a HELP Committee program, something like student loans. In other words, I am saying let's just suppose hypothetically that Senator LOTT wanted some proposals from our committee to bring to the Senate floor and we were going to offset them with programs under the jurisdiction of the HELP Committee.

Under this scenario, obviously, people on that committee could be very angry. They would have every right to be angry because that kind of maneuver on my part, as a member of the Finance Committee, would be wrong. They would have a right, then, in the Health, Education, Labor, and Pensions Committee, to be outraged. The Finance Committee would have no business in a bill pulled off the calendar such as this one of undoing a student loan policy under the jurisdiction of another committee. It would be wrong from two points, both substantive and procedural.

What has happened here is just as bad. The Finance Committee members who support the process that has brought this bill before us should take a ''beware'' position. Supporting the process means they support disenfranchising their own committee. By contrast, anyone who supports my motion recognizes the legitimacy of the committee system.

I have one last hypothetical. This time let's talk about another sponsor of this bill. Let's go back to Mr. MCCAIN, the good Senator from Arizona, and his Commerce Committee. Under this hypothetical scenario, Senator DASCHLE, with Senator BAUCUS's cooperation, would bring a bill to create a special form of tax credit bond for Amtrak. That issue has been before us before. A part of that legislation pulled from the calendar, such as this bill, would suspend the Amtrak reforms. That is within the jurisdiction of Senator MCCAIN's Commerce Committee or, as I could say, the Presiding Officer now, the Senator from South Carolina.

I hope these Senators would be angry and rightfully so. I would expect them to protect a policy important to the Commerce Committee. Amtrak reform is that policy and that subject. These Senators would not want an alteration of the Amtrak reforms railroaded through the Senate on an unrelated bill drafted by a committee other than their own committee, the Commerce Committee, I would suspect.

In both of these hypotheticals, the rights of committee members would be violated. These cases are no different than the case before us, the case of jurisdiction and sources of revenue from the Finance Committee being robbed without the consideration of the Finance Committee to fund a piece of legislation, the Patients' Bill of Rights, coming out of the Health, Education, Labor, and Pensions Committee.

The two hypotheticals are disturbing because both involve dubious procedural and substantive policy decisions. Both hypotheticals short circuit important policy decisions and discussions.

A faulty process usually leads to faulty substance. So I have taken a long time to tell you what my motion is all about. It corrects the faulty process that has ensnared this Patients' Bill of Rights, which should otherwise move to the floor only after debate in the committee. And if it had gone through the committees, I believe it would move through the floor proceedings very expeditiously.

Mr. THOMPSON. Will the Senator yield for a question?

Mr. GRASSLEY. Yes.

Mr. THOMPSON. Let me make sure I understand the Senator. This bill that we have been considering has not gone through the committee process this year; is that correct?

Mr. GRASSLEY. That is correct.

Mr. THOMPSON. The Senator mentioned the prerogative of the committee. Having been a chairman, I understand what he is talking about. From the standpoint of patients and the Patients' Bill of Rights, which we have been here discussing today and Friday in terms of who was covered and who wasn't covered, when employers had liability and when they did not, are these the kinds of things that get hashed out in committee?

Mr. GRASSLEY. Obviously. From the standpoint of the Health, Education, Labor, and Pensions Committee, these things were debated and hashed out in 1999 before the bill came to the Senate floor.

Mr. THOMPSON. But not this year.

Mr. GRASSLEY. Not this year.

Mr. THOMPSON. In 1999, were there any liability provisions in that bill? I don't believe there were any liability provisions in that bill.

Mr. GRASSLEY. Right, because I think there was due consideration to the tradeoff between the people who don't have insurance now—42 million people—and the people who do have insurance through self-employed plans, and that there was within the committee a real concern about whether or not those employers might drop their insurance—not that we are concerned about the employer, but we are concerned about the employee if they are not going to have health insurance.

Mr. THOMPSON. What I am getting at is, is it not true that the liability parts of these bills have not been referred to the Judiciary Committee?

Mr. GRASSLEY. That is absolutely right. I thought the Senator was talking about the Health, Education, Labor, and Pensions Committee. These would also be within their jurisdiction.

Mr. THOMPSON. Not only has the Finance Committee not had a chance to consider their portion, the Judiciary Committee has not had the opportunity to consider the liability portion, which is so controversial. We are hashing out right now what this thick bill means regarding liability. It has never been in the appropriate committee to go through the natural, normal committee process on a bill of this importance; is that correct?

Mr. GRASSLEY. Yes. I am a member of the Judiciary Committee, and we would look at these things and give them the due consideration they ought to have. I know the Senator from Tennessee has served on the Judiciary Committee and he knows that is a very important part of our work.

I thank the Senator from Tennessee for bringing those points to us because he reminds me that not only has it not been considered by the Health, Education, Labor, and Pensions Committee, which I have been talking about, and the Finance Committee, because I am a member and the senior Republican on that committee, but also a third committee should have considered perhaps the most controversial part of this legislation before us, and that has not had the due consideration that important changes in law and liability ought to have in this Chamber.

I am just about done. I have spoken now for a long time on my motion to commit to the respective committees. I guess I am being reminded my motion to commit is to the Health, Education, Labor, and Pensions Committee on the one hand and to the Finance Committee on the other. Maybe my motion

should be broadened—although I am not going to do that at this point—to the point of the Judiciary Committee taking a look-see at the liability provisions as well.

A vote for the motion to commit would put this bill on the right track. It lets members of these committees do the job that we were sent here to do. The Health, Education, Labor, and Pensions Committee and the Finance Committee have a great track record in this Congress. They will continue to do so. Taking this bill through the relevant committees will only improve it and ultimately make it a better law, and one that is not in any way subject to a potential—I predict, not subject to a potential veto threat, as the legislation now is.

After all, isn't getting the job done, getting a good Patients' Bill of Rights, what the people really want—a good law that is produced in a proper way, a bill that will guarantee treatment for patients, not a tribute for lawyers?

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. EDWARDS. Mr. President, let me say a few words about the bill and tell a story about a patient in North Carolina, and we will have an amendment to offer. First of all, the entire purpose of this legislation is to change the law so that the law is on the side of patients and doctors instead of being on the side of the big HMOs, where it has been for many years. We want health care decisions made by families who are affected by them, and by doctors and nurses who have the education and training to make those decisions. It is just that simple.

That is the reason we create the rights among all Americans with health insurance or HMO coverage to have more control over their health care decisions. That is what this is about—having those rights be enforceable because if they are not enforceable, they don't mean anything. That is why we have specifically provided for access to specialists by families; access to clinical trials, if they need that; and being able to go to the emergency room directly without having to call an HMO or a 1–800 number before going to the emergency room—that is the last thing in the world any family ought to have to worry about before going to the emergency room—making sure a woman can see an OB/GYN as a primary care provider.

These rights are aimed at giving patients and families more control over health care decisions. We have all heard the horror stories of legitimate claims being denied by HMOs. That is what this bill is aimed at—putting the law on the side of the patients and on the side of the doctors.

In addition to these substantive rights, we have provisions to make those rights enforceable, so that they mean something. We have an internal review process. First of all, the HMO decides in the first instance whether they are going to cover a claim. If that is unsuccessful, then we have an internal review process within the HMO to get that decision reversed. So if a child is denied the care that child needs, then the family has somewhere to go. These families who are up against big insurance companies, big HMOs, big bureaucracies, under present law they can't do anything. I say this to my colleagues who have been here.

Some say we need to spend more time on this issue. This issue has been around for years now. Every day that we fail to enact legislation and have it signed by the President, there are thousands of people in this country who are being denied the care they need. This is an issue that we need to do something about and stop talking about. It should not be a political issue.

Senator MCCAIN and I have bipartisan support, consensus support for our bill here in the Senate and in the House of Representatives. We have virtually every health care group and consumer group in America, including the American Medical Association, supporting our legislation. These people deal with these issues every day. Doctors get to see what is happening to their patients, and there are bureaucrats sitting behind desks 200 miles away, never having seen their patient, telling them what their patient needs. We have families all over this country who know that their child needs a test, but some bureaucrat five States away, sitting behind a desk somewhere, says they are not going to pay for it.

That is what this legislation is about—so that when people have health insurance and they have HMO coverage, it means something. If they get rejected arbitrarily and are treated unfairly and improperly by a big HMO, they would have the power, finally, to do something about it.

That is why we have an internal review process—to reverse the decision within the HMO—and then if that does not work, we have an independent third party review, a panel of doctors, who can come in and say, that is wrong—the doctor was right, the HMO was wrong—and order the treatment be provided.

None of these things exists today. Today, if a doctor orders a test for a 5-year-old child with cancer and if an HMO says, ''We are not paying for it,'' they are stuck. There is no internal review process; there is no external review process.

What chance does that family have against a huge insurance company? That is what this bill is about. It is about a very simple idea: that HMOs and insurance companies ought to be treated as everybody else; more importantly, putting the law finally back on the side of patients, families, and doctors so they can do something about a wrongful decision by an HMO or an insurance company. That is what this debate is about.

The HMOs have been trotting out every conceivable obstacle to something happening. Anybody who turns their television on will see the ads they are running right now, all these scare tactics and old rhetoric. They have been using it for years. They just want to do everything they can to keep their special status, their privileged status. They like things the way they are. They do not want patients and families to have any power.

We are going to do something about it. I will tell you something else: The families, the children, the patients do not have lobbyists in Washington; they do not have millions of dollars to buy ads on television. They are counting on us to represent them. They are counting on us to do something for them. That is what this debate boils down to: You are either on the side of maintaining the big HMO special status or you are on the side of letting families, doctors, trained people, make health care decisions.

It is not an accident that the American Medical Association, hundreds of health care groups, doctors groups, and consumer groups support our bill. It is not an accident that most of the Senate supports our bill. It is not an accident that most of the House of Representatives supports our bill.

There is a consensus in this country that something needs to be done. What we have to make sure that we get past all the old rhetoric, all the old scare tactics, all the propaganda that is put out by the HMOs. They have huge resources and their voice is heard loudly and clearly in this debate.

Our responsibility is to make sure the voices of the families of this country who do not have big money, who do not have anybody lobbying for them in Washington, are being heard. That is what this is about. Stalemate and nothing occurring is exactly what the HMOs want. That is the easiest result. We have to overcome that. We have to overcome their rhetoric. We have to overcome these obstacles because we are fighting for the children and families of this country who need to make their own health care decisions.

Today I want to talk about one such family. This is a young woman from Wilmington, NC. Her photograph with her husband is behind me. Her name is Terri Seargent. She suffers from a fatal genetic disorder known as alpha one. Alpha one keeps Terri's liver and lungs from working properly. Her body is not able to fight off viruses or pollutants in the air, and if it is left untreated, alpha one eventually destroys the lungs and causes the patient to die. Terri is still fighting this disease, but she is at the point where she only has 43 percent lung capacity.

The problem is Terri is not just fighting this serious disease; she is also fighting her HMO. Ever since she was diagnosed with alpha one, she has been treated by specialists who put her on medication to keep her lungs working as well as they can, to keep her from getting worse. With that medication, she is able to lead a fairly normal life even though she has a serious problem.

She continues to work. She switched jobs, so she has a new HMO, a new health plan. Her HMO first would not let her see the specialist she had been seeing. Second, they would not pay for her medication. They told her she ought to switch to a generic drug because it was cheaper, but then they would not pay for the generic drug.

Here is a young woman who has a very serious medical problem; she is continuing to fight through it courageously to go to work and do everything she can to be productive for herself and her family, and her HMO will not let her see a specialist and will not pay for her medicine. Her medication costs $4,000 a month. It is expensive, but it is critical to the quality of her life and being a contributing member of her family.

What good is her health insurance—she has been paying premiums for years now—what good is that if, when it actually comes time that she needs this medication to allow her to continue to live and stay as healthy as she can and continue to work, the insurance company will not pay for these prescription drugs she desperately needs?

Unfortunately, Terri's case is one in a long list of what we hear every day. When I have townhall meetings or when I am standing on a street corner talking with people, over and over they come up to me and say: You won't believe what the insurance company did to me; you won't believe what the HMO did to my child.

These people need a chance; they need a fighting chance, and that is all we are trying to do, to level the playing field. Let's give these families and young women such as Terri who have serious diseases a chance when their insurance company or HMO says: You are out of luck; we are not paying for it. When a child with cancer needs a test or specialized care and the HMO or insurance company says, ''We're not paying for it,'' even though they have been paying premiums for years, all we are trying to do is give that family a chance. It gets to be pretty simple.

In many cases, it is an individual, a child, a family against a big insurance company, the same big insurance companies that are spending millions of dollars on lobbyists and television ads right now to make sure people such as Terri cannot take them on. That is what this fight is about. It gets to be about a very simple problem.

I have worked with my colleagues on this issue all the time I have been in the Senate—some worked on it very hard before I came to the Senate. I believe when we finish this debate—hopefully this week, but if not this week, for whatever period of time it takes—that we will finally be able to say the big HMOs and all their money and all their power have been overcome and doctors, patients, and families in America finally have a chance.

Mr. REID. Will my friend yield for a question?

Mr. EDWARDS. Yes.

Mr. REID. The Senator has done a great job of explaining how important this bill is to patients, but it is also important to doctors. If the Senator will allow me to read a letter I received from a Las Vegas physician, this physician is formerly head of the State medical society and is chief of staff to the largest hospital in Nevada, about an 800-bed hospital. This letter is addressed to me.

After the first paragraph saying hello to me, he said:

As you have heard from so many Nevadans over the past several years, we need a mechanism where patients have options where care is denied. The following case is a clear illustration.

On April 20th 1999, Joseph Greuble died at the age of 47 from malnutrition. Joseph's malnutrition was a direct complication of his life long battle with Crohns Disease. Joseph's gastrointestinal problem was quite complex. His disease was complicated by ulcerations, fistulae, bleeding, obstruction, electrolyte disturbances, seizures, and chronic pain, and Joseph required multiple operations. Continuity of care is most important when dealing with an incurable, chronic, debilitating disease. In Joseph's case, the system's failure to provide continuity of care proved tragic and fatal.

I served as Joseph's personal physician for 11 years. As Joseph's conditioned worsened he was no longer able to live independently, and he moved into his mother's small apartment in Las Vegas. His mother would accompany him to my office for all of Joseph's visits and as a result, I came to know his mother Marion quite well.

For over a decade, I performed needed physical examinations, arranged for appropriate diagnostic studies, wrote Joseph's prescriptions, and attended to him in the hospital whenever he required admission due to complications of his disease. One of Joseph's most pressing needs was for nutritional support. Joseph had become malnourished as a complication of his Crohns Disease, and required TPN (intravenous nutrition). Joseph's weight had fallen to just over 110 pounds, and a 5'10'' tall Joseph needed the TPN to maintain his weight and prevent death due to malnutrition.

In January of 1999, Joseph was told by his HMO that I could not longer treat him. Appeals by both myself and Joseph to have this decision reversed were denied. My offer to see Joseph free of charge was rejected by the HMO, as I still would not have been permitted to write his prescriptions, direct his nutritional support, order any diagnostic testing or request needed consultations.

While I do not have any of the medical records of Joseph's treatment for the three months after he left my care, Joseph's mother informs me that his TPN had been discontinued, that his malnutrition worsened, his weight dropping to less than 100 pounds. Joseph, malnourished and unable to fight off infection, subsequently developed pneumonia, sepsis, and died.

I have received permission from Mrs. Grouble to share this story. Morion hopes that sharing her son's story will help achieve the needed legislation to prevent this from happening in the future. Holding health plans accountable when they harm patients is not about suing insurance companies and driving up the cost of health care, it is about stopping abuses and bringing compassion back to medicine. Until the health plans are accountable, people like Joseph and his family will continue to suffer.

I say to my friend from North Carolina, this is his bill before the national legislature. This legislation, the Senator would agree, would help patients, but also would help physicians such as my friend, Dr. Nemec, prescribe and give appropriate care to patients. Is that a fair statement?

Mr. EDWARDS. That is absolutely a fair statement. When I have town hall meetings in North Carolina, we often have physicians show up and share horror stories, including ordering care for a patient, with some clerk sitting behind a desk 300 miles away reversing it and overruling a doctor with many years of education and training because they thought they knew better; there was no way they would pay for the particular care.

Mr. REID. Dr. Nemec stated this is one of many cases. He could write me letters on case after case, but he wanted me to indicate he feels this is just about the straw that breaks the camel's back. A man 5 foot 10, weighing less than 100 pounds, and they prevented him from eating, in effect: You are going to die anyway; what is an extra few months or a year.

I want the Senator from North Carolina to know how much I and the people of Nevada appreciate the work the Senator is doing, spending weeks of his time working with Senator MCCAIN, coming up with legislation that allows the Frank Nemecs of the world to give proper care to patients and will allow people such as this lovely woman, pictured behind me, to know when she pays for her insurance for years, when it comes time she needs help, that help will be there.

I want the Senator to know how much I appreciate what is being done. Not only do I appreciate it but so do the people of the State of Nevada. Hundreds of organizations all over the country have contacted us. I have read into the RECORD already, and I will continue reading when we have time on the floor, the names of the entities that support the work done by the Senator from North Carolina. The Senator has been here a short period of time. The impact he has made and the impact he will make adding his name to this legislation will give people hope for generations to come. I appreciate the Senator's work.

Mr. EDWARDS. I thank the Senator for his comments.

I point out, as the Senator well knows, the American Medical Association strongly supports our legislation. Having met with them many times about this issue, they want their doctors to be able to provide the quality care they need to provide to their patients. It is a simple thing from their perspective. For health care providers, doctors and nurses, this is not a money issue. This is not an issue of what their earnings or salaries will be. This is purely an issue of whether they are going to be able to provide the care they have been educated and trained and have spent their life preparing to provide. That is what this is about. They are committed to doing something.

Every day their members all over this country see in their offices patients who need treatment, who need care, who are being arbitrarily denied by people far away who have never seen them, who have no idea what they need.

The horror stories go on and on. We have a young man in North Carolina who is severely sick. They quit paying for his oxygen. We had a young boy with cerebral palsy who needed physical therapy and other therapies on a daily basis and they said it would not do any good; they were not paying. The stories go on and on and on.

With respect to our colleagues on both sides of the aisle, we will work our way through the intricacies of this legislation, whether the issue of exhaustion of administrative remedies, legal terms that may not mean a lot to the American people, we will work our way through those issues and find a bipartisan way to get that done.

What we shouldn't do is leave the Senate without having done something about this issue. The issue has been around for years and has been fought vigorously by the HMOs. We have a responsibility to empower the families of this country to have more control over their health care decisions. That is what this debate is about. Hopefully, by the time we finish this debate, whether this week or next week or the following week, however long it takes—and I believe Senator DASCHLE indicated he is willing to stay as long as we have to—we will be able to walk out of here and be proud of what we have done in giving families, doctors, and patients more control over their health care decisions and the power to do something when they have been treated improperly. That is what this is about.

AMENDMENT NO. 812

Mr. President, pursuant to the previous order, I call up the amendment at the desk by Senator MCCAIN and myself.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. EDWARDS] (for Mr. MCCAIN (for himself and Mr. EDWARDS)) proposes an amendment numbered 812.

Mr. EDWARDS. I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To express the Sense of the Senate with regard to the selection of independent review organizations)

At the appropriate place, insert the following:

**SEC. . SENSE OF THE SENATE REGARDING FAIR REVIEW PROCESS**

(a) FINDINGS.—The Senate finds the following:

(1) A fair, timely, impartial independent external appeals process is essential to any meaningful program of patient protection.

(2) The independence and objectivity of the review organization and review process must be ensured.

(3) It is incompatible with a fair and independent appeals process to allow a health maintenance organization to select the review organization that is entrusted with providing a neutral and unbiased medical review.

(4) The American Arbitration Association and arbitration standards adopted under chapter 44 of title 28, United States Code (28 U.S.C. 651 et seq.) both prohibit, as inherently unfair, the right of one party to a dispute to choose the judge in that dispute.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) every patient who is denied care by a health maintenance organization or other health insurance company should be entitled to a fair, speedy, impartial appeal to a review organization that has not been selected by the health plan;

(2) the States should be empowered to maintain and develop the appropriate process for selection of the independent external review entity;

(3) a child battling a rare cancer whose health maintenance organization has denied a covered treatment recommended by its physician should be entitled to a fair and impartial external appeal to a review organization that has not been chosen by the organization or plan that has denied the care; and

(4) patient protection legislation should not pre-empt existing State laws in States where there already are strong laws in place regarding the selection of independent review organizations.

Mr. EDWARDS. We have talked about the need for an independent review once there is an internal review and the HMO or insurance company denies the claim, to be able to go to a truly independent panel to get the case decided and the decision reversed if a wrongful decision has been made. This sense-of-the-Senate amendment simply provides we all believe that review panel needs to be truly independent in that the HMO and the insurance company should not be able to appoint the members of that panel nor have control over who goes on that panel.

We will debate this amendment tomorrow, but its underlying purpose is to support the notion that I think a majority of the Senate, maybe the vast majority, supports, which is if you are going to have an independent review by a panel of health care providers or doctors, that panel needs to be truly independent, not connected to the HMO, not connected to the insurance company, and also not connected to the patient or the doctor involved, so you have a fair and impartial group to decide whether the claim or treatment should be paid.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I was listening to the description of the sense of the Senate and I wish to compliment my colleague from North Carolina for introducing it. It is extremely important in the administrative process that the procedures we set up are guaranteed to be qualified and guaranteed to be independent. This bill goes a very long way towards doing that. Obviously, I have some problems with this bill. With regard to the provision setting forth these independent entities, the qualified external review entity is established. That means when we have these cases where there is an issue as to whether or not there is coverage, it is the independent person who decides.

We hear about a lot of terrible cases. We get letters from people. We talk to people when we go back home. We hear about people who are sick; in some cases there is absolutely nothing anybody can do, and certainly not us. We hear about people who have terrible accidents. We hear about people who are victims of crimes. We hear about a lot of misfortune. But, in the health care area, we have a system in this country where people can get insured for a lot of things. The deal is, your employer provides this for you. The deal is, your wages are affected by it, of course. The deal is, we are going to provide you insurance to cover certain things in exchange for a premium that the employer is going to pay.

If you cover absolutely anything, and you have a contract—which has never been drafted—that says whatever happens to you, however you get sick, however much it costs, however onerous your injuries, we are going to cover you, no questions asked—the premium for that would be astronomical. Nobody could afford that. It is unfortunate. It doesn't make that person any less sick. It doesn't make that person any less deserving. But that is just the way it is.

We got into managed care because we, in this body, encouraged the creation of these HMOs. The reason for that wasn't because we liked HMOs. The reason was that health care costs were becoming astronomical and people were losing their health care. As tragic as these stories are, they would have been just as tragic had their employers never bought the health insurance. There would not be any dispute over whether or not there was coverage. This would not even be a policy to start with. That would not help these poor people.

So we have a system where certain things are covered for a certain premium. In a free market, those things work out. If somebody is messing up on one side, the other side will take care of it. That is the way the system works. As I say, if you are going to have a system where the Federal Government says that, regardless of whatever the claim is, it has to be paid, you can have a system like that. Nobody has suggested that. I wonder why no one has suggested that. Our hearts go out to people because of these stories. Our hearts go out for all these sick people. Why don't we just say the Federal Government will see to it, either directly out of the Federal Treasury or we will make an insurance company take care of whoever is sick for whatever reason? It is a nationalized health care system. You can debate that. You can argue that. Some people would argue on behalf of that.

Nobody is suggesting that. Why not? Because we do not want to take care of

these people? Of course not. It is because we know the effects of that. Because for everything we do, for which we can make a case, to help people and give rights and give benefits and make other parts of our society give third parties of our society certain rights and benefits so the Federal Government doesn't have to do it—we make other citizens, other companies, do it for us—we can do all that, but there are always effects from that. We were elected to look at all that and try to balance it and try to come up with something that is reasonable. Not something that will come up and cover every hypothetical case that may ever come about, because that cannot be done, but something that will reasonably balance the coverage we want people to have, I want my family to have, something the average person can afford, something the average small employer can afford. Otherwise, they are not going to buy any insurance at all.

The point I am getting to is that there are some cases, where coverage is at issue, in which everybody is operating in good faith. It is not a matter of the big guy and little guy and the big guy is always wrong and the little guy ought to be paid. It is a matter of reasonable people sitting down and having a consideration, discussion, and sometimes a disagreement as to whether or not a particular procedure is medically appropriate.

Honest doctors disagree about that all the time, whether or not a particular procedure is experimental or not. If a policy covered all kinds of experimental things that we did not think would help you—there is a 99-percent chance it is not going to help you any, but it is experimental; we can spend $1 million to see what it is; policies just don't cover that—prices would be astronomical. Nobody could afford that. So you get into the question, Is it medically called for? Is it an experimental thing?

Honest people can disagree about things such as that. We do it all the time. We are talking about lawsuits, and that is what happens in lawsuits. You would not have any lawsuits in the medical area, in the malpractice area, unless you had doctors on both sides of the cases taking different views of these matters. We have to resolve these matters. We cannot just predetermine that because a case is meritorious and our heart bleeds for an individual case, all of it is covered any time for anything. Nobody could afford it. It is a practical, hard part of life with which we have to deal. And we are doing a disservice to our constituents if we do not remind them that there are tradeoffs and there is a bigger picture with which you have to deal.

Here is where we are going. We are getting down to the fact that, as I said, we have in some cases a dispute as to whether or not something is medically called for. What this bill does, and what this resolution supplements, is that it says when you have a situation such as that, let's set up an independent person, an independent entity. In the bill it is called a qualified external review entity. It is external because it is not a part of any employer's process; it is not a part of the employer's deal. The employers do not control this.

The bill takes several pages setting up, I think very skillfully, an independent entity that is highly qualified, that is very independent, that is monitored by the Federal Government to make sure they take a look at that issue to see whether or not there is coverage on an individual incident.

Once again, if you were going to say on the front end everybody who needs coverage has to be covered, regardless of whether or not it is in the insurance policy or anything else, you would not need this external review and your premiums would go through the ceiling and everybody would be calling for nationalizing the health care system in this country. But we are not doing that.

This bill calls for this external review process. That entity determines whether or not this is a medically reviewable decision or not. That entity determines whether or not there is coverage. If that entity decides that it is a medically reviewable matter, there is coverage, it goes to another independent level. And this bill sets up an independent medical review. This first reviewer doesn't have to be a doctor, necessarily. But on the second review it has to be a doctor. He is independent. He has nothing to do with the employer. He is qualified. He is supervised and overseen by the Federal Government. He takes a look at it and he makes a decision.

So far so good. Again, this is a reasonable response to these sad, sad stories that we know people tell and we all hear about from time to time. If you are not going to say: Cover everything all the time and we are going to, depending on how sick a person is, determine coverage—if you are not going to do that, you have to have some way of reasonably and fairly deciding what is right. This bill sets up two levels of independent review. I think that is an appropriate way to balance the need to cover people for what they contract for, for what coverage is for—for which you are paying a premium commensurate with the coverage, on the one hand, and a need to make sure there is at the end of the day some coverage that is affordable for somebody so we do not add to the 40 million people who have no insurance at all.

So far, so good.

The problem I have is not with the bill I just described. The problem I have is not with this resolution which reinforces the idea that we need independent review. The problem I have is that you can go through that entire process and, if a claimant is turned down, they can ignore that entire process and still sue in State court, they can still sue in Federal court, and they can still sue in any jurisdiction where the defendant has a place of business or is doing business for unlimited damages. They can still sue an employer who gave them the insurance.

That is what I have trouble with—not that we are setting up an independent review process. It is that we are not honoring the independent review process. We are saying we are going to set it up. But if it turns out one way, we are going to adhere to it. If the claimant wins, then it is binding on the employer. But if these independent entities decide that the claimant does not win, because it is one of those 99 percent deals, and it is an experimental thing: we just do not cover that; our heart goes out to you, but you just didn't pay for that much—if they decide that, then it is as if all of that independent stuff doesn't count. Here is where the lawsuits start.

That is the problem I have with this bill.

We must recognize that there are tradeoffs for everything we do in this field. It is easy to give new rights, and establish new rights, either out of the Treasury of the Federal Government or making some company pay for something else. But it has an effect on people's conduct. People do not just sit still. If you triple somebody's taxes, it is going to affect their behavior. If you cut their taxes in half, it is going to affect their behavior. If you place new liabilities on employers—some of them are small employers trying to furnish decent health care packages to their employees—they do not have to. But if you make things tough enough on them, they are just going to say: We are either going to drop coverage or we are going to give you some money. You go get your own health insurance and I don't have any liability. And that employee may or may not take that money and buy health insurance; he can do whatever he wants to with it.

What we do affects people's behavior. It is not enough to talk about sad story after sad story and say that is fact. We all agree to that. All of us are looking for a way to balance the approach so people can be properly covered to the extent possible where folks can still afford coverage in this country. Health care prices are already going up at double-digit rates before this bill is passed. If we make the lawsuit liability so great that people can't afford coverage, it is going to go up even higher.

We already have 40 million people in this country who have no insurance at all. Our job is to try to come up with a balanced approach so that we don't add to those 40 million people. We can't just sit out here and talk about one sad story after another without considering the effect of the public policy we are putting into place.

We had before this body, before I got here, when President Clinton was President, the Clinton health care plan. It had noble motives, too. We heard about people who needed help and needed coverage, and so forth, at

that time. The whole Nation did. This body considered that bill. This body decided not to go in that direction because in many people's minds it was a nationalizing of our health care system; that as much as we have instances sometimes where things fall through the cracks, on the whole, people do not fly to England in order to get their medical coverage. The rich people of the world fly here. We have the best overall medical system in the world. We didn't want to nationalize our health care system. We turned that down. It wasn't because our heart didn't go out. It wasn't because there were some pitiful stories out there where people needed more help than they were getting. But it was, on balance, because we didn't believe it would be good for those same people if we nationalized our health care system.

I do not know if we have changed our minds about that or not. I don't think so. But that is what we are doing here with this bill the way it is now drafted. We are nationalizing our health care system in a significant respect by other means. We are doing it by an unfunded mandate on corporations. The Government is not sending people checks for their health care, but they are requiring other people to. We can't think we can do things such as that without having an effect on people's conduct.

Health care costs got out of hand in this country. We responded with a managed care response to it and tried to make that balance to provide enough care that would cover people in most cases but would not be so costly that it would drive people out of the system. It didn't always work. There were some excesses. Some of these HMOs did some bad things. States got into the act. My State of Tennessee covers more things than the McCain-Kennedy bill does in many respects—it is not as if the States are not addressing these issues—and in response to that, health care costs went back up a little bit. We can live with that. But now we are coming along and laying a whole new Federal layer on top of that, double-digit increases in health care costs being present today. And we have no idea what that is going to do to costs when we are saying we are going from a system where there is no redress, right past the system of independent review, which would be a major beneficial change where independent doctors would be deciding the right to unlimited lawsuits.

We have no idea what that is going to mean to the cost of health care in this country. If we think employers are going to sit still for that, that small employers are not going to change their conduct, that prices are going to remain the same and that these HMOs are not going to protect themselves in terms of price increases to cover their new exposure, we are fooling ourselves.

I am not saying we shouldn't respond to current circumstances. I am just saying we are hearing too much of this side of the story and nothing about the other. We are doing the American people a disservice. It doesn't take a lot for Members of this body to grant new rights and extend our sympathy. Sometimes it takes a little more to say that is a relevant part of this discussion. But let's talk about the effects of what we are about to do.

I hope we don't have this debate 2 years from now and we have these same sad stories coming in about my problem wasn't that we got into a dispute over coverage and they were not covering it, but they cut me off. My problem was I didn't have insurance to start with because my employer couldn't afford it.

I commend the Senator for offering the sense of the Senate. I think these independent entities ought to be strong. We have set them up now in this bill. My problem is we don't use them. They can be circumvented without exhausting the administrative remedies. It goes straight to court. Or we can go through and use them, but if you get an adverse decision and the best independent minds look at this and say, sorry, but there is no coverage, it doesn't matter; it is as if they didn't exist. You can then begin a whole realm of lawsuits against HMOs, against employers in some cases, and even against these independent entities that have made the determination. Both the external reviewer and the doctor can be sued because they decided against coverage.

There is in this bill a higher threshold of proof against them to prove they are guilty of gross misconduct. But when we use these independent entities that we are bragging about and we are talking about how strong and important they are, let's use them. Let's not just use them as a starting place and a debating point and go through a year or two of that and a decision that everybody admits was objective and untainted, and then totally treat it as if it didn't exist because we want to open the door to unlimited lawsuits for unlimited amounts for everybody in sight. That is not helping those poor people. That is not going to help those poor people who need medical attention and medical coverage.

They have exempted doctors and lawyers. A lot of doctors support the bill because when they get sued, they want the HMO also to be right there beside them. I understand how that works. So the doctors support them. The doctors were exempted. The doctors are exempted in this bill, and so are the hospitals. People who are giving the health care have been exempted. But the people who are furnishing the health care, the employers, have not been exempted. It doesn't seem right to me.

I yield the floor.

The PRESIDING OFFICER (Ms. STABENOW). Who yields time?

The Senator from Montana.

Mr. BURNS. I thank the Chair.

Madam President, I know there are a lot of folks who want to go home about now. I have listened to this debate on the television with a great deal of interest. We have heard all kinds of examples of bad things that can happen to people. Of course, we could talk about those kinds of things in any field because there are certain circumstances where you could sometimes find victims of circumstance and sometimes find victims of greed.

We have also heard that our health care system is very complicated. I will tell you, I do not think our system is complicated. I think we are moving a piece of legislation that is going to complicate it.

Since the introduction of Medicare and Medicaid, it has grown more complicated all the time. If one thinks HMOs are hard to deal with, I am wondering if anybody has had the opportunity to deal with HCFA lately. Just try to get some things done for an elderly mother or father. I do not see anything in the three proposals right now that deals with the real and perceived problems with private insurance plans or HMOs.

We have advertising that is on every radio station in this town. They have lots of facts, some of which are a little misleading. Patients' rights are assured to those who are covered by HMOs and insurance plans now, but it seems to me where the dispute begins is either the insured did not understand what he or she was buying or what the specific coverages were to which they thought they are entitled.

I am not going to stand here and defend the HMOs or the insurance companies, but what has happened to the industry is making them more cautious about the kinds of contracts they issue. And again, with the consumer, as in all areas of the American way, the buyer has to be concerned. It has always been that way. But as plans were gamed and abused, insurance companies and HMOs became more precise in the offering of their coverages; in other words, the fine print became even finer and smaller. Patients have rights, but not for compensation for specific health care problems that are clearly exempted from coverage.

So what I am saying is, when you are buying something, buyer beware. Again, with regard to this problem of companies being driven to that kind of a situation, how far they can go, and how far they will go, we do not know. We do not know how much they can stand.

A Patients' Bill of Rights is nothing new for me. In 1994, along with my distinguished colleague from Minnesota, Senator WELLSTONE, we had a Patient Protection Act. The goal of that bill was to assure fairness and choice to patients and providers under managed care health benefit plans.

I still believe it is essential we ensure that managed care techniques and procedures protect patients and guarantee the integrity of the patient-physician

relationship. Let me repeat that. We have to guarantee that the integrity of the relationship between the physician and the patient is protected.

I am not without a physician in my family, and we talk quite frequently of these and other issues related to the Patients' Bill of Rights and the problems she faces as she attempts to administer quality and necessary medical care to her patients. It is an area in which I am particularly interested.

I believe all Americans should have access to quality, affordable health care and to be able to select the health care plans of their choice. I support legislation that requires HMOs to be more responsive and accountable to their patients. We must ensure choice, quality, and access at all times.

I think it is fair to state we have reached general agreement over many of the consumer protection aspects of all three of these bills that have been presented to the Senate.

Doctors must be able to discuss the full range of treatment options to their patients. I continue to believe that gag clauses in health care provider contracts attack the heart of the doctor-patient relationship, and they eat into the most important factor in the healing process, and that is trust.

In addition, customers should be fully informed about the financial arrangements, if any, between their doctors and the insurers. Patients in need of emergency care must be free to go to the emergency room to receive the care they need, uninhibited.

Customers must be fully informed about the costs and limits of the coverage they buy, they should have complete information about treatment options, a complete list of the benefits and costs of each plan, a full choice of doctors, and access to specialists.

Finally, patients who are denied care, or receive word that their plan will not pay, must have a right—and they have the right—to a fair, binding, and timely appeals process.

A great deal of debate has and will likely continue to center around this appeals process and how it is structured and having access to the courts. I believe access to the courts should be the last resort. First we should structure a fair, timely, credible, and independent appeals process.

Independent, qualified reviewers should be able to draw upon the broadest and best possible medical guidelines when determining the care patients need that is covered under the contract. Physicians should be able to set the timeframe within which the treatment should be provided. When this process fails or is exhausted, then we should turn to the courts. In the cases where an HMO defies an order of the independent reviewers to provide a benefit—or acts in bad faith to delay making the necessary treatment available—I believe the HMO should be held liable. After all, no American should be denied access to our court and justice system, as it is a constitutional right.

On the other hand, we cannot let the practice of medicine be governed by the fear of lawsuits and, of course, trial lawyers. This will surely add to the cost of care. I am afraid that as the cost of obtaining care increases, so too will the number of uninsured. That is what I have heard most in my State of Montana. That is a price that no one can afford, especially small business. We do not have big companies in the State of Montana. We are a State with a lot of small businesses. Those employers are telling us to be very careful of the action we are taking.

Any bill that passes this Congress cannot contain provisions which would make the employers liable when they have nothing to do with the decision made by their provider of medical coverage. I will tell you, trial lawyers are very imaginative. When they sue, no one is exempt. So our language has to be specific. I was struck that even though it has been shown in this Chamber that the legislation we are considering has that concern—where they say it doesn't say one thing, but there it is in black and white—nobody has offered to change it and make it palatable to either side.

Any such provision is extremely dangerous for any employer, whether it be a small Montana business with two employees or a larger employer such as a hospital or doctor's office or clinic.

There are many native people who do not understand how imaginatively and broadly trial lawyers can interpret statutory provisions to include businesses as defendants in lawsuits when it was not the intention of the drafters of this legislation. To be very specific, I want to make sure that the innocent small businesses that are trying to provide much needed health care for their employees do not find themselves in court for their good intentions. I have always heard the old saying that no good deed shall go unpunished.

Twenty percent of Montanans currently lack health coverage. I don't want to see that number rise either. We cannot add to that number. I cannot support provisions which would threaten to do so. As a practical matter, it seems unreasonable to potentially give one or two people and their lawyers millions of dollars in punitive damages and as a consequence destroy thousands the ability to obtain health insurance coverage. It just doesn't make a lot of sense.

For many the greatest obstacle we face in health care today in this country is the cost of insurance, It is not that we don't want it; we can't afford it. What is driving those costs? It is not the person who tries to take care of themselves. It is the coverage of some extraneous programs or plans that drives the cost.

Since way back in 1993 and 1994, we have been talking about health care. We want three things when it comes to health care in this country: We want top quality, which we have; we want it fast; we want it low cost. If one would think just for a little bit, we can only have two of the three.

I believe we ought to start looking at the best way we can control costs and make health care more accessible and affordable to those who need it.

My primary and overriding concern is that any Patients' Bill of Rights is indeed in the best interest of all my folks in Montana and all Americans. I am deeply concerned about those thousands of hard-working folks who are self-employed or employed by small businesses throughout my wonderful State. These people desperately need our protection. I do not want to act in haste or irresponsibly, jeopardizing their present health coverage by higher premium costs.

I, therefore, will support a bill that will assure the maximum patient protection to all and ensure that patients get the health care they need when they need it.

I absolutely agree that a real Patients' Bill of Rights needs to be enacted as soon as possible. These are complex issues. We have come a long way. I am confident we will be able to arrive at a fair and reasonable bill in the very near future.

We have to look at just exactly what we can do because in this piece of legislation, there could be and probably will be some unintended consequences, as there always is when we pass major legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, we have heard a number of statements over the past week about what is wrong with this legislation that is now before the Senate.

One of the arguments that has been made is that the real purpose behind this legislation is to create socialized medicine in America, that that is the whole purpose. That is why this bipartisan bill was introduced, so that we would have socialized medicine in America. The purpose was to drive all the employers out of insuring their employees.

That argument didn't last very long because it was so fallacious on its face.

Then there was a statement that this was all about lawyers, that there would be thousands of new lawsuits. Well, we looked at a couple of States where they have something comparable to what we want to pass.

Senator MILLER from Georgia came to the floor and said: I don't know what they are talking about. In Georgia, since we have had a Patients' Bill of Rights, there has not been a single lawsuit filed.

In Texas the law has been in effect for over 4 years, even though Governor Bush—now President Bush—vetoed that. In 4 years there have been 17 lawsuits. So they dropped that debate. I will no longer debate that issue.

Then they spent some time on States rights: What was being attempted in this bipartisan legislation is to take

away the rights of States to settle their own problems. Example after example was brought to the attention of the Senate that was simply not true, but they wouldn't let up on that. They said: Well, we think all lawsuits in this matter should be filed in Federal court.

We knew that wasn't the right way to go because people should be able to go to court in the place where they live. Again, Senator MILLER from Georgia laid that out very clearly. Why should someone have to travel hundreds and hundreds of miles to file a lawsuit when they can do it in their own community?

Senator ZELL MILLER of Georgia really put this debate on the right track. After Senator MILLER spoke, they dropped that ''let's use the Federal court for all of our litigation.''

This boils down to a very simple proposition. Why should HMOs be treated differently than anyone else in America except foreign diplomats? As a result of our Constitution, foreign diplomats cannot be sued. HMOs are not in our Constitution. They should be treated no differently than anyone else. Why in America should there be the abnormal situation that the only people who can't be sued are foreign diplomats and HMOs?

There are a number of suggestions floating around here. In fact, one of the sponsors, Senator FRIST of Tennessee, said:

The Patients' Bill of Rights leans toward protecting trial lawyers, not toward protecting patients.

President Bush said, when he was running for President:

If I am the President, people will be able to take their HMO insurance company to court.

He said this on October 17 of last year.

Fact: As a candidate George Bush promised voters their insurance companies would be held accountable.

Fact: George Bush took credit for a law that allowed Texans to sue their insurance companies in State court even through he vetoed that. Now his administration is saying that holding HMOs accountable in State court is a terrible idea. He can't have it both ways.

Another of the fixes on this legislation that is being passed around, again, by the Senator from Tennessee, Mr. FRIST: ''You sue employers under this bill.''

What the President has said in February of this year: ''Only employers who retain responsibility for and make final medical decisions shall be subject to suit.''

That sounds reasonable. That is what the McCain-Edwards bill does.

Fact: The McCain-Edwards legislation does not authorize a cause of action against an employer. In short, employers are protected from lawsuits relating to harm caused by an insurance company.

Another fix, again by the Senator who is sponsoring the other bill, Mr. FRIST. His statement: ''Their bill will drive people to the ranks of the uninsured.''

That is the socialized medicine argument. Here is what the Census Bureau said: ''After Texas enacted a patients right law, the number of uninsured in the State actually decreased.''

This is the U.S. Census Bureau.

Fact: 2 years after the State of Texas gave Texans the right to sue HMOs in State court, the ranks of the uninsured in the State of Texas actually decreased.

George W. Bush, in October of 2000:

I support a National Patients' Bill of Rights and I want all people covered.

One of the fictions stated here by my colleague, the Republican whip, the Senator from Oklahoma, was:

The United States will be considering a bill which could preempt some of the good work States have done in the States to protect patients.

That is fiction. Here are the facts: The McCain-Edwards legislation provides a Federal floor for patient protections, not a ceiling. Stronger unrelated patient protections enacted by the States would remain untouched by this bill.

The other argument they have used—and I touched on this before—is that this is so expensive and how could you possibly ask people to pay for this exorbitant cost that is going to be created by this legislation? The Congressional Budget Office says:

Real patient protection costs about 37 cents more than the GOP-backed Frist legislation.

Not hundreds of thousands or millions or billions but 37 cents.

Senator FRIST:

We know this is going to drive up the cost of health care premiums.

He is right, 37 cents. But last year—the facts are that last year insurers increased premiums by an average of 8.3 percent, 10 times the 1-year cost of this legislation. So it is no wonder that 85 percent of the American public support the Patients' Bill of rights. That is why in a movie—when you hear HMO in a movie, people sneer and shout out in derision.

The Patients' Bill of rights is something we must do. The majority leader has said we are going to finish this legislation before we have the Fourth of July break. Why? Because as the Senator from North Carolina indicated, every day that goes by, there is more grief and pain to patients and doctors because the doctors can't render the care they believe is appropriate for patients. Every day we wait is a day people will be harmed as a result of our not passing this legislation.

Madam President, I read into the RECORD hundreds of names of organizations that support this legislation. The time is late and I am not going to do that tonight. From time to time, I am going to read the names of organizations supporting this legislation. I already read in the names of hundreds. I would start tonight with the D's. It would take a long time because the organizations that support this legislation that have the name ''family'' connected with them goes for five pages.

Literally, our bipartisan Patients' Bill of Rights is supported by hundreds and hundreds of organizations. I hope we—and I am confident that we can as legislators, Democrats and Republicans—pass this legislation soon because the sooner we do it, the better off America is.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

## AGENT ORANGE ACT OF 1991

Mr. DASCHLE. Madam President, I would like to call attention to the introduction of S. 1091, our bipartisan legislation to update and expand the Agent Orange Act of 1991.

These changes, and my other ongoing Agent Orange work, are necessitated by our imperfect understanding of how dioxin affects the human body.

As many of my colleagues know, dioxin is the toxic ingredient in Agent Orange, 11 million gallons of which were sprayed over Vietnam during the war. Dioxin ranks with plutonium as one of the most toxic substances known to man, and this country dropped more on Vietnam than has ever been released into the environment, anywhere in the world. S. 1091 is another effort, more than 25 years after the war's end, to deal with the wounds of, and determine the extent of the injury to, our own soldiers.

As an example of how our knowledge of dioxin is evolving, I would point to a provision in S. 1091 that would remove all deadlines for veterans to claim disability benefits for respiratory cancer. This provision stems from a recent report by the National Academy of Sciences, which pointed out that there is no scientific basis for the deadline contained in current law—a deadline that effectively blocks benefits for a veteran whose cancer develops 30 years after Agent Orange exposure. The Academy finds no evidence that the risk diminishes with the passage of time.

And as scientists learn more about Agent Orange, we must continue to ensure that veterans benefits are updated accordingly. The current mechanism

for continuous updating, established in the 1991 Agent Orange Act, has proven to work well, but it expires soon. The two-step process begins with a biennial review of new dioxin research, via a scientific panel organized by the National Academy of Sciences. Next, the Secretary of Veterans Affairs must respond to the report and recommend the addition of new diseases and conditions as appropriate. S. 1091 would extend the process until 2012.

Recently, this process has brought diabetes on the Agent Orange presumptive disability list, which means that if a veteran was exposed to Agent Orange, the veteran's diabetes is presumed to be connected to his or her military service. Previous Academy reports have linked Agent Orange exposure to serious conditions such as prostate cancer, respiratory cancer, the disfiguring skin disease chloracne, soft-tissue sarcoma, the lymphatic system cancers known as Hodgkin's disease and non-Hodgkin's lymphoma, porphyria cutanea tarda, multiple myeloma, and subacute peripheral neuropathy.

I am proud to be a cosponsor of S. 1091, along with the chair and ranking member of our Veterans' Affairs Committee. My thanks to Senators ROCKEFELLER and SPECTER for their hard work on this measure and their interest in Vietnam veterans, their families, and others who live with the diseases, conditions, and uncertainty created by exposure to dioxin.

## LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Madam President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of this year. The Local law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred December 1, 1991 in Staten Island, New York. An attacker called 53-year-old Frank Kovarik ''fag'' before striking him repeatedly with a baseball bat, breaking his right ankle, fracturing his right leg, breaking a kneecap and wrist, and causing a concussion. The attacker and an accomplice also stole $400 and the keys to Kovarik's car.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation, we can change hearts and minds as well.

## INVESTING IN COMMUNITIES DAY

Mr. DASCHLE. Madam President, the vast majority of cities throughout our Nation are small cities, many of which are fewer than 50,000 people. It is in these communities that our Nation's citizens nurture their families, develop their work ethic, cultivate their values, and live with their neighbors. Millions of Americans live better lives because small cities provide services and programs that meet the needs of their citizens. But small cities cannot meet these needs alone.

Businesses, civic organizations and citizens across the Nation continue to develop partnerships in an effort to improve the quality of life in their communities. The Federal Government, too, must continue to be a good partner by supporting important efforts, such as the COPS program, Community Development Block grants, disaster assistance and infrastructure assistance, that enable small communities to become better places in which to live.

The National League of Cities has designated this day, June 22, 2001, as National Small Cities ''Investing in Communities Day'' in an effort to highlight the many ways in which Federal, State, and local governments work together. We must continue that work and look for ways to improve our communities through continued cooperative efforts.

I join the National League of Cities and the Small Cities Council in encouraging President Bush, my congressional colleagues, State governments, community organizations, businesses and citizens to recognize this event, honor the efforts of ''small town America,'' and renew our commitment to work together on this day and in the future to improve the lives of all citizens throughout the Nation.

## DEPUTY UNITED STATES MARSHAL PETER P. HILLMAN

Mr. WYDEN. Madam President, I rise today to pay tribute to a fallen American hero: Deputy United States Marshal Peter P. Hillman.

Deputy Hillman was tragically killed in the line of duty 1 year ago when the van he was driving was hit by a truck, killing Deputy Hillman and the three prisoners he was transporting. Deputy Hillman's defensive driving actions during that terrible incident helped save the life of a U.S. Marshals Service guard traveling with him that afternoon.

The U.S. Marshals Service and Oregon experienced a great loss with the death of Deputy Hillman. His 14-year U.S. Marshals Service career began in 1986 in San Jose, California. He later transferred to the Eastern District of California in Fresno. It was there that he was given the nickname ''The Hillmanator'' for his relentless efforts in apprehending narcotics fugitives.

Whether his duties entailed lending support to members of the community in the U.S. Virgin Islands after Hurricane Marilyn, apprehending fugitives during ''Operation Sunrise,'' providing security at a high-threat trial in Montana or at the Olympic Games in Atlanta, Georgia, he gave his all in everything he did. Deputy Hillman was a dedicated and courageous man with an enthusiasm for life. His name is now engraved on the Marshals Service's ''Roll Call of Honor,'' along with nearly 200 other dedicated and brave individuals who have set a standard of excellence for all United States Marshals and Deputy Marshals.

Today is the anniversary of Deputy Hillman's death, so I would like to take this opportunity to express my sorrow to the family of Deputy Marshal Hillman. I know they miss him dearly, and I want them to know he has not been forgotten.

I ask my colleagues to join me today in expressing gratitude to the family of Deputy U.S. Marshal Peter Hillman for his service to our country. Displaying valor in both his life and his work, Deputy Marshal Hillman is a tribute to this great nation.

# ADDITIONAL STATEMENTS

## TRIBUTE TO CAPTAIN RICHARD F. WALSH, UNITED STATES NAVY

● Mr. WARNER. Mr. President, I rise today to recognize and pay tribute to Captain Richard F. Walsh, Judge Advocate General's Corp, United States Navy. Captain Walsh will retire from the Navy on July 1, 2001, having completed a distinguished 30 year career of service to our Nation.

Captain Walsh was born in New York City, and is a graduate of the United States Naval Academy and the University of Virginia School of Law. He also earned a Master of Laws degree from the Judge Advocate General's School of the Army.

During his military career, Captain Walsh excelled at all facets of his chosen professions of law and naval service. As a line officer, he served as Combat Information Center Officer onboard USS LUCE (DLG–7), completing two U.S. Sixth Fleet deployments, and qualifying as a Surface Warfare Officer.

As a judge advocate, Captain Walsh has served in a variety of challenging assignments. As the senior litigator at Naval Legal Service Office, Subic Bay, Republic of the Philippines, Captain Walsh faithfully preserved the fairness of the military justice system. Later in his career, he returned to the courtroom as a member of the General Litigation Division, Office of Judge Advocate General, and argued many important cases in numerous Federal Circuits. As a staff judge advocate, he provided legal counsel to SEABEE Commanding Officers stationed in Gulfport, Mississippi, and was later selected to serve as Counsel to the Chief of Naval Personnel. A superb manager of people and mission, Captain Walsh headed the JAG Corps' accession program and later assumed command of Naval Legal Service Office, National Capital Region, where he continued to lead and inspire young judge advocates.

I am sure that many of my colleagues remember and appreciate Captain Walsh's service as Director of Legislation in the Navy's Office of Legislative Affairs, followed by his tour of duty as Executive Director for Senate Affairs under the Assistant Secretary of Defense for Legislative Affairs. During these assignments, he directly contributed to clear and concise communication between Congress and the Departments of the Navy and Defense on a broad range of legislative matters. So noteworthy are his talents, knowledge, and integrity, that Captain Walsh has been chosen to serve on the staff of the Senate Armed Services Committee. The Navy's loss is certainly the Senate's gain, and we look forward to working with Dick Walsh for many years to come.

The Nation, the United States Navy, and the Judge Advocate General's Corps have been made better through the talent and dedication of Captain Richard F. Walsh. I know all of my colleagues join me in congratulating Dick on the completion of his outstanding military career, and we welcome him to the Senate staff.●

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. THOMPSON:

S. 1095. A bill to amend title 38, United States Code, to restore promised GI Bill educational benefits to Vietnam era veterans, and for other purposes; to the Committee on Veterans' Affairs.

By Ms. COLLINS (for herself and Ms. LANDRIEU):

S. 1096. A bill to eliminate the requirement that certain covered beneficiaries under chapter 55 of title 10, United States Code, obtain a nonavailability-of-health-care statement with respect to obstetrics and gynecological care related to a pregnancy; to the Committee on Armed Services.

By Mr. THOMPSON (for himself and Mr. FRIST):

S. 1097. A bill to authorize the Secretary of the Interior to issue right-of-way permits for natural gas pipelines within the boundary of the Great Smoky Mountains National Park; to the Committee on Energy and Natural Resources.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. VOINOVICH (for himself, Mr. BIDEN, Mr. DEWINE, and Mr. HARKIN):

S. Res. 116. A resolution congratulating the Republic of Slovenia on its tenth anniversary of independence; considered and agreed to.

## ADDITIONAL COSPONSORS

S. 258

At the request of Mrs. LINCOLN, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 258, a bill to amend title XVIII of the Social Security Act to provide for coverage under the Medicare program of annual screening pap smear and screening pelvic exams.

S. 277

At the request of Mr. KENNEDY, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 277, a bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

S. 345

At the request of Mr. ALLARD, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 345, a bill to amend the Animal Welfare Act to strike the limitation that permits interstate movement of live birds, for the purpose of fighting, to States in which animal fighting is lawful.

S. 392

At the request of Mr. SARBANES, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 392, a bill to grant a Federal Charter to Korean War Veterans Association, Incorporated, and for other purposes.

S. 497

At the request of Mr. LEAHY, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 497, a bill to express the sense of Congress that the Department of Defense should field currently available weapons, other technologies, tactics and operational concepts that provide suitable alternatives to anti-personnel mines and mixed anti-tank mine systems and that the United States should end its use of such mines and join the Convention on the Prohibition of Anti-Personnel Mines as soon as possible, to expand support for mine action programs including mine victim assistance, and for other purposes.

S. 662

At the request of Mr. DODD, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 662, a bill to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to furnish headstones or markers for marked graves of, or to otherwise commemorate, certain individuals.

S. 672

At the request of Mrs. FEINSTEIN, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 672, a bill to amend the Immigration and Nationality Act to provide for the continued classification of certain aliens as children for purposes of that Act in cases where the aliens ''age-out'' while awaiting immigration processing, and for other purposes.

S. 756

At the request of Mr. GRASSLEY, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 756, a bill to amend the Internal Revenue Code of 1986 to extend and modify the credit for electricity produced from biomass, and for other purposes.

S. 838

At the request of Mr. DODD, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 838, a bill to amend the Federal Food, Drug, and Cosmetic Act to improve the safety and efficacy of pharmaceuticals for children.

S. 887

At the request of Mr. WELLSTONE, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 887, a bill to amend the Torture Victims Relief Act of 1986 to authorize appropriations to provide assistance for domestic centers and programs for the treatment of victims of torture.

S. 913

At the request of Ms. SNOWE, the names of the Senator from Connecticut (Mr. LIEBERMAN), the Senator from New Jersey (Mr. TORRICELLI), and the Senator from Kansas (Mr. ROBERTS) were added as cosponsors of S. 913, a bill to amend title XVIII of the Social Security Act to provide for coverage under the Medicare program of all oral anticancer drugs.

S. 917

At the request of Ms. COLLINS, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 917, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 940

At the request of Mr. DODD, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 940, a bill to leave no child behind.

S. 964

At the request of Mr. KENNEDY, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 964, a bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

S. 999

At the request of Mr. BINGAMAN, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 999, a bill to amend title 10, United States Code, to provide for a Korea Defense Service Medal to be issued to members of the Armed Forces who participated in operations in Korea after the end of the Korean War.

S. 1019

At the request of Mrs. FEINSTEIN, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 1019, a bill to provide for monitoring of aircraft air quality, to require air carriers to produce certain mechanical and maintenance records, and for other purposes.

S. 1037

At the request of Mrs. HUTCHISON, the name of the Senator from Utah (Mr.

HATCH) was added as a cosponsor of S. 1037, a bill to amend title 10, United States Code, to authorize disability retirement to be granted posthumously for members of the Armed Forces who die in the line of duty while on active duty, and for other purposes.

S. 1066

At the request of Mr. KERRY, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 1066, a bill to amend title XVIII of the Social Security Act to establish procedures for determining payment amounts for new clinical diagnostic laboratory tests for which payment is made under the Medicare program.

S. 1083

At the request of Ms. MIKULSKI, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1083, a bill to amend title XVIII of the Social Security Act to exclude clinical social worker services from coverage under the medicare skilled nursing facility prospective payment system.

S. 1084

At the request of Mr. DURBIN, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 1084, a bill to prohibit the importation into the United States of diamonds unless the countries exporting the diamonds have in place a system of controls on rough diamonds, and for other purposes.

S. RES. 71

At the request of Mr. HARKIN, the names of the Senator from Minnesota (Mr. WELLSTONE) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. Res. 71, a resolution expressing the sense of the Senate regarding the need to preserve six day mail delivery.

S. RES. 72

At the request of Mr. SPECTER, the name of the Senator from Texas (Mr. GRAMM) was withdrawn as a cosponsor of S. Res. 72, a resolution designating the month of April as ''National Sexual Assault Awareness Month.''

S. CON. RES. 37

At the request of Mr. LIEBERMAN, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. Con. Res. 37, a concurrent resolution expressing the sense of Congress on the importance of promoting electronic commerce, and for other purposes.

S. CON. RES. 43

At the request of Mr. VOINOVICH, the names of the Senator from Ohio (Mr. DEWINE) and the Senator from Indiana (Mr. LUGAR) were added as cosponsors of S. Con. Res. 43, a concurrent resolution expressing the sense of the Senate regarding the Republic of Korea's ongoing practice of limiting United States motor vehicles access to its domestic market.

S. CON. RES. 53

At the request of Mr. HAGEL, the names of the Senator from Ohio (Mr. DEWINE) and the Senator from Oklahoma (Mr. INHOFE) were added as cosponsors of S. Con. Res. 53, concurrent resolution encouraging the development of strategies to reduce hunger and poverty, and to promote free market economies and democratic institutions, in sub-Saharan Africa.

At the request of Mr. LEAHY, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. Con. Res. 53, supra.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. COLLINS (for herself and Ms. LANDRIEU):

S. 1096. A bill to eliminate the requirement that certain covered beneficiaries under chapter 55 of title 10, United States Code, obtain a nonavailability-of-health-care statement with respect to obstetrics and gynecological care related to a pregnancy; to the Committee on Armed Services.

Ms. COLLINS. Mr. President, I rise today to introduce the Military Spouse Physician Choice Act of 2001. This legislation amends the Civilian Health and Medical Program of the Uniformed Services, CHAMPUS, to eliminate the requirement that a military dependent obtain a nonavailability statement, NAS, or a waiver from a commanding officer of a military treatment facility, in order to receive maternity care from a civilian doctor. I am pleased that my colleague Senator LANDRIEU is joining me in introducing this legislation.

This legislation, which is a companion to H.R. 1511, introduced in the House by Representatives JIM RYUN and SUSAN DAVIS, will eliminate the requirement for TRICARE Standard maternity patients to obtain military nonavailability statements before seeing other doctors. Under current policy, Standard patients who live within 40 miles of a military medical facility must obtain a NAS from the facility commander before receiving pregnancy care from a civilian physician.

Over 53 percent of our Nation's active service personnel today are married. Maintaining a high quality of life for these men and women in uniform must include the best possible health care for their spouses. While the services may recruit men and women to serve in our military forces, the reality is that we retain families to protect our Nation. It is therefore critical that all military spouses receive the health care services they signed up for.

Currently, a military dependent has two options under the military's health care system. All military personnel and 84 percent of military dependents enroll in TRICARE Prime, which is the military's version of an HMO. Prime provides quality care, usually at a military treatment facility on the post or base. However, some dependents choose to enroll in the military's fee-for-service plans, called TRICARE Standard and Extra. These dependents voluntarily accept higher copayments and deductibles in return for the promise of freedom to choose their own doctor.

Unfortunately, the promises in the enrollment brochure do not apply in all circumstances. Currently, a woman who chooses a civilian doctor through TRICARE Standard or Extra is forced to change doctors and return to the military treatment facility when she becomes pregnant. The only way for her to continue using her own doctor is to receive special permission from the commanding officer of that military treatment facility. The result is a bureaucratic nightmare.

This situation is a concern for military dependents across the country. It represents a break in continuity of care that compromises the invaluable relationship between a woman and her doctor. A woman who has a trusted relationship with her civilian ob/gyn is required to change to a doctor at the military treatment facility due to an unnecessary regulation that can, and should, be fixed.

Military families deserve better treatment. Many of them consistently pay higher premiums and accept higher out-of-pocket costs in exchange for an active role in controlling their health care decisions. It should not take a military order to allow a woman to stay with her regular doctor for prenatal, delivery and postnatal care. This is why Senator LANDRIEU and I are introducing legislation to cut through this burdensome red tape. The Military Spouse Physician Choice Act would eliminate the need for women to get special permission to receive the continuity of care they were promised.

Over the past few years, Congress has made several positive changes to military health care services. We have given our military personnel the ability to choose the health care option that is right for each of their families. We have enabled our military treatment facilities to maintain a high level of excellence, making them the choice of most military dependents. It only follows that a pregnant spouse should be able to choose to utilize that treatment facility but not be mandated to do so.

If we want to continue to recruit and retain quality people for our armed services, we need to show them that they and their families will be treated fairly when making health care decisions.

I am very pleased that the Military Coalition, a consortium of nationally prominent uniformed services and veterans organizations representing more than 5.5 million members plus their families, has endorsed this legislation. The Retired Officers Association, TROA, has as well because the current policy denies TRICARE Standard beneficiaries one of the most important principles of quality health care, continuity of care by a provider of their choice.

I urge all Members of the Senate to join me and Senator LANDRIEU in support of the Military Spouse Physician Choice Act.

I ask consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1096

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Military Spouse Physician Choice Act''.

**SEC. 2. ELIMINATION OF REQUIREMENT TO OBTAIN NONAVAILABILITY-OF-HEALTH-CARE STATEMENT IN CASES OF PREGNANCY.**

(a) ELIMINATION OF REQUIREMENT.—Section 1080(b) of title 10, United States Code, is amended by striking the second sentence.

(b) EXPANSION OF NONAVAILABILITY STATEMENT WAIVER AUTHORITY.—Section 721 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 114 Stat. 1654A-446) is amended—

(1) in subsection (a), by inserting '', or with respect to obstetrics and gynecological care related to the pregnancy of such a beneficiary who is enrolled in TRICARE Extra,'' after ''TRICARE Standard''; and

(2) in subsection (c)—

(A) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively;

(B) by inserting ''(1)'' after ''(c) EXCEPTIONS.—''; and

(C) by adding at the end the following new paragraph:

''(2) Paragraph (1) shall not apply in the case of obstetrics and gynecological care related to the pregnancy of a covered beneficiary.''.

Ms. LANDRIEU. Mr. President, I rise today to introduce the Military Spouse Physician Choice Act of 2001 with my distinguished colleague, the junior Senator from Maine. This legislation amends the Civilian Health and Medical Program of the Uniformed Services, CHAMPUS, to restore equity to the families of our servicemembers. Simply put, this bill would delete the requirement for a servicemember's spouse to obtain a non-availability statement from the commanding officer of the nearest military treatment facility in order to receive maternity care from a civilian doctor.

Under current legislation, military dependents choosing to enroll and pay for TRICARE Standard, the program in which enrollees accept higher co-payments in exchange for the option of choosing their own doctors, are still required to obtain a military non-availability statement before seeing their choice of civilian physician. This practice continues despite the fact they are already paying for just that option. Our bill eliminates the requirement for maternity patients enrolled in TRICARE Standard to get that non-availability statement before being seen by the civilian physician of their choice for all maternity care throughout the pregnancy.

I am committed to the quality of life of the men and women in uniform who sacrifice to serve their Nation. All too often we forget that families and their treatment are key to the quality of life and retention of those servicemenbers. Our military and their families deserve better treatment than what they receive today. If they choose to accept the higher costs of TRICARE Standard in exchange for greater control over their healthcare choices, then they should have that control over all healthcare choices. Pregnancy should not force a spouse to get permission from the military to receive her prenatal, delivery, and postnatal care from the same doctor who she paid to see prior to the pregnancy. Anything less is fundamentally unfair and is something none of us would accept from any medical plan in the civilian community.

This body has worked hard to improve military healthcare for our servicemembers, their families and retirees. With the creation of TRICARE, we gave them control over their medical treatment by allowing them to pay additional costs out of pocket in exchange for greater flexibility, the same choice anyone outside of the military has the opportunity to make. If we want to continue to recruit and retain the best and brightest people our Nation has, we owe them equitable treatment. Any other course is a disservice to them and disrespectful of the choices and financial commitments they have made to the military healthcare system. I urge my colleagues to support this bill and send a message to our military: You and your families will be treated fairly and with respect when making healthcare decisions. The Military Coalition representing more than 5.5 million servicemembers and their families supports this legislation. So does The Retired Officers' Association, TROA. Fellow members of the Senate, support of this bill should be common sense for all of us. This bill should pass unanimously because it does what is right, what is fair, and keeps faith with our military.

I am proud to cosponsor this legislation with Senator COLLINS and urge all of you to join us in supporting the Military Spouse Physician Choice Act.

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By Mr. THOMPSON (for himself and Mr. FRIST):

S. 1097. A bill to authorize the Secretary of the Interior to issue right-of-way permits for natural gas pipelines within the boundary of the Great Smoky Mountains National Park; to the Committee on Energy and Natural Resources.

Mr. THOMPSON. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1097

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. NATURAL GAS PIPELINES WITHIN THE BOUNDARY OF THE GREAT SMOKY MOUNTAINS NATIONAL PARK.**

(a) PERMIT FOR NATURAL GAS PIPELINES.—

(1) AUTHORIZATION.—The Secretary of the Interior may issue right-of-way permits for natural gas pipelines that are—

(A) within the boundary of the Great Smoky Mountains National Park (as of the date of enactment of this Act);

(B) not otherwise authorized by Federal law; and

(C) not subject to valid rights of property ownership.

(2) CONDITIONS.—A permit issued under paragraph (1) shall be subject to any terms and conditions that the Secretary determines necessary.

(b) PERMIT FOR PROPOSED NATURAL GAS PIPELINES.—

(1) AUTHORIZATION.—The Secretary may issue right-of-way permits for natural gas pipelines within the boundary of the Great Smoky Mountains National Park that are proposed for construction in—

(A) the Foothills Parkway;

(B) the Foothills Parkway Spur between Pigeon Forge and Gatlinburg; and

(C) the Gatlinburg Bypass.

(2) CONDITIONS.—A permit issued under paragraph (1) shall be subject to any terms and conditions that the Secretary determines necessary, including—

(A) provisions for the protection and restoration of resources that are disturbed by pipeline construction; and

(B) assurances that construction and operation of the pipeline will be compatible with the purposes of the Park.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 116—CONGRATULATING THE REPUBLIC OF SLOVENIA ON ITS TENTH ANNIVERSARY OF INDEPENDENCE

Mr. VOINOVICH (for himself, Mr. BIDEN, Mr. DEWINE, and Mr. HARKIN) submitted the following resolution; which was considered and agreed to:

S. RES. 116

Whereas on December 23, 1990, the people of Slovenia voted overwhelmingly in favor of independence from the former Yugoslavia in a national referendum;

Whereas, on June 25, 1991, the Republic of Slovenia declared itself an independent and sovereign nation;

Whereas, on December 23, 1991, the Slovenian parliament adopted a constitution based on the rule of law, respect for human rights, and democratic ideals;

Whereas, during its ten years of independence, Slovenia has been an important United States ally in Central and Eastern Europe and a strong advocate of democracy, the rule of law, and the merits of an open, free market economy;

Whereas the Republic of Slovenia has demonstrated an outstanding record on human rights during the past decade, and the country's market economy has experienced continued growth and success;

Whereas Slovenia has made important contributions to international efforts to promote peace and stability in Southeast Europe and other parts of the world;

Whereas Slovenia serves as a leader in efforts to remove destructive land mines in parts of Southeast Europe plagued by war and ethnic violence during the 1990s;

Whereas Slovenia has become an active member of international organizations, including the United Nations, the World Trade

Organization, the Council of Europe and the Organization for Security and Cooperation in Europe; and

Whereas the Republic of Slovenia has made significant progress in its work to join the NATO Alliance and the European Union: Now, therefore, be it

*Resolved,* That the Senate hereby—

(1) congratulates the Republic of Slovenia as the country celebrates ten years of independence on June 25, 2001;

(2) commends the people of Slovenia on the significant progress made during the past decade to advance respect for human rights, the rule of law, free market economies, and democracy;

(3) recognizes the important role played by the Slovenian community in diaspora to promote independence in the Republic of Slovenia; and

(4) encourages the Republic of Slovenia to continue its important work toward membership in the NATO Alliance and the European Union, as well as efforts to further peace, stability, and prosperity in Central and Eastern Europe.

## AMENDMENTS SUBMITTED AND PROPOSED

SA 811. Mr. SPECTER submitted an amendment intended to be proposed by him to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; which was ordered to lie on the table.

SA 812. Mr. EDWARDS (for Mr. MCCAIN (for himself and Mr. EDWARDS)) proposed an amendment to the bill S. 1052, supra.

## TEXT OF AMENDMENTS

**SA 811.** Mr. SPECTER submitted an amendment intended to be proposed by him to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; which was ordered to lie on the table; as follows:

On page 153, strike lines 1 through 14.

On page 159, between lines 12 and 13, insert the following:

''(D) ACTIONS IN FEDERAL COURT.—A cause of action described in subparagraph (A) shall be brought and maintained only in the Federal district court for the district in which the plaintiff resides or in which the alleged injury or death that is the subject of such action occurred. In any such action, the court shall apply the laws of the State involved in determining the liability of the defendants.''

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**SA 812.** Mr. EDWARDS (for Mr. MCCAIN (for himself and Mr. EDWARDS)) proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

At the appropriate place, insert the following:

**SEC. . SENSE OF THE SENATE REGARDING FAIR REVIEW PROCESS.**

(a) FINDINGS.—The Senate finds the following:

(1) A fair, timely, impartial independent external appeals process is essential to any meaningful program of patient protection.

(2) The independence and objectivity of the review organization and review process must be ensured.

(3) It is incompatible with a fair and independent appeals process to allow a health maintenance organization to select the review organization that is entrusted with providing a neutral and unbiased medical review.

(4) The American Arbitration Association and arbitration standards adopted under chapter 44 of title 28, United States Code (28 U.S.C. 651 et seq.) both prohibit, as inherently unfair, the right of one party to a dispute to choose the judge in that dispute.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) every patient who is denied care by a health maintenance organization or other health insurance company should be entitled to a fair, speedy, impartial appeal to a review organization that has not been selected by the health plan;

(2) the States should be empowered to maintain and develop the appropriate process for selection of the independent external review entity;

(3) a child battling a rare cancer whose health maintenance organization has denied a covered treatment recommended by its physician should be entitled to a fair and impartial external appeal to a review organization that has not been chosen by the organization or plan that has denied the care; and

(4) patient protection legislation should not preempt existing State laws in States where there already are strong laws in place regarding the selection of independent review organizations.

## NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a nominee has been added to the full committee nomination hearing scheduled for Wednesday, June 27, immediately following a 9:30 a.m. business meeting in room 366 of the Dirksen Senate Office Building.

The nomination of John Walton Keys III, to be Commissioner of the Bureau of Reclamation, will be considered, along with the nominations of Vicky A. Bailey to be an Assistant Secretary of Energy (International Affairs and Domestic Policy) and Frances P. Mainella to be Director of the National Park Service.

Those wishing to submit written testimony on these nominations should address them to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510. For further information, please call Sam Fowler on 202/224–7571.

## CONGRATULATING THE PEOPLE OF PERU ON THEIR DEMOCRATIC ELECTIONS ON JUNE 3, 2001

Mr. REID. Madam President, I ask unanimous consent that the Foreign Relations Committee be discharged from the consideration of S. Res. 107, and the Senate then proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 107) congratulating the people of Peru on the occasion of their democratic elections on June 3, 2001.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Madam President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, with no intervening action, and that any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 107) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 107

Whereas the people of Peru have courageously struggled to restore democracy and the rule of law following fraudulent elections on May 28, 2000, and after more than a decade of the systematic undermining of democratic institutions by the Government of Alberto Fujimori;

Whereas, in elections on April 8 and June 3, 2001, the people of Peru held democratic multiparty elections to choose their government;

Whereas these elections were determined by domestic and international observers to be free and fair and a legitimate expression of the will of the people of Peru; and

Whereas the 2001 elections form the foundation for a genuinely democratic government that represents the will and sovereignty of the people of Peru and that can be a constructive partner with the United States in advancing common interests in the Americas: Now, therefore, be it

*Resolved,*

**SECTION 1. SENSE OF THE SENATE REGARDING THE DEMOCRATIC ELECTIONS IN PERU ON JUNE 3, 2001.**

(a) CONGRATULATING THE PEOPLE OF PERU.—The Senate, on behalf of the people of the United States, hereby—

(1) congratulates the people of Peru for the successful completion of free and fair elections held on April 8 and June 3, 2001, as well as for their courageous struggle to restore democracy and the rule of law;

(2) congratulates Alejandro Toledo for his election as President of Peru and his continued strong commitment to democracy;

(3) congratulates Valentin Paniagua, current President of Peru, for his commitment to ensuring a stable and peaceful transition to democracy and the rule of law; and

(4) congratulates the Organization of American States (OAS) Electoral Observer Mission, led by Eduardo Stein, for its service in promoting representative democracy in the Americas by working to ensure free and fair elections in Peru.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that —

(1) the United States should expand its cooperation with the Government of Peru to promote—

(A) the strengthening of democratic institutions and the rule of law in Peru; and

(B) economic development and an improved quality of life for citizens of both countries;

(2) the governments of the United States and Peru should act in solidarity to promote democracy and respect for human rights in the Western Hemisphere and throughout the world;

(3) the governments of the United States and Peru should enhance cooperation to confront common threats such as corruption and trafficking in illicit narcotics and arms; and

(4) the United States Government should cooperate fully with the Peruvian Government to bring to justice former Peruvian officials involved in narcotics and arms trafficking or other illicit activities.

## CONGRATULATING SLOVENIA ON ITS TENTH ANNIVERSARY OF INDEPENDENCE

Mr. REID. Madam President, I ask unanimous consent that the Senate now proceed to the immediate consideration of S. Res. 116, submitted earlier by Senators VOINOVICH and BIDEN.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 116) congratulating the Republic of Slovenia on its tenth anniversary of independence.

There being no objection, the Senate proceeded to consider the resolution.

Mr. HARKIN. Madam President, I rise today to congratulate the people and Republic of Slovenia on their tenth anniversary of independence. It is a privilege to join my Republican colleague, Senator GEORGE VOINOVICH, as an original cosponsor of the legislation he introduced today to pay tribute to the remarkable transformation of Slovenia into a free, democratic state during the past decade.

Since the fall of the Soviet Union and the break-up of the former Yugoslavia, no country in either Southern or Eastern Europe has made greater and faster progress in embracing human rights, the rule of law, open markets, and democratic governance.

At the same time, Slovenia has demonstrated both the readiness and the capacity to become a regional leader in pursuit of peace and stability that has long suffered from ethnic divisiveness, turmoil, and bloodshed. Let me cite just one example. Slovenia took the initiative a few years ago to establish the International Trust Fund for De-Mining, ITF, which has become the leading organization to rid the Balkans of landmines and to rehabilitate the victims of these deadly weapons. In so doing, it is the Slovenians who deserve the credit for securing contributions from the U.S. and eighteen other Nations as well as many private donors to meet this urgent humanitarian challenge. I am hopeful that this Congress will authorize and appropriate a second U.S. contribution to help sustain the outstanding work of the ITF this year and beyond.

Slovenia has also become an active member of various international organizations, including the United Nations, the World Trade Organization, the Council of Europe, and the Organization for Security and Cooperation in Europe. Therefore, it is not surprising that President Bush and Russian President Putin held their first summit meeting earlier this month in Ljubljana, the capital of Slovenia.

I salute the remarkable courage of the Slovenian people in achieving their quest for free and democratic government as well as their entrepreneurial drive in building a vibrant, growing national economy in such a short span of time. Accordingly, the U.S. and our NATO allies should move forthwith to extend a formal invitation for Slovenia to become a full-fledged NATO member within the next 12–18 months.

Mr. VOINOVICH. Madam President, today, I am joined by Senators BIDEN, DEWINE, and HARKIN in congratulating the Republic of Slovenia on its tenth anniversary of independence.

Ten years ago today, on June 25, 1991, the Republic of Slovenia declared itself an independent and sovereign Nation. Since that time, Slovenia has remained a model of reform and progress in Central and Eastern Europe, working to promote democratic ideals, respect for human rights and the rule of law, and the merits of free market economic systems.

Slovenia has made great strides in its work to join the NATO Alliance and the European Union. In addition to its outstanding human rights record and commitment to the democratic process, the people of Slovenia enjoy the highest per capita gross domestic product in the region, and the country's economy continues to grow. Slovenia has also demonstrated its ability to contribute to international peacekeeping operations, including NATO's Stabilization Force in Bosnia and Herzegovina, as well as NATO's force in Kosovo, among others. Given its record in these regards, I believe the Republic of Slovenia stands as a strong candidate for NATO membership when the Alliance considers enlargement in Prague in November 2002.

Slovenia's progress extends beyond domestic reform and foreign policy goals. In Southeast Europe, a part of the world that continues to feel the burden of decades of war and ethnic strife, Slovenia continues to serve as a leader in efforts to remove destructive land mines in the region. The International Trust Fund for Demining, ITF, established by the Slovenian government in 1998, has undertaken more than 200 projects in the Balkans since its creation. As a result, more than 12 million square meters of land have been cleared throughout Albania, Croatia, Bosnia and Herzegovina, and Kosovo. In addition, the ITF Mine Victims' Assistance program has helped more than 500 people in Bosnia and Herzegovina who have been injured by land mines. Congress provided matching funds to assist the International Trust Fund for Demining in 1998, and this year the United States will again consider funding for this important initiative.

As the Republic of Slovenia has made considerable and important progress during its 10 years of independence, working to promote peace, stability and prosperity in Central and Eastern Europe, I am pleased to have the opportunity to submit this resolution on the occasion of Slovenia's 10th anniversary of independence. I congratulate the people of Slovenia on their accomplishments thus far, and I urge them to continue their significant work to advance the ideals of democracy, human rights, the rule of law and free market economies throughout the Balkans region.

Mr. REID. Madam President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and finally, that any statements relating to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 116) was agreed to.

The preamble was agreed to.

(The text of S. Res. 116 is located in today's RECORD under ''Statements on Submitted Resolutions''.)

## ORDERS FOR TUESDAY, JUNE 26, 2001

Mr. REID. Madam President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 9:30 a.m. Tuesday, June 26. I further ask that on Tuesday, immediately following the prayer and the pledge, the Journal of the proceedings be approved to date, the morning hour be deemed to have expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of the Patients' Bill of Rights; further, following the 11:30 a.m. votes, there be up to 30 minutes for morning business with Senators permitted to speak for 5 minutes each, with the following exceptions: Senator FEINGOLD, the first 15 minutes; Senator THOMAS, or his designee, the second 15 minutes; further, that upon conclusion of the period for morning business, the Senate recess until 2:15 p.m. for the weekly party conferences.

The PRESIDING OFFICER. Without objection, it is so ordered.

## STATUS ON SENATOR RICHARD BRYAN

Mr. REID. Madam President, I want to announce to the Senate—and I have made this statement previously—that my friend Richard Bryan is expected to be released from the hospital tomorrow or the next day. He has been very ill, with some malady that no one can figure out. He had an infection in his neck. He went into surgery and was in intensive care for 5 of 6 days. He is up and walking around, and he is going to go home. In a few weeks, he will be as good as ever.

## PROGRAM

Mr. REID. Madam President, on Tuesday the Senate will convene at 9:30

a.m. and resume consideration of the Patients' Bill of Rights. There will be 2 hours of closing debate on the Grassley motion to commit and the Gramm amendment regarding employers prior to two rollcall votes at about 11:30 tomorrow. Hopefully, we are going to conclude consideration of the Patients' Bill of Rights and, hopefully, the supplemental appropriations bill, together with the organizing resolution.

## ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. REID. Madam President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, at 6:27 p.m., the Senate adjourned until Tuesday, June 26, 2001, at 9:30 a.m.