

guardian or legal representative of such patient) with respect to—

(i) the patient's health status, medical care, or legal treatment options;

(ii) any utilization review requirements that may affect treatment options for the patient; or

(iii) any financial incentives that may affect the treatment of the patient.

(B) MISREPRESENTATION.—The term "medical communication" does not include a communication by a health care provider with a patient of the health care provider (or the guardian or legal representative of such patient) if the communication involves a knowing or willful misrepresentation by such provider.

(5) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

SEC. 4. EFFECTIVE DATE.

This Act shall take effect on the date of enactment of this Act, except that section 2(a)(3) shall take effect 180 days after such date of enactment.

Mr. KENNEDY. Mr. President, I am pleased to join Senator WYDEN in introducing this gag rule legislation and I commend him for his leadership. Last year, a majority of the Senate voted for similar legislation but it was defeated on a procedural technicality.

Gag rules have no place in American medicine. Americans deserve straight talk from their physicians. Physicians deserve protection against insurance companies that abuse their economic power and compel doctors to pay more attention to the health of the company's bottom line than to the health of their patients.

I am pleased that this legislation has strong support from both the American Medical Association and Consumer's Union—because it is a cause that unites the interests of patients and doctors.

One of the most dramatic changes in the American health care system in recent years has been the growth of health maintenance organizations, preferred provider organizations, point of service plans, and other types of managed care. Today, 75 percent of all privately insured Americans are in managed care. Even conventional fee-for-service plans have increasingly adopted features of managed care, such as ongoing medical review and case management.

In many ways, this is a positive development. Managed care offers the opportunity to extend the best medical practice to all medical practice. It emphasizes helping people to stay healthy, rather than simply caring for them when they become sick. It helps provide more coordinated care and more effective care for people with multiple medical needs. It offers a needed antidote to incentives to provide unnecessary care—incentives that have contributed a great deal to the high cost of care in recent years.

At its best, managed care fulfills these goals and improves the quality of care. Numerous studies have found that managed care compares favorably to fee for-service medicine on a variety of quality measures, including use of

preventive care, early diagnosis of some conditions, and patient satisfaction. Many HMOs have made vigorous efforts to improve the quality of care, gather and use systematic data to improve clinical decision-making, and assure an appropriate mix of primary and specialty care.

But the same financial incentives that enable HMOs and other managed care providers to practice more cost-effective medicine also can lead to under treatment or inappropriate restrictions on care, especially when expensive treatments or new treatments are involved.

Too often, insurance companies have placed their bottom line ahead of their patient's well-being and have pressured physicians in their plans to do the same. These abuses include failure to inform patients of particular treatment options; barriers to reduce referrals to specialists for evaluation and treatment; unwillingness to order appropriate diagnostic tests; and reluctance to pay for potentially life-saving treatment. It is hard to talk to a physician these days without hearing a story about insurance company behavior that raises questions about quality of care. In some cases, insurance company behavior has had tragic consequences.

In the long run, the most effective means of assuring quality care in HMOs is for the industry itself to make sure that quality is always a top priority. I am encouraged by the industry's development of ethical principles for its members, by the growing trend toward accreditation, and by the increasingly widespread use of standardized quality assessment measures. But I also believe that basic Federal regulations are necessary to assure that every plan meets at least minimum standards.

Medicare has already implemented such a prohibition. All Americans are entitled to this same protection.

A gag rule provision is also included in a more comprehensive managed care bill that I introduced earlier this session. That bill addresses a number of other issues as well. This prohibition of gag rules is such a simple need and cries out for immediate relief.

This legislation targets the most abusive type of gag rule—the type that forbids physicians from discussing all treatment options with patients and makes the best possible professional recommendation, even if the recommendation is for a non-covered service or could be construed to disparage the plan for not covering it.

This bill specifically forbids plans from prohibiting or restricting a provider from any medical communication with his or her patient.

This is a basic rule which everyone endorses in theory, even though it has been violated in practice. The standards of the Joint Commission on Accreditation of Health Care Organizations require that "Physicians cannot be restricted from sharing treatment

options with their patients, whether or not the options are covered by the plan."

We need to act on this legislation promptly. The Senate has the opportunity to protect patients across the country from these abusive gag rules. Action on this legislation is truly a test of the Senate's commitment to the rights of patients and physicians across the country.●

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nomination on the Executive Calendar:

Calendar No. 42, the nomination of Keith Hall, to be Assistant Secretary of the Air Force.

I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, that any statements relating to the nomination appear at this point in the RECORD, that the President be immediately notified of the Senate's action, and that the Senate then return to legislative session.

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

The nomination considered and confirmed is as follows:

DEPARTMENT OF DEFENSE

Keith R. Hall, of Maryland, to be an Assistant Secretary of the Air Force, vice Jeffrey K. Harris, resigned.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

Mr. LOTT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDERS FOR WEDNESDAY, MARCH 19, 1997

Mr. LOTT. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 10:30 a.m. on Wednesday, March 19. I further ask unanimous consent that on Wednesday, immediately following the prayer, the routine requests through the morning hour be granted and the Senate then resume consideration of Senate Joint Resolution 22, the independent counsel resolution. I further ask consent that the time from 10:30 a.m. until 11:30 a.m. be equally divided