

The Commerce bill raised the penalty potential to \$706 billion. Floor amendments raised it to \$810 billion on the look-back.

I think that is questionable constitutionally. I think it is questionable whether you can say to a company, you have to do all kind of things, but if you do all those things and still don't meet the targets we will penalize you. I think it is questionable constitutionally for the ability to do that unless the companies agree to it. I think what we are doing is penalizing companies without any fault on their part. We are saying, do all of these things, but if you don't reach these targets we are going to hit you with \$810 billion worth of penalties. They can agree to that; but if they don't agree to it, I doubt whether it will pass constitutional muster.

I think the marketing and advertising restrictions happen to be the most important thing we can do in order to get teens to stop smoking. The \$1.10 is not going to do it. Kids pay \$100 for a pair of sneakers. Do you think \$1.10 will get that many to quit smoking when they are paying \$100 for a pair of tennis shoes? I doubt it. Marketing and advertising restrictions are very important—probably not constitutional.

The look-back provisions: Sounds good. Let's make it as high as we can. If the companies don't agree, I question whether that is constitutional.

Look what we did when you add it up. The base payments were increased, the look-back provisions, and now the judgments. We used to have a \$5 billion annual cap for liability payments. This is for future suits. People say we are giving them all kinds of limitations on liability. Individuals can still sue in the future, can still have criminal actions against companies in the future, under the agreement. You can still have punitive damages in the future for companies who do wrong, and intentionally do it, but what we have done—we have gone from adding an increase in base payments, increased the look-back penalties, and took the cap off any annual limitations on future payments. We have gone from \$435 billion to \$906.4 billion, and now we add it up and there is no limit. Why would a company agree to all of those marketing and advertising restrictions, agree to all these look-back penalties and targets that they have to meet, and get nothing in return?

I am not arguing their case. I made it very clear where I come from in the beginning. An agreement, unless it is comprehensive, an agreement, unless everybody is involved in it, is an agreement on paper that may make us feel good temporarily but is not an agreement that is going to get the job done.

It is incredibly important that we look at reality and come up with something that works. I suggest that we take the June 20 agreement as the basis, pass it, go to conference in the House, and we can work out something that will work. Senator HATCH, I un-

derstand, and Senator FEINSTEIN and others on our side are working together to take what people thought was impossible and pass it.

Let's get out of the cookie jar. Let's get back to reality. Let's do something that will pass, that will work, and that will make good sense.

I yield the floor.

PATIENTS' BILL OF RIGHTS

Mr. KENNEDY. Mr. President, I am deeply concerned about the continuing lack of commitment by the Republican Leadership to schedule floor debate on legislation to end abuses by health insurance managed care plans. Today, more than 100 groups have sent a letter to Senator LOTT and Speaker GINGRICH asking for quick, full and fair floor consideration of this legislation, which is called the Patients' Bill of Rights. These groups represent millions of patients, doctors, nurses, therapists, and working families.

Yet, in a memo sent to all Senators and in recent floor statements, it appears that our patient protection legislation—the Patients' Bill of Rights—is not even on the Republican Leader's radar screen. It is not on the list of priorities designated by the Republican Leadership to be taken up this month, or even this session. I have here a list of more than 20 bills, ranging from regular appropriations bills and reauthorization bills to the nuclear waste disposal legislation and a constitutional amendment on flag burning.

But, I have yet to see any interest from the Republican Leadership in taking action to ensure that medical decisions are made by treating physicians, and not by insurance company accountants. And I have yet to see any interest from the Republican Leadership in curbing abusive activities by the worst plans and insurance companies that are dedicated to their profits, not their patients. Instead, it appears that, by this inaction, the Republican Leadership is interested only in defending the indefensible, the status quo.

In addition, the House Republican Leader, DICK ARMEY, recently lashed out at doctors, nurses and other health care professionals by grossly misinterpreting and distorting a provision in the Patients' Bill of Rights that allows health care professionals to support their patients in appeals procedures, and to report concerns about the quality of care without fear of retaliation. These are reasonable patient-oriented protections. Congressman ARMEY'S misguided effort offends and impugns the character and professionalism of hundreds of thousands of nurses, doctors and patients.

In fact, his harsh attack has helped mobilize even more organizations to support the bill. Representatives LOIS CAPPS, CAROLYN MCCARTHY and EDDIE BERNICE JOHNSON, who are former nurses, and nurses from communities around the country have rallied around the Patients' Bill of Rights. Today,

they have sent a letter to Congressman ARMEY asking for a meeting on these critically important issues. They are supported, in a separate letter, by a number of groups who represent persons with disabilities, mental illness and HIV/AIDS, and other organizations that rely regularly on trained and devoted health care professionals.

These issues matter a great deal to families across the country. Too often today, managed care is mismanaged care. In state after state across the country, patients are paying for these industry abuses with their lives.

Just ask Frances Jennings of Andover, Massachusetts. In November, 1992, at the age of 57, her husband Jack was diagnosed with mild emphysema by his pulmonologist. A few years later, in March, 1997, Mr. Jennings was hospitalized for a pneumothorax, which can lead to a collapsed lung. His physician, Dr. Newsome, determined that a lung reduction procedure would improve Jack's health and overall quality of life.

Two months later, in May, 1997, Jack's condition was stable enough for the operation, and he was referred to Dr. Sugerbaker, a top surgeon who specialized in the procedure.

But in late May, Jack's insurance plan—U.S. HealthCare—denied his referral to the specialist. Frances and Jack were disappointed that the plan refused to authorize the referral, and they requested a referral for consultation with a plan-approved physician. This appointment was finally scheduled for June 12. But, on June 11, the new doctor's office called Jack to cancel his appointment, stating that the physician no longer accepted patients from the health plan.

Immediately following this cancellation, Jack's primary care physician—Dr. Newsome—contacted the health plan to obtain yet another referral. On June 18, a new appointment was confirmed for mid-July, four months after his initial hospitalization.

Tragically, Jack Jennings never had the opportunity to benefit from the procedure recommended by his doctor. Jack had been having trouble breathing, despite his continuous use of oxygen, and had been hospitalized at the end of June. During this hospitalization, they discovered a fast growing cancer in his chest. Lung surgery was out of the question, and it was too late for chemotherapy to be effective.

Mr. Jennings died on July 10—four days before his long-awaited appointment with the specialist. In fact, this appointment would have been with Dr. Sugarbaker's group, the same physician that U.S. Health Care had prevented Jack from seeing in May.

This is a clear case where needed health care was unnecessarily delayed, with tragic implications. Timely care could have saved Jack's life. The health plan's inability or unwillingness to provide it cost him his life.

Unfortunately, such abuses are far too common in managed care plans

today. Congressional offices are flooded with letters and calls from constituents who need assistance. Newspapers tell story after story of the human costs of these abuses.

The Patients' Bill of Rights will help solve these problems, and restore confidence in the health care system. The Patients' Bill of Rights is a common sense solution. Nearly all of its provisions were recommended by the Presidential Advisory Commission on Quality in the Health Care Industry. Many are included in the voluntary code of conduct for members of the American Association of Health Plans, the managed care trade association. Some of the provisions are already being implemented for federal health programs, including Medicare. Still others are included in model laws written by the National Association of Insurance Commissioners. The Senate should act on this important legislation, and it should act now.

Mr. President, I ask unanimous consent that the letters I have mentioned may be printed in the RECORD.

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

JUNE 10, 1998.

Hon. RICHARD K. ARMEY,
Majority Leader, House of Representatives,
Washington, DC.

DEAR MAJORITY LEADER ARMEY: As organizations representing health care consumers, we strongly support efforts to establish meaningful patient and quality protections. We believe that an essential component of that effort is to protect the rights of physicians, nurses and other health care professionals to speak out about quality concerns without fear of retribution. While the rise of managed care has created strong incentives to reduce costs and cut corners, many of those impacts are not evident to patients. Instead, patients need to rely on the ability of health care professionals to provide information and advocate on their behalf.

For that reason, we take strong exception to your May 15th "Dear Colleague" expressing your opposition to H.R. 3605, the Patient's Bill of Rights. First, we do not believe that patients are served when those who care for them are gagged or handcuffed, unable to speak out because of contractual arrangements or the very real threat of retaliation. This is not just a question of being informed of all available and appropriate treatment options; it is also a question of knowing when patient safety is the risk because of quality problems.

Second, we strongly believe disagree with your contentions that nurses and doctors are only seeking financial gain and would use "good faith" reporting protections "to rationalize a financially motivated lie." Nurses and doctors across this country have had the courage to challenge managed care and other health industry abuses, often at personal risk. Those abuses will not disappear if the health industry is allowed to continue using retaliatory threats to shield itself from investigation. If nurses, physicians and other health care professionals are afraid to speak out, quality concerns will go unreported and problems will be ignored. If this situation is allowed to continue, patients will be the real losers.

Our organizations understand that health care consumers benefit when workers have the ability to report poor quality, including medication errors, problems created by early discharges from hospitals, or fraud and abuse. We hope that you will come to realize

the need for such patient protections and reverse your opposition, both to this provision and to the entire Patients' Bill of Rights. Patients know that nurses and doctors have been their advocates. It remains our hope that you and the Republican leadership will demonstrate that you also are advocates in the fight for quality care.

Sincerely,

AIDS Action Council; The Arc; Bazelon Center for Mental Health Law; Center on Disability and Health; Children and Adults with Attention Deficit Disorder (CHADD); Communications Workers of America; Consumer Federation of America; Consumers Union; Epilepsy Foundation of America; Families USA; Friends Committee on National Legislation; Gay Men's Health Crisis.

National Association of People with AIDS; National Association of Protection and Advocacy Systems; National Association of Social Workers; National Council of Senior Citizens; National Multiple Sclerosis Society; National Partnership for Women and Families; Neighbor to Neighbor; Older Women's League; San Francisco AIDS Foundation; Summit Health Coalition; United Cerebral Palsy Association; United Church of Christ, Office for Church in Society.

JUNE 9, 1998.

Hon. RICHARD K. ARMEY,
Majority Leader, House of Representatives,
Washington, DC.

DEAR MAJORITY LEADER ARMEY: On behalf of over 200,000 nurses, we would like to express our deep disappointment with Your May 15 "Dear Colleague" letter accusing nurses and other health care workers of being willing to lie about quality concerns in order to improve their financial status. Your letter demonstrates a profound lack of awareness of the integrity and concerns of nurses as well as the problems facing patients throughout this country.

The major impetus behind the patient protection bill is health care quality. An important part of that is providing patients with accurate information and ensuring that the health care professionals who treat them are able to meet their professional and ethical obligations to advocate on their behalf.

Every day, nurses are confronted with situations that place their patients in jeopardy. Insufficient numbers of nurses, the replacement of skilled nurses with untrained personnel, and incentives for early discharge are just a few of the problems. In some facilities, the growing crisis in quality has forced families to hire private duty nurses in order to ensure that their loved ones receive adequate care.

Nurses know about patient conditions and are justifiably alarmed. Yet, nurses who speak out risk termination, cutbacks in hours, and other forms of retaliation. The Patients' Bill of Rights, H.R. 3605, seeks to protect nurses, doctors and other health care professionals who report quality problems to their employers, public entities and private accreditation organizations. It is an important first step in improving patient conditions.

Your opposition to even this limited provision is surprising and disturbing. Your statements that this provision is motivated by financial considerations is an insult to every nurse who struggles to provide the best possible care to her on his patients.

As Congress considers legislation to improve health care quality, we would like the opportunity to meet with you to discuss our views and describe the real world situation nurses see every day. We understand that your views as majority Leader are likely to reflect, or at least influence, those of the Republican leadership and the task force ap-

pointed by the speaker to make quality care recommendations. Therefore, we would appreciate meeting with those representatives as well. Please contact Cathy Hurwit at (202) 429-5006 if you have any questions or to arrange a meeting.

Sincerely,

Martha Baker, RN, President SEIU Local 1991, Miami, Florida, Candice Owley, RN, Wisconsin FNHP, President, FNHP Local 5001, Milwaukee, Wisconsin, Kathy Sackman, RN, President United Nurses' Association of California Pomona, California, Sandra Alexander, LVN, Vice President, AFSCME Local 839, Council 57, Daly City, California, Norma Amsterdam, RN, Executive Vice President Registered Nurse Division 1199NY/SEIU, New York, New York, David Bailey, LPN, Director AFSCME District #3, Mt. Vernon, Ohio, Sylvia Barial, RN, New Orleans Public Schools, School Nurse Chapter Chair, AFT Local 0527, New Orleans, Louisiana, Rowena Blackman-Stroud, NMS, SUNY-Brooklyn College of Medicine, Treasurer, AFT Local 2190, Brooklyn, New York, Glenda Canfield, RN, SEIU Local 707, Santa Rosa, California.

Pia Davis, Vice President, SEIU Local 73, Chicago, Illinois, Carol Flynn, RN, Danbury FNHP, President, FNHP Local 5047, Danbury, Connecticut, Anne Goldman, RN, Federation of Nurses/UFT, Special Representative, AFT, Local 0002, New York, New York, Rhonda Goode, RN, SEIU Local 535, Pasadena, California, Pat Greenberg, RN, SEIU Local 200A, Fayetteville, New York, Jacqueline Himes, RN, Philadelphia Public Schools, Executive Board Member, AFT Local 00003, Philadelphia, Pennsylvania, Doris Lee, RN, AFSCME Local 152, Mililani, Hawaii, Bonnie Marpo, LPN, President, AFSCME Local 2245, Shippensburg, Pennsylvania, Linda McDonald, RN Rhode Island Hospital, President, FNHP Local 5098, Providence, Rhode Island.

Mary Lou Millar, RN, President, CHCA/NUHHCE, Wallingford, Connecticut, Carol Moore, LVN, AFSCME Local 1550, Houston, Texas, Sylvia Rawson, LPN, AFSCME Council 71, Sicklerville, New Jersey, Jan Salsich, RN, Westerly Hospital, President FNHP Local 5075, Westerly, Rhode Island, Katherine Schmidt, RN, Oregon FNHP, President, FNHP Local 5017, Portland, Oregon, Darla Shehy, RN, SEIU Local 1199P, Hummelstown, Pennsylvania, Diane Sosne, RN, President, SEIU Local 1199NW, Seattle, Washington, Al Thompson, RN, SEIU Local 660, Los Angeles, California, Ann Twomey, RN, Health Professionals and Allied Employees, President, HPAE/FNHP, Emerson, New Jersey, Nancy Yalanis, RN, CHCA/NUHHCE 1199, Southington, Connecticut.

JUNE 11, 1998.

Hon. TRENT LOTT,
U.S. Senate, Washington, DC.

Dear Mr. Majority Leader:

The American people want and need the protection of Patients' Bill of Rights. As more and more families face unreasonable barriers to getting necessary health care approved from health maintenance organizations (HMOs) and other health insurance plans, it is clear that legislative action is needed. Public opinion surveys repeatedly show that the public's desire for managed

care consumer protections is both wide and deep.

It is more than half a year since the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry proposed, virtually unanimously, the adoption of a Bill of Rights. For many months it has been clear that strong support exists for the enactment of a genuine Patients' Bill of Rights. A number of bills including the Patients' Bill of Rights Act (S. 1890), the patients' Access to Responsible Care Act (S. 644) and others have such support and demonstrate that many members are in favor of bipartisan patient protection legislation.

It is therefore both troubling and puzzling that there has been a delay in consideration of this legislation. We believe that it is wrong to obstruct congressional consideration of genuine patient protection legislation. Your colleagues want such legislation. America's families need it. And it is a violation of fundamental fairness, and a disservice to families seeking health care, for you to block a vote on this important legislation.

We hope that you will lend your support to efforts to enact genuine managed care patient protection legislation—not a watered-down version and not one that is combined with "poison pills." We urge you to schedule quickly a full and fair debate on such legislation. Protecting America's families should be your number one priority. We urge you to act now.

Sincerely,

ACT UP Golden Gate, AIDS Action, AIDS Legal Referral Panel, AIDS Policy Center for Children, Youth and Families, AIDS Treatment News, Alzheimer's Association, American Academy of Child & Adolescent Psychiatry, American Academy of Neurology, American Academy of Physician Medicine and Rehabilitation, American Association for Marriage and Family Therapy, American Association for Psychosocial Rehabilitation, American Association for Respiratory Care, American Association of Children's Residential Centers, American Association of Pastoral Counselors, American Association of Private Practice Psychiatrists, American Association of University Women, American Association on Mental Retardation, American Board of Examiners in Clinical Social Work, American Cancer Society, American Chiropractic Association, American Counseling Association, American Dental Association, American Federation of Labor-Congress of Industrial Organizations (AFL-CIO).

American Federation of State, County and Municipal Employees (AFSCME), American Group Psychotherapy Association, American Lung Association, American Medical Association, American Medical Rehabilitation Providers Association, American Nurses Association, American Occupational Therapy Association, American Protestant Health Alliance, American Psychiatric Association, American Psychiatric Nurses Association, American Psychoanalytic Association, American Psychological Association, American Society for Adolescent Psychiatry, American Society of Plastic and Reconstructive Surgeons; American Speech-Language-Hearing Association; American Therapeutic Recreation Association; American Thoracic Society, Anxiety Disorders Association of America; Arc of the United States, Asian & Pacific Islander Wellness Center, Association for Ambulatory Behavioral Healthcare, Association for the Advancement of

Psychology, Association of Women's Health, Obstetric and Neonatal Nurses, Bazelon Center for Mental Health Law, Brain Injury Association Inc (BIA), Center for Patient Advocacy, Center on Disabilities and Health, Child Welfare League of America, Children and Adults with Attention Deficit Disorders (CHADD), Clinical Social Work Federation, Consumer Coalition for Quality Health Care, Consumer Federation of America, Corporation for the Advancement of Psychiatry, Families USA, Family Voices, Friends Committee on National Legislation (Quaker), Gay Men's Health Crisis, Health Initiatives for Youth, Human Rights Campaign, International Association of Psychological Rehabilitation Services, League of Women Voters of the United States, Legal Action Center, Lutheran Office for Governmental Affairs of the Evangelical Lutheran Church in America.

National Alliance for the Mentally Ill, National Association for Rural Mental Health, National Association for the Advancement of Orthotics and Prosthetics (NAAOP), National Association of Alcoholism and Drug Abuse Counselors, National Association of Developmental Disabilities Council, National Association of People with AIDS, National Association of Protection & Advocacy Systems, National Association of Psychiatric Treatment Centers for Children, National Association of School Psychologists, National Association of Social Workers, National Caucus and Center on Black Aged, Inc., National Citizens' Coalition for Nursing Home Reform, National Council for Community Behavioral Health, National Council on Aging; National Easter Seal Society, National Education Association, National Marfan Foundation, National Mental Health Association, National Minority Aids Council, National Organization for Rare Disorders (NORD), National Organization on Disability, National Osteoporosis Foundation, National Parent Network on Disabilities, National Partnership for Women & Families, National Patient Advocate Foundation.

National Therapeutic Recreation Society, National Women's Law Center, Neighbor to Neighbor, OWL, Paralyzed Veterans of America, Project Inform, RESOLVE, The National Infertility Association, San Francisco AIDS Foundation, Service Employees International Union (SEIU), Summit Health Coalition, United Cerebral Palsy Association, United Church of Christ, Office of Church in Society, Women's AIDS Network.

MEASURE READ THE FIRST TIME—H.R. 3978

Mr. ROCKEFELLER. I ask for regular order of H.R. 3978, for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The bill clerk read as follows:

A bill (H.R. 3978) to restore provisions agreed to by the conferees to H.R. 2400, entitled the "Transportation Equity Act for the 21st Century," but not included in the conference report to H.R. 2400, and for other purposes.

Mr. ROCKEFELLER. I ask unanimous consent for the second reading of H.R. 3978.

The PRESIDING OFFICER. Is there an objection?

Mr. MCCAIN. Mr. President, I object. The PRESIDING OFFICER. The objection is heard.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. ENZI). Morning business is closed.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 1415, which the clerk will report.

The bill clerk read as follows:

A bill (S. 1415) to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Gregg/Leahy amendment No. 2433 (to amendment No. 2420), to modify the provisions relating to civil liability for tobacco manufacturers.

Gregg/Leahy amendment No. 2434 (to amendment No. 2433), in the nature of a substitute.

Gramm motion to recommit the bill to the Committee on Finance with instructions to report back forthwith, with amendment No. 2436, to modify the provisions relating to civil liability for tobacco manufacturers, and to eliminate the marriage penalty reflected in the standard deduction and to ensure the earned income credit takes into account the elimination of such penalty.

Daschle (for Durbin) amendment No. 2437 (to amendment No. 2436), relating to reductions in underage tobacco usage.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, we have now been on this legislation for 3 weeks. We have taken some very important votes, and the bill has been significantly modified. I think it is time for us to complete our business and do so with dispatch. Obviously, if we don't, the proponents of the status quo will achieve by delay what they can't with a majority of votes; and that is, obviously, to kill tobacco legislation that is aimed at saving the lives of over 1 million children.

The bill, as it has been modified, contains measures of enormous benefit to the Nation, including vital antiuse smoking initiatives that will stop or reduce the compelling aspect of this entire legislation—that is, the 3,000 children a day from taking up a habit that will kill a third of them. There is critical funding for ground-breaking health research, assistance to our Nation's veterans who suffer from smoking-related illnesses, a major antidrug effort to attack the serious threat that is posed by illegal drugs, the magnitude and importance of which was described very effectively by the Senator