

EXTENSIONS OF REMARKS

INTRODUCTION OF THE PATIENTS' BILL OF RIGHTS

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 19, 1999

Mr. STARK. Mr. Speaker, I am pleased to join with my Democratic colleagues from both the House and Senate today to re-introduce the Patients' Bill of Rights. This legislation came within five votes of passage in the last Congress. We are anxious to work with our colleagues to pass this important legislation this year.

Patient protection should not be a partisan issue. This is the health care issue that continues to top this list of my constituents' concerns—and I represent California which has the longest history of managed care in our country.

The Patients' Bill of Rights is a bill whose time has come. It builds on bills that have previously been introduced, on recommendations from the President's Advisory Commission on Quality in the Health Care Industry that met last year, on legislative efforts of various states, and on consensus agreements among consumer groups, many providers, and certain health plans.

As more and more of our population joins managed care plans, the need for federal oversight of plan quality grows greater. Patients deserve to know that their health plans are held accountable to a basic set of consumer protection standards. That is what the Patients' Bill of Rights will do.

Though many states have enacted consumer protection bills, they cannot regulate many of the health plans within their borders due to our convoluted health care system. Federal action is required.

The Patients' Bill of Rights creates a set of federal standards that assures patient access to covered benefits and that holds health plans accountable for their actions.

The most important components of the bill are as follows:

Health Plan Accountability: The Patients' Bill of Rights holds health plan administrators to the same level of accountability for making medical decisions as doctors.

Under current law, if an individual receives health care benefits through his/her employer, and a health plan makes a medical decision to withhold treatment that harms a patient, that health plan's only responsibility is for the provision of benefits that had been denied. The estimates are that some 125 million Americans are in these types of health plans.

So, if a health plan denies a woman a mammography and she later is found to have advanced breast cancer—which would have been detected much earlier with the screening exam—that plan's only liability is the cost of the mammogram that was not provided.

The remedy for this is straightforward: if health care plans are going to be making medical decisions, they must be held accountable to the same standards for legal liability as health care providers.

In the last Congress, I introduced a free-standing bill (HR 1749) to correct this glaring inequity. The Patients' Bill of Rights corrects it as well. Our legislation would allow states to determine whether or not a consumer can bring a state cause of action against health plan administrators whose medical decisions result in harm.

There has been much ado about this provision and its potential impact on business. The fact of the matter is that few employers are making medical decisions regarding their employees' health care. And, the bill goes so far as to explicitly protect employers from any liability as long as they are not involved in any medical decision-making.

There has also been much talk that the courts will soon resolve the issue of ERISA preemption. Unfortunately, we are years away from a point when such resolution will be found. Courts across the country are developing very different interpretations of ERISA preemption and, consequently, there is no clear direction from their decisions. This is too important an issue to wait any longer. A legislative solution is warranted.

External Appeals: Guaranteeing consumers access to a strong, independent external appeals process is also one of the best ways to assure the provision of quality care.

Unless there is an outside, independent decision-making body for which consumers can ultimately take their appeals, we will not obtain real consumer protection. Health plans that hold a financial interest in denying care simply cannot be the final arbitrators about whether care will be provided.

The Patients' Bill of Rights calls for health plans to contract with independent external appeals entities certified by the State or the Department of Labor to provide timely analysis of the plan's actions with the help of neutral health care professionals. There are defined timelines in the legislation to ensure that consumers facing serious, time-sensitive health consequences will be able to have their appeals resolved and the appropriate care provided. For example, in the case of urgently needed care, the external appeal entity could take no more than 72 hours to issue a decision.

Disclosure of Consumer Information: Today, consumers have no way of comparing health plans based on easily understood quality criteria. The collection of standardized data and the provision of standardized comparative information is a key component of the Democratic legislation.

As an example of this lack of ability to compare plans, PacifiCare, the largest Medicare HMO contractor and an insurer in the Federal Employees Health Benefits Program, refused to release its NCQA data last year. NCQA data may not be perfect, but it is the only measure out there today by which consumers can compare health plans. PacifiCare should not have been allowed to get away with holding that data confidential.

One of my principal concerns has always been that managed care plans are quick to

sign people up and collect monthly premiums, but slow to see a large number of their patients. I think that every health plan should be required, upon enrollment, to conduct an examination of each new enrollee before the health plan can receive any premium dollars.

The strongest argument in support of managed care is that when it is done well—and is truly coordinating the care of patients—it can produce superior health outcomes. The idea of a care coordinator helping a patient through the typical health care maze is a good one. But, how can a managed care plan fulfill that role if the patient is never seen, let alone evaluated?

The Patients' Bill of Rights does not go so far as to require that a plan examine a patient before premiums can be collected. However, it does require that data be presented to consumers on the plan's preventive health care services. In this way, consumers and employers will be able to compare health plans as to how fare the plan really goes toward managing patient's health. This data is available for prospective as well as current plan enrollees.

These are several of the key consumer protection and quality provisions in The Patients' Bill of Rights. I chose to highlight these points because I think they are fundamental components of meaningful managed care reform. But the bill contains many additional important protections.

The Patients' Bill of Rights is the most consumer-oriented managed care reform bill that has been introduced. Instead of protecting providers, it aims to help consumers. It calls for: direct access to OB-GYNs; direct access to specialists for patients with chronic medical conditions; coverage of routine patient costs for approved clinical trials; participation by plan physicians and pharmacists in the development of drug formularies; access to an out-of-plan specialist if no appropriate in-plan specialist is available—at no extra cost to the patient; and the creation of a consumer ombudsman in each state to help consumers make health care choices that meet their needs.

Again, I am pleased to join with my colleagues today to introduce this vitally important legislation. I look forward to working with members in both bodies and on both sides of the aisle—and with the President—to pass federally-enforced, consumer-oriented managed care legislation this year.

INTRODUCTION OF THE DISTRICT OF COLUMBIA PRISON SAFETY ACT

HON. ELEANOR HOLMES NORTON

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 19, 1999

Ms. NORTON. Mr. Speaker, on January 6, 1999, I introduced the District of Columbia Prison Safety Act, a bill to assure the safety and well being of District of Columbia and other Federal Bureau of Prisons (BOP) inmates, who may be placed in private prison

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