

## PATIENTS' BILL OF RIGHTS

Ms. MIKULSKI. Mr. President, I come here today to talk about something that is very compelling to the women of this country; that is, the Patients' Bill of Rights.

The Patients' Bill of Rights is a women's issue, because it is the women of America's families who often make the decisions that are very important in terms of the health care of their family. They are the ones who often read the fine print of insurance documents. They fill out the paperwork in order to make sure their children have access to the health care they need. They are often the ones on the front line either trying to get health insurance for their families or also ensuring they have the best benefit package.

But, guess what. When it comes down to them getting the health care they need, they are often denied it. They are often denied having access to an OB/GYN who is the primary care provider for most American women, because they are called "a specialist."

Also, when they face a tremendous problem in their lives, such as a mastectomy, they are often denied the time they need to get the care they need because of the insurance gatekeepers. We call this the drive-by mastectomy situation. We call it a drive-by mastectomy, because a procedure is performed on a woman, she is driven to the hospital, and she is driven out of the hospital—sometimes within hours.

What is a mastectomy? Make no mistake, the term "mastectomy" is a technical term. But what it really means to a woman is that it is a breast amputation with all of the horror, terror, and trauma that an amputation brings out. When one faces such a horrific procedure, certainly you should have the kind of care you need. And that should be decided by the doctor and the patient—not by an insurance gatekeeper.

What does a mastectomy mean? For every woman in the United States of America, the one phrase that she is terrified to hear is: You have breast cancer. The next phrase that she is terrified to hear is: It has gone so far that we have to do a mastectomy.

It is traumatic for her, because it is not only body altering, but it is family altering, and it is relationship altering. When one looks at one woman facing a mastectomy, she needs to discuss this with her spouse. He is as scared as she is. He is terrified that she is going to die. He is terrified about how he can support her when she comes home from the hospital. And then they know they have to sort out a relationship under such difficult situations.

When a woman has a mastectomy, they need to recover where they recover best. That is decided by the doctor and the patient. Women are sent home still groggy from anesthesia and sometimes with drainage tubes still in

place, with infection, and are not sure if that is the right place.

Make no mistake. We can't practice cookbook medicine. Insurance gatekeepers can't give cookbook answers. An 80-year-old who needs a mastectomy needs a different kind of care than a 38-year-old woman.

We go out there, and we race for the cure. I think it is wonderful. We do it on a bipartisan basis. But if we find the cures, we need access to the clinical trials. It is being denied in the Republican Patients' Bill of Rights. We need to be able to talk to our own OB/GYN. That is called "a specialist"; we can't do that.

We need to have access to the care. This is the United States of America. We have discovered in this century more medical and scientific breakthroughs than any other century in American history. It is in America where we found how to handle infectious diseases. It is in America where we have come up with lifesaving pharmaceuticals. It is in America where we have had lifesaving new surgical techniques only to find that in America, though we invented something to save your life, we also invented insurance gatekeepers that prevent you from having access to those lifesaving mastectomies. This can't be so.

If we are going to really take America into the 21st century, we must continue our discovery. We must continue our research, and we have to have access to our discoveries.

The Republicans, through Senator D'Amato, offered legislation on drive-by mastectomies. When the Republicans offered their bill in the committee, it was strikingly absent. Senator MURRAY and other Members offered the D'Amato amendment. However, along party lines it was rejected, 10-8. Certainly what was good for D'Amato a year ago should be good now, at least to have the opportunity to debate this year.

The Democratic alternative Senator MURRAY and other Members want to offer simply says that decisions should be made by the doctor in consultation with the patient.

A few months ago I had gallbladder surgery. I could stay overnight for my gallbladder surgery because it was medically necessary and medically appropriate. Surely if I can stay overnight for gallbladder surgery, a woman should be able to stay overnight if she has had a mastectomy.

I yield the floor.

Mr. REID. Mr. President, how much time does the minority have remaining for morning business?

The PRESIDING OFFICER (Mr. HUTCHINSON). The minority has 8 minutes 30 seconds remaining.

Mr. REID. While the assistant leader for the majority is on the floor, I ask unanimous consent we be allowed to extend on an equal basis the time for morning business until 12 noon.

Mr. NICKLES. Reserving the right to object, and I probably will not, how much time remains on our side?

The PRESIDING OFFICER. Forty minutes.

Mr. NICKLES. My colleague would be asking for an additional 10 minutes on each side?

Mr. REID. I think that would be appropriate.

Mr. NICKLES. Mr. President, if my colleague would modify his request and ask for an additional 10 minutes on each side, there would be no objection.

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

Mr. REID. I extend my appreciation to my friend, the senior Senator from Oklahoma, my counterpart on the majority.

Mr. President, I think it is time we did a little comparison as to what we really mean when we talk about the Patients' Bill of Rights.

The majority has something called the Patients' Bill of Rights, but it is this only in name. For example, does the majority's bill protect all patients with private insurance? No. It covers about 40 million; ours covers about 170 million.

What about the majority's ability to hold plans accountable? Does their bill hold plans accountable? No. Does ours? Absolutely, yes.

What about arbitrary interference from the management, from the bureaucrats? In the minority's bill, our Patients' Bill of Rights, there is no arbitrary HMO interference; in the majority's bill, of course there is.

We have heard so much about guaranteed access to specialists. The Democrats' Patients' Bill of Rights guarantees access to specialists; the majority's does not.

That is important. We have heard so much today about the need for the ability to see a specialist when needed. I spoke earlier about the daughter from Minden, NV, who writes to me:

If my mother had been able to get to the urologist earlier, she would be alive today, but she had to wait for 2 years. The tumor had grown, she died five months afterwards.

She also said in the letter it was such a waste of resources, because the HMO did spend money putting her mother in a hospice while she died. That was very expensive.

That is the whole point of our legislation. There is talk about it being so expensive. It is not expensive. In the long run, it saves the country money to have people taken care of when they need medical care.

Guaranteed access to specialists is what our legislation is all about. It is important we understand that.

What about access to out-of-network providers? They are needed on occasion. Ours gives that access; the Republicans', the majority's, does not.

How about specialists who need to work together to coordinate care? Ours

guarantees that; the Republicans' does not.

What about prohibition of improper financial incentives? Some of the plans have incentives. The more you keep people out of hospitals, the more money you make. A doctor has an incentive to keep people out of the hospital. That is wrong. That is absolutely wrong. Our legislation prohibits improper financial incentives; the Republicans', or the majority's, does not.

Access to clinical trials. This really isn't anything fancy, or complicated. There are certain diseases—cancer is the one that comes to mind—where people have no standard therapy left. Should they be allowed to go to the most modern programs that are life-saving in nature? We don't know for sure they work, but we think they will work. However, we need experiments, clinical trials, to determine if these new procedures work. Our legislation allows these clinical trials to go forward. Our legislation says we don't give up on someone and simply say we have used all standard procedures, we will not allow these great scientists, these medical researchers who have found new ways they believe can cure a disease—we will not allow your mother, father, brother, or sister to have cutting-edge treatments.

Under our program, we say patients should have access to clinical trials. People's lives are saved every day because of these clinical trials.

Access to OB/GYN—obstetrician/gynecologist. This is absolutely critical for women. It is guaranteed under our legislation that women would have access to OB/GYN physicians. That is extremely important. Under the Republican version, there are certain instances, certain times—very minute, very limited—that women can see an OB/GYN physician. We believe this should be a matter of routine. A woman should be able to see a gynecologist or obstetrician when she believes it appropriate.

We know in America today, when women see a gynecologist, often these physicians become the primary care physician for women. We believe our legislation is what women deserve and what they need in America today.

What about access to doctor-prescribed drugs? We have had a problem develop around the country and in Las Vegas when one of our providers found a new way to dispense drugs. If someone needs one 50-milligram pill, the provider sends them a 100-milligram pill and tells them to cut it in half, giving them the instrument to cut it in half.

That is not the way medicine should be practiced. Just because the HMOs get a good deal on a bunch of medicine, on a bunch of drugs, does not mean that patients should be subjected to that kind of treatment. Shouldn't they be given the prescribed drugs the doctor says they need?

How would you feel if you went to a pharmacist and the prescription ordered a 50-milligram pill and the pharmacist said: I will give you half as many, but they are twice as powerful, so just cut them in half?

That is what is going on in America today with managed care. Our legislation would prohibit these practices.

There are significant numbers of people who are fired from managed care entities for telling the truth, for being advocates, for saying: This is not the way you should be treated. Go talk to your doctor. Go back to someone else. They get fired.

In our legislation, we have protections for patient advocates. If a nurse, for example, says, this is not the way I believe you should be treated, you should go talk to your doctor, or you should appeal a decision, under our legislation, this nurse would be protected for advocating on behalf of her patient. Under the proposal of the majority, there is no similar protection.

Another problem is that managed care facilities put their physicians on an index. They go out every year and hustle doctors in order to get good deals. They find a doctor who will do an appendectomy cheaper than a doctor did last year, so that doctor gets put on their list. All of a sudden, the patient no longer has the right to see the doctor who has been treating him or her for 10 years, because the doctor is not on the HMO's list.

What we say in our legislation is that you can keep your doctor throughout treatment, that you need not change even though the managed care entity, in effect, has fired that doctor. The doctor is fired not for doing anything wrong as far as rendering bad treatment, but simply because they no longer want them on their approved list. Maybe they had an argument with one of the administrators. Maybe they think they charged too much. Maybe they can get a better deal. That is usually what it is, a better deal from other physicians.

Under our Patients' Bill of Rights, we, as I have said, allow patient advocacy. But we also prohibit gag rules. Under the majority's Patients' Bill of Rights, and I use that term very loosely, you will find they have language prohibiting gag rules but it is relatively meaningless. It is not enforceable.

We also believe there should be external appeals. There was a speech made here yesterday that the majority's legislation does allow independent external appeals. That is simply not true. They have words that say that occurs, but it really has no merit. Under our legislation, there is a guarantee of an independent external appeal. And it is done quickly.

There are also very important considerations as to whether or not a person who is part of a plan has the right

to go to an emergency room. We have heard numerous examples of people denied payments after going to an emergency room. One of my favorites was a young woman who was out hiking, fell off a cliff, broke her pelvis and leg, was taken to an emergency room, and the cost was over \$10,000. It was denied by the managed care entity because she did not get prior approval to go to the emergency room.

If that were only one case where that happened, maybe we would not pay much attention to it. But this happens all the time. People are constantly denied the right to go to an emergency room. Under the majority's legislation, they have a little bit of language that gives a little bit of protection for emergency room access, but this is not enough.

One of the key provisions in our legislation is that we have an ombudsman. What is an ombudsman? An ombudsman is a person you can go to who works for the managed care entity, so if there is a complaint, "I was denied care and I should not have been," it is that person's job to get to the bottom of it. An ombudsman can take a look at that and find out what went wrong. There is someone to go to if there is a problem with the managed care entity. Under our legislation, it is a requirement. It is not even mentioned in the majority plan.

Plan quality—isn't it just right that there be somewhere where a patient, a member of a plan, can go to find out what happens when certain procedures are done in this managed care entity? Are they successful? Are they not successful? Our legislation provides that people who are members of a plan can get information on the quality of their plan. That is critically important.

As I have asked before, why are we here today talking about the Patients' Bill of Rights? We are here because we believe there should be a debate taking place in the greatest debating society in the world, as the Senate is often referred to, on this issue. What should be done with these managed care entities around the country as far as providing information, protecting all patients? Do we want a debate on whether the Patients' Bill of Rights should cover 40 million Americans or whether it should cover 60 million? Do we want to debate on whether we can hold plans accountable? Do we want a debate on whether there can be arbitrary HMO interference in the practice of medicine? Do we want a debate on guaranteed access to specialists? Do we want a debate on access to out-of-network providers? Do we want a debate on specialists being able to coordinate care? Do we want a debate on standing referrals to specialists? Do we want a debate on improper financial incentives given to doctors who are part of these entities? Do we want a debate on access to clinical trials? Do we want a debate on having

an obstetrician and gynecologist for women when they want one? Do we want a debate on access to doctor-prescribed drugs? Do we want a debate on patient protection advocacy? Do we want a debate on keeping a doctor throughout your entire treatment? Do we want a debate on prohibition of gag rules? Do we want a debate on how the guaranteed network meets the needs of a patient? Do we want a debate on access to nonphysician providers? Do we want a debate on choice of provider point-of-service? Do we want a debate on emergency room access? Do we want a debate on whether or not these plans should have an ombudsman?

The answer to every one of these questions is yes, we do. That is why we are here in this body. This great debating society says: Yes, let's debate these issues. If the majority is putting forth this bill that they call a Patients' Bill of Rights—and we submit it is only in name a Patients' Bill of Rights—we say we are willing to debate this because the American people are protected under our Patients' Bill of Rights. People need protection. They have been taken advantage of.

In America today there are only two groups of people who cannot be sued: foreign diplomats and HMOs. I was at dinner in Nevada Saturday with a friend who is one of the chief administrative officers for a big managed care entity in northern Nevada. She said to me: I kind of like your plan, except these lawyers.

I said to her: Every other business in America has to deal with lawyers. Why shouldn't people who take care of me, people who take care of my daughter, people who take care of my son, my wife, if they do something wrong, why should they not also have to respond in the legal system? That is really invalid. People are saying this is going to make all this litigation. That is simply not true. Lawyers, especially when they deal with people's health, have to be very careful litigating. In the entire history of the State of Nevada, which is now not the smallest State in the Union, although certainly not one of the largest, it is about 35th in population, in the entire time we have been a State, there have only been a handful of cases, medical malpractice cases that have gone to a jury. So this is a bogeyman that does not exist.

What we are saying is we want a debate on the Patients' Bill of Rights. We think ours is certainly one in keeping with the standards the American people want. In the light of day, we are willing to debate what the Patients' Bill of Rights on the other side has, which is nothing. It is a Patients' Bill of Rights in name only. We want to come to this body and have a reasonable number of amendments. That is a concession on our part, a reasonable number of amendments. We should be able to offer all the amendments we

want, but we believe so strongly about this issue that our leader has said to the majority leader we are willing to limit our amendments to 20 and to set a time for completing this bill.

That certainly seems fair and reasonable when one considers that in this Congress, we already have taken up bills which have not taken a lot of time but had far more amendments.

Y2K problem, 51 amendments; DOD authorization, 159 amendments. We spent 4 days on that bill. On the Y2K problem, we spent 13 days on it and many of those were very short days.

Defense appropriations, 67 amendments. We were able to finish that bill in 1 day. We debated the juvenile justice bill for 8 days, and we were able to dispose of 52 amendments.

We are saying, with something as important as people's health care and well-being, we are willing to take 20 amendments. We feel we can finish the bill in 3 days with 20 amendments. Certainly, we are entitled to that time. We had 8 days on juvenile justice. In that regard, we came up with some good legislation.

On the budget resolution, which is a guide for this body and which I believe was not a very good piece of legislation—I voted against it as did most everyone on this side of the aisle—there were 104 amendments, and we disposed of that bill in 2 days.

In short, we certainly should have this debate, and we should do it right away. We recognize we are only going to have one more legislative day this week and then we go back to our States to do other things. Let's do it next week. Let's begin this bill next week, and after the Fourth of July break, we can come back and work on the appropriations bills. We are not going to complete any of the appropriations bills until we have a meaningful debate on the Patients' Bill of Rights, one where we are not gagged and we are allowed to offer the amendments we want to offer as to the substantive merits of this legislation.

I hope the majority will allow this debate to take place. It will take place. It is only a question of when it will take place. We will save a great deal of time and anxiety if we just get to it. As Mills Lane, the famous fight referee, now the TV judge says: Let's get it on.

We are willing to get it on with this debate. We feel so strongly about the merits of our case, we are willing to debate it in the dead of night or early in the morning. We do not care when we do it, but let's do it.

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

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

Mr. KERREY. Mr. President, are we in morning business?

The PRESIDING OFFICER. The Senate is in morning business.

#### AMENDMENTS TO AGRICULTURE APPROPRIATIONS

Mr. KERREY. Mr. President, I had intended to come over and talk on the ag appropriations bill. I am not going to talk about the ag appropriations bill since we are not on it. I am going to talk about a couple of amendments I intend to offer, if we ever get to that point. I will put us back into a quorum call when I am through.

There are many important things in this ag appropriations bill that I strongly support. I have a great deal of respect and appreciation for the work that both Senator COCHRAN and Senator KOHL have done on this piece of legislation. Every appropriator, every Senator who has the responsibility of working on the Appropriations Committee, understands we are seeing a decline, a deterioration in our capacity to invest in our future as a result of a growing problem we have with our budget; that is, a larger and larger share that is going to mandatory programs and a smaller and smaller share available for these long-term investments, whether it is in soil, whether it is in research, all the other things that are in this particular piece of legislation. The problem is only going to get worse.

I didn't come to talk about that, but I did feel obliged to say I understand that all these men and women who serve on the Appropriations Committee are under an awful lot of pressure, and that pressure is going to grow.

We currently take from the American people about 20.5 percent of GDP to spend on Federal programs. That one-fifth of total GDP that we have been taking for the last 50 or 60 years has remained relatively constant, though at 20.5 it has not been at that high level since 1945. I say that only because there is an upper limit as to what we can take. I think we are there. Indeed, I support cutting taxes right now; I believe we can cut taxes. Indeed, part of the reason I am for it is that, at 20.5, in order to send a signal, we need to understand there is an upper limit. Otherwise, we are apt to spend it on a variety of things, and all the fiscal discipline we have had throughout most of this decade will be evaporated in a hurry.

But as to this bill itself, whenever it becomes appropriate, I intend to offer a couple amendments. As I said, while this piece of legislation does support a number of very important aspects of agriculture spending, from agriculture research to food stamps, in fact, it can't, given its mission, address the