

particular interest and approach their counterparts in Moscow to indicate that the United States is very, very concerned about this situation, that we are watching it, that they are not going to be able to do this behind closed doors and get away with it. They are not used to public hearings in Russia and they are scared to go public on this.

It is very, very important that Captain Nikitin's case be recognized by our Department of State as something that Members of this Congress are very, very concerned about, and I call on other Members to acquaint themselves with the circumstances.

The gentleman from Pennsylvania (Mr. WELDON) is well aware of it, as I said. He is unable to be with us today to discuss the situation further. But I can assure you, Mr. Speaker, and I assure the other Members, this is not the last time that I will be on this floor, nor that individuals like the gentleman from Pennsylvania (Mr. WELDON) will be here.

Let me conclude by indicating to that on a recent Congressional delegation trip to Russia, the gentleman from Missouri (Mr. SKELTON) as the ranking Democrat on the Committee on Armed Services led a delegation of individuals from the Congress there, and we met with Captain Nikitin.

We can provide you information, Mr. Speaker, on the case in more detail, but we just want to alert you and alert the State Department today that we expect to have this case front and center in the consciences of everyone who is concerned about the environmental degradation taking place in Russia today as a result of the deterioration of the nuclear submarines that are presently being mothballed.

Mr. Speaker, I insert the following for the RECORD:

DR. CARAWAY: As you know the Supreme Court will hear the Nikitin appeal on Thursday. The verdict should be announced the same day. We will see then.

Unfortunately, the hearing will take place behind closed doors, somewhat incomprehensible given that the hearing is not about the secrecy question, but about procedural issues.

Yours,

THOMAS JANDL,
Director, Bellona USA.

NIKITIN SUPREME COURT SESSION BEHIND
CLOSED DOORS

The Supreme Court session in the Nikitin case on 4 February will be held behind closed doors. The presiding judge, a member of an officially abolished department within the Supreme Court Council for the Criminal Cases, made the decision in fear that state secrets might be released.

The Nikitin case will be tried by the Council for the Criminal Cases of the Supreme Court. Many former Soviet dissidents associate this particular council with the dark times of KGB rule back in the Soviet past. The Council used to have a special department supervised by the KGB and responsible for the handling of crimes against the state. The special department was officially abol-

ished as the 'wind of democracy' swept across the former Soviet Union, but its membership remained intact.

"The judges in the Council have been sitting there for as long as I can recall," says Yury Schmidt, defender of Aleksandr Nikitin and former Soviet dissident. "They are not used to open hearings, they are scared to go public," adds Schmidt.

The court will not consider the merits of the case, but rather evaluate the legality of the 29 October 1998 St. Petersburg City Court ruling to send the case back for further investigation.

No legal grounds to have closed session. "The only legal reference they can find to justify the closed door hearings is the fact that the case formally deals with so-called state secrets," says Yury Schmidt. "But the court's task is not to go to the substance of the case, but rather evaluate the legal side of it. What secrets could this constitute," asks Schmidt rhetorically. According to Schmidt, there were quite solid grounds to have the court session behind closed doors in the St. Petersburg City Court as the court was examining the alleged secret material. A substantial part remained open to the public.

"To have the Supreme Court session closed can either be explained by the pressure from the FSB (successor to the KGB) or by the initiative of a KGB-trained judge", says Schmidt.

THE JUDGE'S DECISION

When approached for comments Supreme Court press spokesman Nikolay Gastello said the decision was taken by the presiding judge, Magomed A. Karimov. Gastello could neither comment on the motives of the judge nor say if the judge would change his mind.

"It was not an unexpected decision," says Aleksandr Nikitin, who arrived in Moscow today. "The FSB is there and does whatever it can to win the case."

THE NIKITIN CASE

Aleksandr Nikitin is charged with espionage and disclosure of state secrets while working for the Bellona Foundation. He was arrested by the FSB on 6 February 1996, after writing two chapters of a Bellona report on the risks of radioactive pollution from Russia's Northern Fleet. Jailed for 10 months following his arrest, Nikitin has since been restricted to the city limits of St. Petersburg. His case was then tried in St. Petersburg City Court between October 20 and 29, 1998. The St. Petersburg judge's decision to return the case to further investigation was appealed by both the prosecutor and the defence. Their respective appeals are to be heard in the Supreme Court on 4 February 1999.

Contacts in Moscow: Frederic Hauge and Thomas Nilsen.

Contacts in Oslo: Bellona Main Office.
Contacts in Washington: Thomas Jandl.
More info: <http://www.bellona.no/e/russia/nikitin/mailto:info@bellona.no>

COMMUNICATION FROM STAFF
MEMBER OF HONORABLE JIM
MCCRERY, MEMBER OF CON-
GRESS

The SPEAKER pro tempore laid before the House the following communication from Sally Asseff, staff member of the Honorable JIM MCCRERY, Member of Congress:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 27, 1999.

Hon. J. DENNIS HASTERT,
Speaker, U.S. House of Representatives, Wash-
ington, DC.

DEAR MR. SPEAKER: This is to formally notify you pursuant to Rule VIII of the Rules of the House that I received a grand jury subpoena for documents issued by the U.S. District Court for the Western District of Louisiana.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the privileges and precedents of the House.

Sincerely,

SALLY ASSEFF.

APPOINTMENT OF MEMBERS TO
HOUSE COMMISSION ON CON-
GRESSIONAL MAILING STAND-
ARDS

The SPEAKER pro tempore. Without objection, and pursuant to the provisions of section 5(b) of Public Law 93-191, the Chair announces the Speaker's appointment of the following Members of the House to the House Commission on Congressional Mailing Standards:

Mr. THOMAS of California, Chairman;

Mr. BOEHNER of Ohio;

Mr. NEY of Ohio;

Mr. HOYER of Maryland;

Mr. CLAY of Missouri; and

Mr. FROST of Texas.

There was no objection.

MANAGED CARE REFORM

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 1999, the gentleman from Iowa (Mr. GANSKE) is recognized for 60 minutes as the designee of the majority leader.

Mr. GANSKE. Mr. Speaker, I want to talk to my colleagues today about managed care reform, an issue that we must take from the drawing board to the signing ceremony this year.

Last year I joined with my friend, the gentleman from Michigan (Mr. DINGELL), and offered the Patients' Bill of Rights as an amendment on the House floor. While I regret that it did not pass, there may have been at least one good thing about that. In the last few weeks, many HMOs have announced double digit premium increases, because, in my opinion they have not done such a great job in cost containment and their premiums have been loss leaders for years. But you can be sure that if the Patients' Bill of Rights had passed last year, they would be blaming us now for their skyrocketing premiums.

□ 1330

And by the way, how many of their CEOs are taking pay cuts from their multimillion dollar salaries as they are raising their premiums this year?

Mr. Speaker, before discussing how I think Congress will deal with this issue

this year, it is important to understand why passage of HMO reform legislation is so important. I will bet that every Member of Congress has heard from constituents describing their own HMO horror story.

We have all seen headlines like: "HMO's Cruel Rules Leave Her Dying for the Doc She Needs." Or: "Ex-New Yorker is Told: Get Castrated So We Can Save Dollars." Or how about this headline: "What His Parents Didn't Know About HMOs May Have Killed This Baby."

Consider the 29-year-old cancer patient whose HMO would not pay for his treatments. The HMO case manager told him instead to hold a fund-raiser. A fund-raiser. Well, Mr. Speaker, I certainly hope that campaign finance reform will not stymie this man's efforts to get his cancer treatment.

During congressional hearings two years ago before the Committee on Commerce, we heard testimony from Alan DeMeurers, who lost his wife, Christy, to breast cancer. When a specialist at UCLA recommended that she undergo a bone marrow transplant, her HMO leaned on UCLA to change its medical opinion. Who knows whether Christy would be with her two children today, had her HMO not interfered with her doctor-patient relationship.

Other plans have placed ridiculous burdens on those seeking emergency care. Ask Jacqueline Lee how bad this can be. In the summer of 1996 she was hiking in the Shenandoah mountains when she fell off a 40-foot cliff. She fractured her skull, her arm, her pelvis; she was semicomatose. She was airlifted to the local hospital and treated. Now, my colleagues will not believe this. Her HMO refused to pay for the services because she had failed to get preauthorization.

I want to ask my colleagues, what was she supposed to do, know that she was going to fall off a cliff? Or maybe as she was laying at the base of that 40-foot cliff, semicomatose, with her non-broken arm she could pull a cellular phone out of her pocket and phone a 1-800 number saying, I need to get to the emergency room?

Colleagues, there are countless other examples. How about the doctor who was treating a drowning victim, a little 6-year-old boy? This physician told me that this little boy had been in the ICU for just a few hours, was hooked up to a ventilator, they were doing everything they could to save his life, but it did not look very promising. As this physician and the little boy's parents were standing around the bedside, just a few hours after admission to the ICU, the phone rings. It is the HMO case manager.

"Well, how is this little boy's condition?" It is pretty critical. "Well, if it is so dismal, have you thought about sending him home on home ventilation?" Think about that. We are fight-

ing to save this little boy's life, and a few hours after admission, the HMO is suggesting, send him home on home ventilation so that we can save a few dollars.

How about the HMOs that refuse to cover cleft lip and cleft palate surgery, saying that these are cosmetic? How about plans that threaten action against doctors who tell their patients about all of their medical options, not just the cheap ones that the plan will provide? How about HMOs manipulating the term "medically necessary" to avoid covering costly procedures?

Because our friends, our neighbors, our fellow workers, or our own families have had these types of experiences, countless polls show that people want Congress to pass managed care reform legislation this year. A recent Kaiser Family Foundation survey found that 78 percent of voters support managed care reform, and a similar percentage support allowing consumers to go to court to sue their health plans if their health plans are guilty of malpractice.

But no public opinion poll can convey the depth of emotion on this issue, except the way movie audiences around the country spontaneously clapped and cheered Helen Hunt's obscenity-laced description of her HMO in the Oscar-winning movie, *As Good As It Gets*. Audiences across the country responded to her plight because they saw the same things happening to their families, their friends, their fellow workers.

Now, the industry responds, well, these cases that you have talked about, they are all just anecdotes. Well, Mr. Speaker, to paraphrase Shakespeare, "Hath not these anecdotes" these HMO victims, "Hath not these anecdotes' hands, organs, senses, passions" the same as a HMO apologist? And if you prick these anecdotes, do they not bleed? If you tickle those anecdotes, do they not laugh? And if you cut short their care for profits, might they not die?

Last year I and some others crossed party lines to push for passage of the Patients' Bill of Rights. This is a good bill. It would have done a lot to deal with the end of the constant stream of HMO abuses similar to the ones I have talked about.

It contained, for example, strong language ensuring that health plans pay for emergency care. Think of the plight of James Adams, age 6 months. At 3:30 in the morning his mother, Lamona, found him hot, panting, moaning. His temperature was 104 degrees. Lamona phoned her HMO and was told to take little Jimmy to the Scottish Rite Hospital. Quote: "That is the only hospital I can send you to," said the HMO reviewer. "How do I get there?" Lamona asked. "I don't know," the nurse said. "I'm not good at directions."

Well, about 20 miles into their ride, little Jimmy's parents passed Emory University Hospital, a renowned pedi-

atric center. Then they passed Georgia Baptist and Grady Memorial, but they did not have permission to stop there, and so they drove on. They had 22 more miles to travel to get to Scottish Rite Hospital, and while searching for Scottish Rite, James' heart stopped.

There is a scene in the recent movie, *Civil Action*, showing a mother and a father in a car on the side of the road administering CPR to their child. Think of little Jimmy Adams when you see that scene.

Well, Lamona eventually got Jimmy to the hospital, but because he had had an arrest, it looked like he was going to die. Jimmy was a tough little guy, though, and despite his cardiac arrest due to the delay in treatment by his HMO, he survived. However, the doctors taking care of little Jimmy had to amputate both his hands and both his feet because of gangrene related to the arrest.

All of this is documented in the book, *Health Against Wealth*. As the details of baby James' HMO's methods emerged, it became clear that the margins of safety in HMOs can be razor thin. Maybe as thin as the scalpel that amputated Jimmy's hands and feet.

Think of the dilemma an HMO places on a mother struggling to make ends meet. In Lamona's situation, if she takes her child to the nearest emergency room, she could be at risk for hundreds or even thousands of dollars in uncovered charges. Or she could hope that her child's condition will not get worse as they drive past other hospitals that additional 22 miles to get to the nearest ER authorized by that HMO.

A strong HMO reform bill would ensure that consumers do not have to make that type of potentially disastrous choice.

Last year we had support from consumer groups and from a number of nonprofit health plans calling for Federal legislation. These health plans and consumer groups wrote, "Together, we are seeking to address problems that have led to a decline in consumer confidence and trust in health plans. We believe that thoughtfully designed health plan standards will help to restore confidence and ensure needed protection."

And noting that they already made extensive efforts to improve the quality of their care, the chief executive officer of one of these plans said, "We intend to insist on even higher standards of behavior within our own industry, and we are more than willing to see laws enacted to ensure that result."

Let me repeat that. The CEO of one of the country's largest HMOs said, "We are more than willing to see laws enacted to ensure that result."

So in recognition of the problems in managed care, these three managed care plans, along with consumer groups, got together and endorsed nationally enforceable standards. Things

like guaranteeing access to appropriate services, providing people with a choice of health plans, ensuring the confidentiality of medical records, protecting the continuity of care, providing consumers with relevant information, covering emergency care, banning gag rules.

Well, I am sad to say that despite strong public support to correct problems like these and the support of many responsible managed care plans, the legislation stalled in Washington last year. That is truly unfortunate, since the problem demands Federal action.

Mr. Speaker, historically State insurance commissioners have done a good job of monitoring the performance of the health plans in their States. But Federal law puts most HMOs beyond the reach of State regulations.

How is this possible? More than two decades ago Congress passed the Employee Retirement Income Security Act, which I will refer to as ERISA, in order to provide some uniformity for pension plans in dealing with different State laws. Health plans were included in ERISA almost as an afterthought. But the result has been a gaping regulatory loophole for self-insured plans under ERISA.

And even more alarming is the fact that this lack of effective regulation is coupled with an immunity from liability for negligent actions.

Now, Mr. Speaker, personal responsibility has been a watchword for this Republican Congress, and this issue should be no different. Health plans that recklessly deny needed medical service should be made to answer for their conduct. Laws that shield them from their responsibility only encourage HMOs to cut corners. Congress created this ERISA loophole, and, Mr. Speaker, Congress should fix it.

Think for a moment about buying a car. Mr. Speaker, I often hear from opponents to this legislation, well, this managed care legislation, this could lead to socialized medicine. But think about buying a car. Federal laws ensure that cars have horns, brakes and headlights. Yet, despite these minimum standards, we do not have a nationalized auto industry. Instead, consumers have lots of choices. But they know that whatever car they buy, that car has to meet certain minimum safety standards. One does not buy safety "a la carte".

The same notion of basic protections and standards should, in my opinion, apply to health plans. Consumer protections will not lead to socialized medicine any more than requiring seat belts has led to a nationalized auto industry.

□ 1345

In a free market, these minimum standards set a level playing field that allows competition to flourish.

Mr. Speaker, let me share some thoughts on how I think this issue will evolve in the coming months. As we know, we came close to passing the Patients' Bill of Rights last year. Already, however, I see signs that a partisan fight could break out again this year.

While I continue to support the Patients' Bill of Rights and I wish it had passed, I do not want us to get hung up on or let reform die on the altar of partisanship like the opponents to the legislation used last year.

So I decided not to cosponsor the Patients' Bill of Rights this year when the gentleman from Michigan (Mr. DINGELL) introduces it. Instead, I am going to introduce my own bill, probably next week. While my bill will keep the best features of the Patients' Bill of Rights, it will also eliminate some of the provisions that would add regulatory burdens on health plans without really adding much in the way of increased patient safety.

In addition, my bill will have a new formulation on the issue of health plan liability. I continue to believe that health plans which make negligent medical decisions should be accountable for their actions, but Mr. Speaker, winning a lawsuit is little consolation to a family who has lost a loved one.

The best HMO bill will ensure that health care is delivered when it is needed, and to encourage that, the bill which I will drop next week will provide for both an internal and an external appeals process. But unlike last year's Patient Protection Act, the external review will be binding on the plan. It could be requested by either the patient or the health plan. The review would be done by an independent panel of medical experts.

Do external appeals work? A recent review in New York shows that half of all internal appeals are decided in favor of the patient. But that also means that half of the time the HMO's decisions are upheld. The important thing is to get the proper treatment for the patient in a timely way, not necessarily to end the post mortem in a court.

So I will propose that where there is a dispute on denial of care, either the patient or the HMO can take this dispute to an independent peer panel for a binding decision. If the plan follows that decision, there could not be punitive damages against the HMO, since there can be no malice if they bind themselves to the decision of an independent panel of experts.

I suspect that Aetna today wishes they had had an independent peer panel available, even with a binding decision on care, when it denied care to David Goodrich. Last week a California jury handed down a verdict with \$116 million in punitive damages to David Goodrich's wife, Teresa. If Aetna or the Goodriches had had the ability to send

that denial of care to an external review, they could have avoided the courtroom. But Mr. Speaker, more importantly, David Goodrich might be alive today.

That is why my plan should be attractive to both sides of the aisle. Consumers get a reliable and quick external appeals process which will help them get the care they need. They can go to court to collect economic damages or lost wages, future medical care. But if the plan follows the external review's decision, the patient cannot sue for punitive damages.

HMOs, whose greatest fear is of a \$50 or a \$100 million punitive damage award, can shield themselves from those astronomic awards, but only if they follow the recommendations of an independent review panel, which is free to make its own decision about what care is medically necessary, as long as there is not a specific exclusion of coverage of a benefit; i.e., a plan says up front to an enrollee, we do not cover liver transplants.

I have shared this approach with a number of my colleagues as well as consumer groups, businesses, health plans. I have been encouraged by the positive responses that I have received. I think this could be the basis for the bipartisan solution to this problem.

In fact, I recently spoke with the CEO of a large Blue Cross plan who confided to me that his organization is already implementing virtually all of the recommendations of the President's Health Care Quality Advisory Commission at little or no cost, probably no premium increase.

But the one part of the health care debate that concerns him is the issue of liability. He indicated that shielding plans from punitive damages when they follow an external review body would strike an appropriate balance.

Mr. Speaker, passage of real patient protection legislation is going to require a lot of hard work, dedication, and seeking a consensus and a compromise. My new bill represents an effort to break through the partisan gridlock that we saw last year, and to move this issue forward and get a solution signed into law.

I hope that my colleagues will sign on as original cosponsors to the Managed Care Reform Act of 1999. If Members have any questions about parts of this bill or if they want to sign on, please give my office a phone call.

INTRODUCTION OF THE DISASTER MITIGATION ACT OF 1999

The SPEAKER pro tempore (Mr. SHIMKUS). Under a previous order of the House, the gentleman from New York (Mr. BOEHLERT) is recognized for 5 minutes.

Mr. BOEHLERT. Mr. Speaker, I am pleased to be joined by my colleague, the gentleman from Pennsylvania (Mr.