June 7, 1999

CONGRESSIONAL RECORD—HOUSE

HMO REFORM NEEDED NOW

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.

Mr. GANSKE. Mr. Speaker, before I came to Congress I was a reconstructive surgeon. I took care of a lot of children who were born with cleft lips and pallets, similar to this little baby here. Unfortunately, Mr. Speaker, about half of the reconstructive surgeons in the country in the last couple of years have had proposed surgeries to correct conditions related to this birth defect turned down by HMOs because they are “cosmetic.”

Mr. Speaker, when you have a normal process like aging and you do an operation to make it better, that is cosmetic. But, Mr. Speaker, when a baby is born with a birth defect in the middle of their face, like this, that is not a cosmetic procedure. I can give you many functional reasons why this should be fixed. But there are children in this country in the last several years who have been denied medically necessary treatment by HMOs.

Mr. Speaker, I closed my medical practice when I came to Congress, but I still go overseas to do surgeries to correct birth defects like this. I remember a few years ago I was down in Guatemala and a 30 year old man came in with an unrepaired cleft lip just like this. He lived all his life with an unrepaired cleft lip. So we fixed him the next day.

He had come in with his mother, who was probably about 50, but she looked like she was about 80. They were of Indian extraction. When we took him back to the recovery area in this small hospital in north east Guatemala, his mother broke down and started crying. She said in Spanish, “Ahora el va a Dios con felicidad,” now he will go to heaven happy.

Now, Mr. Speaker, one of the Members of this Congress, the gentleman from Texas (Mr. DELAY), should be commended, because he has helped raise funds for those surgical trips abroad, many of them done by Dr. Bill Riley, to help correct this type of birth defect. But we have a situation in this country where even if you are paying a lot of money for your insurance, you are getting turned down because your HMO arbitrarily declares this not medically necessary.

As soon as money comes to the floor, I hope my colleagues who have participated in helping children get charitable care to correct this type of birth defect will vote for legislation that makes it necessary for insurers in this country to cover correction of this type of birth defect.

Mr. Speaker, the clock continues to tick. Another week has gone by without legislative action in the House on HMO reform. The gentleman from Virginia (Mr. BLILEY), the chairman of the Committee on Commerce, has promised the gentleman from Georgia (Mr. NORWOOD) that we would have a subcommittee markup “sometime in June.” But where is a firm commitment to a date certain, and where is the commitment for a full committee markup, and where is the commitment from the Republican leadership in this House to move HMO reform to the floor? Or do we just continue to delay?

Managed care reform should be on the floor by July 4th, and I return for four weeks until the July 4th recess. So, colleagues, let us get moving.

Now, why is it so important to move this legislation in a timely fashion? Because, Mr. Speaker, people are being hurt every day by decisions by managed care health plans that they make when they know they cannot be held responsible for those decisions.

I recently read an account of a gruesome crime, and I saw an analogy in that crime to what we have with Federal law as it relates to HMOs.

Mr. Speaker, in late 1978 a woman by the name of Mary Vincent made a fatal decision. She jumped into a blue van on a freeway while hitchhiking in Berkley, California. Later the driver pulled off the highway and, in a flash, Mary saw a hammer swinging at her head. Her attacker then tied her hands behind her back and he raped her viciously, repeatedly. She screamed for help, but the driver patiently grabbed her hands, only to sink an ax, an ax, into her left forearm. Then he did it again, and again, and her left arm was off in three blows. Four blows later, and he

seen, Mr. Speaker, is a quantum leap in technological prowess by the Communist Chinese, with our know-how, with our capital.

Indeed, I would just say to my friend from Pennsylvania, whatever price it might cost to include those transcripts of the FBI wiretaps in the CONGRESSIONAL RECORD, it is a small price to pay on behalf of the American people.

Interestingly enough, Mr. Speaker, April of 1996, that was when Vice President Gore went to Southern California for his campaign fund-raiser, what he first described as a community outreach event at the Buddhist temple in Southern California.

The American people have simple questions that need to be answered. Are we safe? Are those who took the oath of office to uphold and defend the Constitution of the United States and thereby provide for the common defense in fact being good stewards and good custodians of that trust? As my colleague from Pennsylvania eloquently and substantially explains to you many functional reasons why there may be troubling answers.

Mr. WELDON of Pennsylvania. I thank my colleague for joining me. I would like to stay here and engage the gentleman, but I am supposed to do a gentle manly duty. Unfortunately, I have to yield back my time. But I would like to thank the gentleman for coming over and joining me.

Berkley, California. Later the driver pulled off the highway and, in a flash, Mary saw a hammer swinging at her head. Her attacker then tied her hands behind her back and he raped her viciously, repeatedly. She screamed for help, but the driver patiently grabbed her hands, only to sink an ax, an ax, into her left forearm. Then he did it again, and again, and her left arm was off in three blows. Four blows later, and he
had cut off her other arm. This sadist then dumped her molested and violated and mutilated body into a culvert off of a lonely road, where she was found the next morning, miraculously, still alive.

Mary was in the hospital for a month and was eventually fitted with prosthetic arms that have crab-like pinchers for her hands. She later testified against her attacker, and when she left the witness stand, she swore at her, "If it is the last thing I do, I am going to finish the job."

Eight years later Mary was living in Puget Sound when she heard on her wedding day that her attacker had been freed from San Quentin after serving only eight years. She lived in fear for years that this rapist would return to finish the job.

Finally, in February 1997, her mother called her with more bad news. Her attacker had killed a Florida woman. The Adams family lived south of Atlanta, Georgia, and Scottish Rite was an hour away on the other side of the Atlanta metro area.

Lamona held little baby Jimmy while his dad drove as fast as he could. Twenty miles into the trip, while driving through Atlanta, they passed Emory Hospital's emergency room. Georgia Baptist's emergency room, then Grady Memorial's emergency room. But they still pushed on to Scottish Rite Medical Center, still 22 miles away, because they knew if they stopped at an unauthorized hospital, their HMO would deny coverage for any unauthorized treatment, and they would be left with possibly thousands of dollars of bills.

They knew Jimmy was sick, they just didn't know how sick. After all, they were not trained medical professionals. While still miles away from Scottish Rite hospital, Jimmy's eyes fell closed as everyone called out to him, but she couldn't get him to respond. His heart had stopped. Can you imagine Jimmy's dad driving as fast as he can while his mother is trying to keep him alive?

They finally pulled into the emergency room entrance. Lamona leaped out of the car. She raced to the emergency room with Jimmy in her arms. She was screaming, help my baby, help my baby. The nurse gave him mouth-to-mouth resuscitation while the pediatric crash cart was rushed into the room. Doctors and nurses raced to see if modern medicine could revive this little infant. He was intubated, intravenous medicines were given, and he was being cardiopulmonary resuscitated.

This is little Jimmy Adams, tugging at his big sister's sleeve before he got sick. Well, little Jimmy turned out to be a tough little guy. He survived, despite the delay in treatment caused by his HMO's delay in paying.

He ended up with gangrene in both hands and both feet, and doctors had to amputate both of Jimmy's hands and both of his feet.

Now Jimmy is learning how to put on his leg prostheses with his arm stump, but it is tough for him to get on both of his arm hook prostheses by himself. For the rest of his life this anecdote, quote unquote, as HMO defenders are so likely to call a victim like Jimmy; they just say, they are just anecdotes. Well, little Jimmy will never play basketball, and little Jimmy will never caress the face of the woman that he loves with his hands.

A judge looked into this case of James Adams and he said that the HMO's decision was "razor thin." I would add it is about as razor thin as the scalpel that had to amputate little Jimmy's hands and feet.

What do little Jimmy's amputations have to do with Mary Vincent's amputations? The person responsible for cutting off her arms is now on death row. But if your child had an experience like little Jimmy's and you received your health insurance through your employer's self-insured plan, the health plan would be responsible for his amputations. The health plan would be responsible for cutting off her arms is now on death row.

But if your child had an experience like little Jimmy's and you received your health insurance through your employer's self-insured plan, the health plan would be responsible for his amputations. The person responsible for cutting off her arms is now on death row.

The health plan, let me repeat that as we look at little Jimmy, if Jimmy's parents received their insurance through their employer who has a self-insured plan, and that plan has made the medical decision that has resulted in a little Jimmy Adams losing both hands and both feet, under Federal law that plan is responsible for nothing other than the medical decision that results in the loss of a limb like this? Should they not at least be responsible for damages?

Under a current Federal law called ERISA, the Employee Retirement and Income Security Act, if you receive your insurance from your employer and you have a tragedy like Jimmy Adams, your plan which makes decisions is liable for nothing other than the medical decision that was not given. Not only did Congress give HMOs legal immunity for their decisions, but ERISA allows those health plans to define as medically necessary. But just as I, as a doctor, am responsible for my actions, HMOs should be responsible for their actions.

There are many Members of Congress like myself who support the death penalty because we believe in personal responsibility. How can, I ask the Members, how can we not at least support financial responsibility for an HMO when they make a medically negligent decision that results in the loss of a limb like this? Should they not at least be responsible for damages?

Do Members not quite see the parallel between Mary Vincent and Jimmy Adams yet? Listen to the words of a former HMO reviewer as she testified before Congress. It was May 30, 1996, when a small, nervous woman testified before the Committee on Commerce. Her testimony came after a long day of testimony on the abuses of managed care.

This woman was Linda Peeno, a claims reviewer for several health care plans. She told of plans that planned to make everyday when they determine the medical necessity of treatment options.

I am going to recount her story for the Members as she testified: "I wish to begin by making a public confession. In the spring of 1987, I caused the death of a man. Although this was known to many people, I have not been taken before any court of law or called to account for this in any professional or public forum. In fact, just the opposite occurred. I was rewarded for this. It brought me an improved reputation in my job, and contributed to my advancement afterwards. Not only did I demonstrate I could do what was expected of me, I exemplified the good company doctor. I had saved a half million dollars."

Her anguish over harming patients as a managed care reviewer had caused this woman to come forth and bare her soul in tearful and husky-voiced account. The audience in that room shifted uncomfortably and they became very quiet as her story continued. Industry representatives averted their eyes.
She continued: “Since that day, I have lived with this act and many others eating into my heart and soul. For me, a physician is a professional charged with the care of the healing of his or her fellow human beings. The primary ethical norm is, do no harm. I did worse. I caused death. Instead of using a clumsy, bloody weapon, those are how I wound instead of using a clumsy, bloody weapon. I used the simplest, cleanest of tools, my words. This man died because I denied him a necessary operation to save his heart.

“I felt little pain or remorse at the time. The man’s faceless distance,” remember that I-400 number that Lamona Adams, little Jimmy’s mother, had to phone, “because of that faceless distance, it soothed my conscience. Like a skilled soldier, I was trained for the HMO job. When care with qualms arose, I was to remember I was not denying care, I was only denying payment.”

She continued: “At the time, this helped me avoid any sense of responsibility for my decisions. Now I am no longer willing to accept the escapist reasoning that allowed me to rationalize this decision. I accept my responsibility now for this man’s death, as well as for the immeasurable pain and suffering many other decisions of mine caused.”

At this point, Mrs. Peeno described many ways that health care plans deny care, but she emphasized one in particular, the right to decide what care is medically necessary.

She said, “There is one last activity that I think deserves a special place on this list, and this is what I call the smart bomb of cost containment, and that is medical necessities denials. Even when medical criteria is used, she continued, “It is rarely developed in any kind of standard traditional clinical process. It is rarely standardized across the field. The criteria are rarely available for prior review by the physicians or the members of the plan. And we have enough experience from history to demonstrate the consequences of secretive, unregulated systems that go awry.”

Mr. Speaker, the man who cut off Mary Vincent’s arms sits on death row, but HMOs who do the same consequences, what happens to them? They increase their profits. Under Federal laws, HMOs can cause a Jimmy Adams to lose his hands or his feet, and then they can justify their decision by defining “medically necessary” any way they choose.

When I think of Mary Vincent and Jimmy Adams, I rail at the injustice of their pain, but at least in Mary Vincent’s case we know that her attacker is getting his just due, his just desserts.

But does it not send a chill up our spine to hear an HMO medical reviewer describe how she caused the death of a man, and then got rewarded for it? Does it not cause a sense of outrage to find out that for years Congress has been shielding health plans from the consequences of their decisions like those that affected Jimmy Adams?

It is time for Congress to defuse the smart bomb of HMOs. It is time for Congress to repeal the liability protection for ERISA health plans. They should function under the same liability that insurers in the individual market operate under, under regulations that would prevent tragedy like this.

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Those protections should apply, Mr. Speaker, to everyone.

Now, Mr. Speaker, personal responsibility has been a watchword in this Republican Congress. It should be applied to this issue. Health plans that recklessly deny needed medical service should be made to answer for their conduct. Laws that shield entities from their responsibility only encourage them to cut corners. Congress created the ERISA loophole, and Congress should fix it.

So I have now come full circle to what brings me to the floor tonight. I find us at a crossroads, HMO reform will either suffer slow legislative death as the House continues to do nothing, or we will take our responsibility for past congressional mistakes and pass a bill like my Managed Care Reform Act of 1999, H.R. 719.

I urge my colleagues to cosponsor H.R. 719, the Managed Care Reform Act of 1999. It would fix the type of conditions that have caused this type of loss to a little boy.

This bill is endorsed by the American Cancer Society and other consumer groups. It is endorsed by many professional groups, including the American Academy of Family Physicians. This weekend, it was endorsed by the American College of Surgeons.

Mr. Speaker, I beg my colleagues, no I implore my colleagues, we cannot let even one more little boy or girl become a victim for the sake of making profits for an HMO. Let us have a fair debate under an open rule on the floor of this House by the July 4th recess. We should all be for the little guy. We should not be in the pockets of the HMO corporate CEOs.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(1) The following Members (at the request of Mr. PAULSEN) to revise and extend their remarks and include extraneous material:

Mr. PAULSEN, for 5 minutes, today.

Mrs. MOORMAN, for 5 minutes, today.

Ms. GRIMM, for 5 minutes, today.

Mr. SOTO, for 5 minutes, today.

Ms. JACKSON-LEE of Texas, for 5 minutes, today.

Mr. GUTENBERG, for 5 minutes, on June 9.

Mr. ISAACSON, for 5 minutes, on June 9.

Mr. JONES of North Carolina, for 5 minutes, on June 8.

Mr. THORNBERGER, for 5 minutes, today.

Mr. PAUL, for 5 minutes, today.

Mr. FOSSIELLA, for 5 minutes, today.

ENROLLED BILLS SIGNED

Mr. THOMAS, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills, and that no other purposes.

H.R. 1121. An act to designate the Federal Courthouse in the City of Richmond, Virginia, to be the Robert R. Godwin Federal Building.

S. 704. An act to create a United States Court of Appeals for the Second Circuit, to create a United States District Court for the Northern District of New York, and to create a United States District Court for the Southern District of New York.

H.R. 929. An act to provide for the designation of a portion of the Fourteenth Street Bridge in Washington, D.C., as the "Lewis F. Martin Bridge.

H.R. 1011. An act to provide for the designation of a portion of the Greenbelt Road in Greenbelt, Maryland, as the "Blighty Bridge.

H.R. 1026. An act to designate the Federal Courthouse in the City of Richmond, Virginia, to be the "Robert R. Godwin Federal Building.

H.R. 1034. An act to amend title 18, United States Code, to combat the overutilization of public health care services; to increase prison health care costs; to the Committee on the Judiciary.

S. 704. An act to create a United States Court of Appeals for the Second Circuit, to create a United States District Court for the Northern District of New York, and to create a United States District Court for the Southern District of New York.

S. 1112. An act to provide for the designation of a portion of the Fourteenth Street Bridge in Washington, D.C., as the "Lewis F. Martin Bridge.

S. 1225. An act to provide for the designation of a portion of the Greenbelt Road in Greenbelt, Maryland, as the "Blighty Bridge.

S. 1288. An act to designate the Federal Courthouse in the City of Richmond, Virginia, to be the "Robert R. Godwin Federal Building.

S. 1309. An act to amend title 18, United States Code, to combat the overutilization of public health care services; to increase prison health care costs; to the Committee on the Judiciary.

H.R. 1139. An act to amend the Fastener Quality Act to strengthen the protection against the sale of mislabeled, misrepresentated, and counterfeit fasteners and eliminate unnecessary requirements, and for other purposes.