

rights by allowing States to demonstrate that their insurance laws are at least substantially equivalent to the new Federal standards, thereby leaving the State law in effect. State officials could enforce the patient protections of State law. The Secretary of Labor and Health and Human Services can approve the State plan or could challenge it, if it is inadequate. Under the new draft, doctors would make the medical decisions involving medical necessity. When a plan denies coverage, the patient has the ability to pursue an independent review of the decision from a panel of physicians that is independent of the HMO. That external review would be binding on the plan.

So let us say that an HMO says to someone, your father in this HMO does not really need to be in the hospital because he says he is going to commit suicide. And the doctor says, oh, yes, he does. And the health plan says, no, he does not. We are not going to pay for any more, out the door. Let us say then your dad goes home, and he drinks a gallon of antifreeze and he dies. Under our bill, that plan would be liable for that, that health plan would be liable. That is a hypothetical situation. That actually occurred in Texas. Texas passed a strong patient protection bill. Our bill in the House was modeled after that Texas bill.

We should take the lead of the Nation's courts with particular attention given to the recent Supreme Court case, *Pegram v. Hedrick*. And our new draft reflects that emerging judicial consensus. Recent court decisions have suggested injured patients can hold their health plans accountable in State court in disputes over the quality of medical care, those involving medical necessity decisions. However, patients would have to hold health plans accountable in Federal court if they wanted to challenge an administrative decision, something that would deny benefits or coverage or any decision not involving medical necessity. That is in our bill, and that is an important compromise.

In addition to specific legislative provisions, our discussion draft answers continuing questions about the original bill that passed this House. For instance, our draft says, employers may not be held liable unless they "directly participate" in a decision to deny benefits, as a result of which a patient is killed or injured.

So, for the average business out there that simply hires an HMO to provide health care coverage for both the employer and the employees, there is no liability involved, unless the employer or the business was directly involved or directly participated in the decision, but that is not how it happens. The HMO makes the decision. The business does not.

Explicitly in our bill, the employer would not be liable for that. I cannot

tell my colleagues how many times I have seen ads in the Washington newspaper, I read about radio and television ads by the groups that are trying to defeat our bill, that simply do not tell the truth on our protections for employers. I simply have to say, read the bill, read the language. Those protections for businesses are real, unless they directly participate in the decision. Even then, defendants could not be required to pay punitive damages unless they showed a willful and wanton disregard for the rights or safety of the patients.

Another concern about our bill was whether it would affect the ability of health plans to maintain uniformity in different States. Some of the businesses that have business in many different States were concerned about this. Our new draft only subjects plans to State law when they make medical decisions that result in harm. So it does not affect the ability of a business to offer a uniform benefits package and be outside of State law as it relates to that benefits package.

This discussion draft that we have will allow Republican Senators who have voted against the Norwood-Dingell-Ganske bill to vote for a real patient protection bill. I sincerely hope that they take that opportunity. It would make a tremendously positive difference for our country. Mr. Speaker, to be quite frank, it probably would help the HMO industry too, because all of these cartoons and jokes that we hear about are not a good thing for that industry. But if we had a fair process in place so that if one has a dispute with one's HMO, one would have a fair process to get that taken care of, and one would know that at the end of the day, if one did not agree with the company, we would have an independent panel to review it where the decision would be binding on the company.

I say to my colleagues, that would not increase lawsuits, that would decrease lawsuits. That would help prevent injuries or deaths from happening. I honestly think that that would be beneficial to the industry itself, because boy, they have got a real problem that in my opinion some of them really deserve.

So, Mr. Speaker, I am coming to an end here. I think that there are some ways where some common sense could help with the prescription drug problem, not just for senior citizens, but for everyone in terms of helping bring down the cost of prescription drugs. I think as we look at in the next week or so ways to help with some reimbursement issues for Medicare, we should be very careful about rewarding HMOs who, in many cases, are ripping off the system; and we should focus those dollars on the real areas that need to be fixed.

Finally, we have about 3 weeks, by my estimate, left here in Congress to

get something done. The way it stands right now, if the Republican Senators who have voted for the Norwood-Dingell-Ganske bill, Senators MCCAIN, FITZGERALD, CHAFEE, and SPECTER, will stick to their past votes, they have already voted twice for real patient protection, if those Republican Senators will stick with their past votes, then if all of the Senators show up and we vote on that again, we have a 50-50 tie and Vice President GORE comes in and breaks the tie, and we will have signed into law a real Patients' Bill of Rights.

However, we have an alternative. The alternative is to look at this compromise language, to get some additional Republican support for this compromise language. We can add some important aspects of access to health care to that, some areas of real compromise with the Democrats, whether it is in the area of 100 percent deductibility for the self-employed or some additional tax credits for small businesses that offer health insurance, or even in the context of an overall agreement, maybe even an extension of medical savings accounts.

Mr. Speaker, there is a desire to get this done. That is why we have come up with this new compromise language. We do not want to put Republican Members of the Senate in a box and ask them to change their vote. That is why our compromise solution is there, so that they can come on board to a good piece of legislation, we can get this signed into law, and then we can go back to our voters in November and say, we have overcome a \$100 million effort by a special interest group to keep the special protection that no other American business has. We are doing something in a truly bipartisan fashion so that our citizens back home in their time of need, when they really need to have their health insurance work for them, health insurance that they have spent a lot of money on, when they really need it, it will be there, and they can have confidence in being treated fairly.

That, Mr. Speaker, is what this is about. It is a big opportunity. I urge my colleagues on both sides of the aisle to take it.

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#### REPORT ON RESOLUTION WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. DREIER (during special order of Mr. GANSKE), from the Committee on Rules, submitted a privileged report (Rept. No. 106-882) on the resolution (H. Res. 586) waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.