

Mr. PALLONE. Let me say, Mr. Speaker, that again I know we only have a few days left here; but we certainly, and I will speak for my Democratic colleagues in the leadership, are going to continue to push every day and every night both on the floor, during the legislative day and as well as during the Special Orders at night to make sure that these health care initiatives are addressed and that these concerns for the average American with regard to health care are met.

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. GIBBONS). The Chair would remind Members that it is not in order in debate to characterize Senate action or inaction.

#### MANAGED CARE REFORM

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

Mr. SHADEGG. Mr. Speaker, I appreciate this opportunity to address my colleagues and to talk about, in fact, the exact same subject that my colleague from the other side of the aisle, from the Democrat side of the aisle, just addressed. He talked about a wide range of medical issues. I am going to do that in this hour as well, but I am going to begin by focusing on the issue of patients' rights legislation, the issue of HMO reform, the issue of managed care reform. After I have spent some time on that and focused on why that issue is so critical and why I so strongly disagree with much of what was just said and how sad I think it is that this debate has boiled down to this struggle where one side is saying the other side is just carrying the water for a special interest, then I would like to turn perhaps in the latter half of the hour to the issue of the Medicare drug benefit and perhaps other topics that are worth talking about and that were raised in the remarks in that regard.

Again, I want to focus tonight on the issue of patients' rights legislation, the issue of a Patients' Bill of Rights, the critical question facing our country of managed care reform, HMO reform. We are in the midst as everyone knows of a political campaign. There are ads running across the country saying that it is sad that my party, so these ads say, has blocked, the Republican Party, has blocked the passage of patients' rights legislation. I simply want to start by saying that is not true. Indeed, the opposite is true. We have worked very hard to pass patients' rights legislation that will help patients. That is the key difference. Sometimes it is said that the devil is in the details and the devil is in the details.

In this case there are two competing ideas on patients' rights legislation: one is the idea advanced by Democrats, the idea which they are pushing, the idea which their ads talk about, the idea which the President is saying he supports; and that proposal sadly does not help patients. That proposal helps trial lawyers. Rather than just talk about that, I am tonight going to explain exactly, precisely, how their legislation would advance the cause of trial lawyers but do literally nothing to help and in fact hurt patients and weaken the position of doctors to control health care in America. I think that is the debate that needs to occur.

I think we need to understand why, yes, patients' rights legislation is vitally important for this country. There are serious problems in managed care. But how you enact that legislation, what it does, is so critically important and why, sadly, the bill that the Democrats are advancing, and they call it a patients' rights piece of legislation, in fact is fatally flawed in its structure, because instead of giving patients more power, instead of giving doctors the ability to set the standard of care and to decide how patients are treated in America, that legislation takes power away from HMOs, and that is good, but instead of giving that power and that authority to set the standard of care in America to doctors where it belongs and to patients where it belongs, their legislation gives that ability to trial lawyers to take the issue directly to court.

We have heard just a few minutes ago in the rather partisan remarks by my colleague from the Democrat side that the Republicans are for the special interest of HMOs and that Democrats are for the people. Sadly, that charge is just flat false. Let me start with my position. I have been passionately fighting for patients' rights legislation, the right patients' rights legislation, for the last 2 years. I have met with countless doctors from all over the country, many in my State, I cannot tell you how many, my own medical association in Arizona; and I have talked with them for hours and hours about how do we go about fixing the problem with managed care in America, how do we deal with the problems that have been created by managed care in America.

In every one of those conversations, I have never once heard, well, Congressman, the way to fix it is to let lawyers step into the middle of the process, take a claim by an injured patient, take my request as a doctor to get my patient care and have a lawyer step in and rush to court and file a lawsuit. Never has a doctor in America in my home State or anywhere else that I have met with said the answer to this problem is to let the trial lawyers address the issue. The reality is we do need patients' rights legislation to

change managed care and to make it more pro-patient and more pro-doctor.

But we need legislation that will accomplish that goal, that will take power away from the managed care industry, to tell doctors how to treat their patients and move that power over to patients and doctors to determine what the standard of care ought to be in America.

I am adamantly for managed care reform, and I am a Republican and I have fought for that legislation since I have gotten here. One of the offhand remarks of my colleague just a moment ago was that the conference only met a few times. Well, my colleague was not on the conference. I was on the conference. We spent countless hours trying to reconcile the differences between a pure trial lawyer piece of legislation that will not help patients and a piece of legislation that would advance the cause of doctors and patients. I am going to explain that in my remarks. I tell you that every other Republican with whom I served on that conference committee and the Speaker himself who was asking in the last several weeks to try to bridge this gap and try to pass legislation, they are all adamantly for the passage of meaningful legislation that will empower patients and doctors and solve this problem.

As to my own bona fides on this issue with the gentleman from Oklahoma (Mr. COBURN), who is going to join me later in this Special Order, we wrote the Coburn-Shadegg managed care reform bill, the Coburn-Shadegg patients' rights legislation. That bill would have put the emphasis precisely where it should be. It would have empowered doctors and patients to resolve medical questions, doctors in consultation with their patients to set the standard of care; and it would not have given that power over to trial lawyers. It is sad that it has gotten tied up in this kind of a debate, but it has.

Everyone who understands managed care reform understands that we need to reform the system in a way that will be pro-patient. Let us start with why we need managed care reform. It is important to understand how managed care works in America. It was a reform idea itself to try to hold down the costs of medical care in America. In that sense, it has worked to some degree; but sadly it has been abused, and it is susceptible of abuse and we need to fix that.

Let me talk about why we need to fix it. Right now in America, in our managed care system, a given doctor meets with his or her patient, does an examination and decides the patient needs a particular type of care. And so that doctor makes the recommendation for the care and goes to their managed care plan and says, "My patient needs this care." There is an initial review of that claim, sadly often by an HMO bureaucrat, not a medical personnel, but

a nurse or someone else; and let us assume it is turned down by the plan. There then is in some instances an internal appeal, an appeal to doctors at the managed care plan. If you follow that structure, if there is no appeal beyond that, you have a doctor, a treating physician, saying that his or her patient needs care. And then you have a managed care bureaucrat, an HMO bureaucrat, saying, no, you do not get the care. That is where the first point of abuse is.

In America today under that system, a managed care bureaucrat can turn down the request for care by the treating physician, and they can turn it down perhaps for the wrong reason. They can turn it down to protect the profits of the managed care company, rather than to protect the care of the individual. I have been working on this issue, and I have been in my district when hundreds of people have talked to me over time about how they or a member of their family, their mother, their father, their daughter, their sister, their brother was abused by a managed care company when the treating physician said my patient needs this care and the HMO denied the care for a specious reason.

So what is wrong with that structure? The thing that is wrong with that structure is that under that structure, the managed care plan, the HMO, is telling the treating physician how he should care for the patient. In medical jargon, that really means the managed care plan is setting the standard of care for any individual patient under a set of circumstances. That is crazy. Managed care plans are essentially insurance companies. They ought to try to hold down excessive costs, but managed care plans should not set the standard of care. HMO bureaucrats should not tell doctors how to treat patients. That ought to be a decision made by doctors. They were trained to practice medicine. HMO bureaucrats were not trained to practice medicine. So the current system is backward. It lets doctors be told how to practice and how to treat their patient and what the standard of care in America is for a given set of circumstances by an HMO bureaucrat. So that is why I fought for managed care reform. They can deny that care for monetary reasons, not reasons of care.

The second reason that we need managed care reform is actually a tragedy, and it falls into my own area of expertise. And, that is, that as a result of, I believe, an unintended consequence of a Federal law called ERISA, a managed care company in America today can deny care; and if they negligently deny care, in that example I just gave, they make a mistake when they said the treating physician may not provide this care, if when they do that the patient is injured or dies, there are no damages. There is no recovery. That

managed care plan can simply walk away and say, "Wow. Our mistake injured or killed somebody, but since we're a managed care plan and we are operating under this Federal law called ERISA, we can't be held accountable." I think that is an outrageous structure for the law. Every one of us knows that if we make a mistake, if we, let us say, run a red light at an intersection and our negligence injures or kills somebody, we are responsible for that injury and hopefully our insurance policy will make the injured person whole, will pay damages for them. Sadly, even though every business in America, every homeowner in America, every car driver in America, every one of us in America is legally accountable when we injure or kill somebody, that is not the case for federally governed ERISA managed care plans. They have as a result of this Federal law an interpretation of it by the United States Supreme Court, immunity. They cannot be held liable when they injure or kill someone. That is a tragedy, and it should be fixed. That is why I have fought for patients' rights legislation and fought to hold plans accountable.

The best story on that is the story of Mrs. Corcoran. Mrs. Corcoran became pregnant. She was an employee of Southern Bell in Louisiana. It was her second pregnancy. She applied for benefits. Her treating physician was treating her through the course of the pregnancy. At one point he told her she needed to go to the hospital, to be in the hospital for the balance of her pregnancy so that if there was a problem with the baby, and it was her second pregnancy and she had had a difficulty the first time, he said, If you're not in the hospital, there is a danger you will die or a danger your baby will die.

Tragically, her HMO denied her that benefit and said, No, we won't pay to put you in the hospital. We'll pay for a little bit of home nursing, somebody to come by and visit you. Even more tragically, the worst possible circumstance happened. While Mrs. Corcoran was home, her baby went into distress, still in the womb; and notwithstanding that they did everything they could, her baby died as a result of the fact that she was not in the hospital. Mr. and Mrs. Corcoran, tragically hurt by this event, filed a lawsuit to recover damages; but of course, they did not sue their doctor. Their doctor had done the right thing. He had said you should be in the hospital but their HMO had said, No, I'm sorry, we won't put you in the hospital and we won't pay for it. Under the current Federal law, the law provides that the Corcorans cannot recover, could not recover, did not recover any damages for the death of their child. That is an outrage, and it has to be fixed.

The next question is, why then, Congressman, have you not embraced and

why have Republicans not embraced the Democrat Patients' Bill of Rights? There is a simple answer to that, and I am going to explain it here today. It is because the Democrats' Patients' Bill of Rights will not help Mrs. Corcoran. The Democrats' Patients' Bill of Rights would, in fact, hurt patients. It would, in fact, hurt doctors. It would, in fact, hurt businesses across America; and it would, in fact, cause more uninsured Americans. There is one group that the Democrats' Patients' Bill of Rights would help and there, is one group that is supporting the Democrats' Patients' Bill of Rights, and that group is tied to them through contributions, and that is the trial lawyers.

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The Democrats' Patients' Bill of Rights, the bill that has been debated on this floor, the bill that the President says he wants to pass, moves power away from HMOs and moves it directly to not doctors, not patients, it moves it directly to lawyers. That is a problem, and let me explain how that Democrat Patients' Bill of Rights, it is known as Dingell-Norwood, works. The Vice President referred to it in the debate the other day. I do not know that the average American out there listening knows the word Dingell-Norwood, so I am just going to refer to it as the Democrat Patients' Bill of Rights, but it is the bill that Vice President GORE wants us to enact. It is the bill the President has asked for us to enact.

If you live in a congressional district where there is a commercial running right now, it is the bill when they say pass a Patients' Bill of Rights, they want you to pass the Democrat Patients' Bill of Rights, the Dingell-Norwood Patients' Bill of Rights, which will not help patients, will not help doctors. It will cause a flood of lawsuits.

Now, let us start kind of with a fundamental issue in this debate, and to do that I want to refer to a chart. This chart asks the basic question that anybody concerned about health care ought to ask, and that is health care in America, who should make medical decisions? Right now one issue is, well, should HMOs make medical decisions? We just talked about how under the current structure HMOs, managed care companies, indeed maybe even managed care bureaucrats, get to make medical decisions. Should HMOs make decisions? I do not think so.

Another alternative is the one I favor, and that is the one here at the bottom; and we have put a red check to show that is where I believe the power ought to be. Should patients and doctors, or doctors in consultation with their patients, make medical decisions? I think the answer to that question is obviously that as between HMO bureaucrats making medical decisions, what should be the standard of care,

what course of treatment is right for a particular patient, should that be decided by a treating physician talking to his or her patient or should it be decided by some HMO bureaucrat? That is a no brainer. I hope everyone in America agrees it should not be an HMO bureaucrat. It ought to be the doctor, the treating physician, who has touched you, who knows you, who has known you perhaps for years, who has looked you in the eye and assessed your medical condition and says, this is what we ought to do for your care. It should not be a bureaucrat at the HMO who has never seen you and has just read kind of a cold chart.

That is where this debate ought to be. It ought to be between HMOs making those decisions and doctors and patients making those decisions, and that ought to be the fight that is going on right now and on that one I think we win. It ought to go to doctors in consultation with their patients.

My friends who are doctors tell me that the practice of medicine is more art than science, and what they mean by that is that the doctor that is treating you, the doctor that knows you, your own treating physician, can sense what really ought to be done about your condition. The problem with giving this power to HMOs is that that is a cold bureaucratic decision often made by somebody who is not even trained as a doctor, perhaps made ultimately by someone that is a doctor but has not practiced medicine for many years because they could not hack it in the practice of medicine. It should not be made by that person who has never touched you or felt you or looked in your eye or tried to assess in conversation what is really wrong with you. It ought to be made by your treating physician.

So what is this middle line doing here? Why are lawyers in the discussion? Well, the answer is, they should not be. Lawyers should not be a part of this discussion. We need to write a patients' rights piece of legislation that drives care, a patients' rights legislation or patients' rights bill that incentivizes or encourages the system and the managed care company to deliver the best possible care at the earliest possible moment, and that is the goal.

The goal is the best care at the earliest moment. I think that happens when a doctor, after consulting with his or her patient, says this is the care that is right. But how are lawyers in this discussion? Well, the answer is, some people who want to reform managed care really do not really care about patients and doctors. What they care about is litigation. Sadly, what they want to do is create a structure where you do not get care very quickly because your HMO decided to approve the care recommended by your doctor. You do not get care very quickly be-

cause an independent external review panel said your HMO, when it denied you was wrong and darn well better deliver that care, what they say is, we really need to turn this whole thing over to lawyers. We need to turn it over to trial lawyers. We need to let the trial lawyers get to court quick so that those trial lawyers can drag this out in a nice long lawsuit. Do not mess with the doctors. Just get in front of a judge, drag the lawsuit out and if nothing else perhaps if we do not have a meritorious case, we can exact some kind of a settlement.

I said earlier that the Democrats' bill, the Dingell-Norwood bill, is tragically flawed; and it is. This issue has been little discussed on the floor, almost not discussed anywhere across America, but if you hear the President or the Vice President call for patients' rights legislation, you need to know the bill they are asking for is Dingell-Norwood; and you need to know that bill will not let your doctor make the decision. It will take down a restriction that exists in the law right now and let your lawyer, if you get one, quickly rush off to court and perhaps win himself a large settlement of which he gets a third, or 40 percent.

Now, I believe in the tort system. I think if somebody hurts you, you ought to be able to recover your damages; but I sure do not think our first goal in patients' rights ought to be to empower lawyers. I think it ought to be to incentivize the best possible care at the earliest moment.

I want to move to one more chart. It is a chart that is a schematic of the Democrat Dingell-Norwood bill, and I apologize for having to do a schematic, but it is how we can illustrate what is wrong with the Democrat legislation and why if you hear a commercial that says, by gosh, we need patients' rights legislation, you are right, we do need a patients' bill of rights; but we do not need the flawed Democrat bill. We need a bill that will get you the best care at the earliest possible moment; not a lawsuit.

Let me explain this bill, and we will walk through it. We talked about your doctor consulting with you and then making an initial claim. Often unfortunately that is currently done through some bureaucrat at the HMO, and they may turn you down. The next step under the Democrat's bill is a good one, and that is you ought to have a right to get to a doctor at the HMO. That is called internal review. You ought to force the HMO not to let a bureaucrat turn you down. The HMO ought to have to hire a doctor to make a review of your case. Hopefully, that doctor will say you get the care, rather than deny you. So that is a good step. That is a step in the right direction.

Everyone in America ought to have an internal review by the plan and let the plan make the right decision. But

if they do not, the critical question in managed care reform, the critical question for patients' rights legislation, is what do we do next? I argue the answer is that in every case, what we ought to do after internal review, if this managed care company, this HMO denies your treating physician and you the care you need, the next step ought to be an external review, what we call an external review. That is not complicated. What it is is that if the plan will not give you the care you need after their doctor has looked at it, you ought to have a right to get to three totally independent doctors and to have those three totally independent doctors review your claim.

Now when I say totally independent, what do I mean? Well, the law that we talk about would say that these doctors have to be selected independently. They cannot be controlled by the HMO. They cannot be hired by the HMO. They cannot have a conflict of interest because of their connection with or their income from the HMO. They have to be totally independent of the HMO so they can make an unbiased decision. Obviously, they also need to be independent of your own doctor. So they are truly experts. In our bill, we call for them to be practicing physicians, with expertise in the field, who are independent of the HMO and independent of you and your treating physician.

Our goal is to have that external review panel of three doctors make a quick decision; yes, the patient deserves the care, the plan was wrong and, by the way, HMO, if you do not give them the care and they get injured or they are injured, then you not only are going to be liable for the care you should have given but you are going to be liable for all of their economic damages, you are going to be liable for all of their pain and suffering; and if the plan acts in an arbitrary and capricious fashion, then you are going to be liable for punitive damages.

The bottom line here is that there ought to be a review by three doctors very quickly, and we have an expedited time frame to do that. Here is the flaw with the Democrat bill, and here is why you see this little red circle with a bar through it. It is probably hard to see on the TV, but you see under the Democrat Dingell-Norwood bill you do not go to external review. As a matter of fact, that will never happen under that bill. It will literally never happen, and the three doctors over here will not get to set the standard of care by telling plans how they should treat patients. They will not get a chance to say was your treating physician right or was the plan right. They will not define the standard of care in America because under their bill there is this gigantic loophole, and it is the lawyers' loophole.

Here you see the arrow going down. It says, well, guess what? The minute

you finish internal review you can go straight to court. We do not really want an independent panel of doctors to make a decision. We want some aggressive trial lawyer to go hire his own expert witnesses who will interestingly always side with the trial lawyer, and file a lawsuit.

Now, I said earlier in all of my conversations with doctors across America, and I have talked with literally, I think, hundreds, not a single one of them, not in Arizona, not anywhere else that I have met with them, have they said, you know, Congressman, we really think the way to solve the problem with managed care in America is to get people to lawsuits, because lawsuits will deliver care. Indeed, none of them have said the problem with managed care is that we do not get to court quick enough. What they have said is, the plan can turn us down and we could get an independent group of doctors to review our request. So this is the loophole in their bill; and it is why, and I said earlier, that the Democrat's bill is fatally flawed. They talked about how Republicans favor the special interests of HMOs. The legislation I favor lets HMOs be sued, lets them be held accountable, says if they kill Mrs. Corcoran's baby they must pay damages. But it does not carve a loophole to prevent people from getting quick care and the proper care by letting the case go to court. It rather is legislation that says get them care.

If you talk about special interests, the Democrats have a special interest that my colleague on the other side did not talk about a few minutes ago, and that special interest is trial lawyers. That is why they created this loophole. This, by the way, is a structure that takes power away from HMOs and hands that power to trial lawyers. That is crazy. What we do need to do is take power away from HMOs to decide how you should be treated, or your wife or your daughter or your son. You need to take that power away from HMOs and put it in the hands of your treating physician and in the hands of an expert panel of independent doctors.

That kind of takes me to the structure that we have proposed; and you see here it says, the compromise patients' bill of rights, and it is a simple structure. It is a structure that incentivizes or encourages the best possible care at the earliest possible moment, because that is what managed care reform ought to be about. Tragically, my friends on the other side of the aisle, Democrats, adamantly to the death oppose this structure. They say absolutely not. We need the trial lawyer plan. We do not need the plan that empowers doctors and patients.

Let us talk about how this structure for the bill is different; and again I apologize, but a flowchart really does kind of let you understand the legislation. Here in the legislation we are pro-

posing, the legislation we have begged the American Medical Association to endorse, there is first an initial claim just like the Democrats' bill. Then there is internal review, just like the Democrats' bill in Dingell-Norwood; but you will notice there is no loophole here. We do not let the lawyers cut off external review. What we say is that if the plan turns you down at external review and says to your treating physician, no, we are not going to give you the care, you would have an immediate right, indeed we have three different time procedures, one for extremely urgent situations where it is within a matter of hours you would have a right to get to external review. If it is less urgent, there are two more time frames for less urgent circumstances. But if you were denied that internal, you would get to go within hours in an emergency situation to the external review that I talked about, and that external review is conducted by three independent doctors who will get to judge the recommendation of your treating physician that my patient needs an MRI, and judge the decision of the managed care company that, no, your patient does not need an MRI.

Those three independent doctors would have to be practicing physicians, as opposed to physicians who quit years ago because they could not make it. They would have to be experts in the field, and they would get to make a decision.

Now, here is the key: that can happen within hours under certain circumstances and once that happens, and it may be hard for you to read but right here it says, the HMO is bound by the decision of this medical panel and the patient receives the care. You can see that this is a quick process. It happens very quickly. By the way, there is no lawyer yet. The lawyer did not get in here. The lawyer did not get to take the case off to trial court or get into discovery and try to extort a settlement. This went straight through. It went through internal review, and it went to the external review; and if the external review panel says the treating physician is right, you get the care. Sadly, the Democrats do not like this bill because it cuts trial lawyers out to that point in time.

Now, what do we do about the people who are truly injured? Well, we say in our legislation, if as you have been going through this process you were injured, not only do you get the care here but now you have the right to go to court after the plan has been told to deliver the care, you have the right to go to court and you have the right to recover your damages. So it is not that we are against giving people access to trial lawyers. I have many friends who are trial lawyers, and they do a great service for people who are truly injured. It is not that we are against the tort system. Indeed, I am outraged by

the fact that Mrs. Corcoran, under the current structure of the Federal law, her baby was killed by a managed care company, and they did not have to pay a dime. They just got to walk away. But the issue is where do you put in legal accountability? The Democrats, the Dingell-Norwood bill, lets lawyers jump in right up front, boom, here we just get to go straight to court.

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Our bill says, no. Let us let a panel of three independent doctors make the decision, and then, if the plan is wrong and someone has been injured, then let us go to court. Let us let someone recover their economic damages; if they lost time from work, they ought to be able to recover that. If they have suffered pain and suffering as a result of this wrongful decision by the HMO, perhaps motivated by their desire to keep their profit line looking good rather than the patient's need for health care, then they get to recover their economic damages, they get to recover what we call their non-economic damages, which means their pain and suffering, and if the plan did not follow the instructions of the external panel, then there are punitive damages on top of that. But we can see that this structure is designed to empower doctors, not lawyers, and that is the huge difference. That is the debate that has been going on.

Sometimes in the last few days when I have been thinking about this issue, I thought, how could it have been so complicated for 2 years for us not to get across the issue and explain to the American people, patients' rights legislation is vitally needed, but the bill they want, the bill the Democrats are pushing on us, the bill they talked about in their ads and the bill the President will probably speak about many times between now and election day, the bill that the Vice President will talk about many times between now and the election does not help doctors; most importantly, it does not help patients. What it helps is trial lawyers. We want a bill that empowers doctors to decide what care should be, what the standard of care should be.

I have to tell my colleagues, and in a moment I want to discuss these issues with the gentleman from Oklahoma, I have to say that I am amazed. If the Trial Lawyers Association were actively advocating this structure, the structure where one gets to court, but they do not get to a panel of independent doctors, I could understand that. But what puzzles me and what I do not understand is that the American Medical Association is supporting that structure, the trial lawyer structure, and I do not understand, and I hope some day they will explain to me, why the American Medical Association is not supporting a structure that will empower doctors rather than lawyers.

We do need to diminish the ability of managed care companies to hurt people. We do need to take away from HMOs the ability to set the standard of care. The standard of care in America ought to be set by doctors who are trained in medicine. But, when we take that power away from a managed care company and move that power somewhere, I suggest it would be a tragic mistake to, as the Democrats propose, move that power, to decide how one should be treated as a patient who needs medical care, to move that power to a trial lawyer, rather than moving it to a trained physician; in our structure, to a panel of trained physicians who will tell the HMOs exactly what the standard of care ought to be.

For perhaps any doctors listening across America, in my own city of Phoenix, and the reason I care about this issue, the managed care penetration is so deep, they have such power.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. WALDEN of Oregon). The Chair would remind Members to direct their remarks to the Chair and not to the television audience.

Mr. SHADEGG. Mr. Speaker, let me point out that in my State of Arizona, there are so many managed care companies that a doctor that does not sign up with an HMO, indeed with several HMOs literally can barely survive economically, and yet we look at the structure that currently exists where HMOs tell practicing physicians what care they can and cannot deliver, one can imagine that the doctors in my State are enraged at that structure.

Mr. Speaker, the doctors in Arizona, and I have talked with hundreds of them over the last 2 years, they want a structure where doctors set the standard of care and where doctors tell HMOs how patients should be treated; where doctors tell the managed care company, this is the right kind of treatment to give to a patient. The doctors in Arizona, at least, and the other doctors I have talked to, do not want to turn that ability to set the standard of care over to lawyers or even to encourage more lawsuits. You bet: If somebody is injured, then, in fact, a trial lawyer should come in and recover for their injury, and indeed, I wish that Mrs. Corcoran, I wish we could have passed this law in a way to allow Mrs. Corcoran and her husband to be made whole for the managed care company's decision that killed their baby. We cannot do that for them, but we can do that for future people, for someone tomorrow.

That is why I have worked so hard here at the end of this session, desperately around the clock, with everyone involved in this debate, to try to pass a patients' bill of rights that would correct these problems in a way that will help patients and will help doctors.

Mr. COBURN. Mr. Speaker, if the gentleman will yield, I wanted to clarify and ask the gentleman a couple of questions. Several times in the gentleman's discussion, he used the word HMOs. What we really also mean is managed care, which means PPOs and managed insurance products that deny one adequate care. I believe that is correct, is it not?

Mr. SHADEGG. Mr. Speaker, I used the term HMOs to refer to a broad array. Some would argue that PPOs are a little bit different, that one gets a little better care under a PPO. But fundamentally, we are talking about managed care companies and HMOs, which are health care management organizations, whose job it is to manage the care, and it is these managed care companies or HMOs, and now as they are kind of morphing themselves into the latest version which is a PPO, we are talking about all of these structures under which someone other than the treating physician gets to make the decision.

In our discussions of this in the past, the gentleman has pointed out that if you have a fee-for-service plan, your doctor gets to make these decisions. There is not someone second-guessing him. Of course, it does not matter to me whether we are talking about the doctor being second-guessed by an HMO or being second-guessed by a managed care company, or being second-guessed by a PPO. The fundamental issue is, if the plan one is in gives some insurance company bureaucrat or some insurance company employee the power to deny the treating physician the ability to deliver the care they think is appropriate, there ought to be a quick appeal and they ought to get a quick answer so that the patient can get the care he or she needs.

Mr. COBURN. Mr. Speaker, I want to thank the gentleman for taking the time on the House floor on an evening when we are supposed to be either home in Oklahoma or home in Arizona working with our constituency to explain this.

I want to just kind of go through those charts with the gentleman for a minute, because I see another big defect in the Dingell, or the Norwood-Dingell bill that is so espoused by President Clinton, Vice President GORE and the American Medical Association. I also want the Members of this body to know that the American Medical Association represents 25 percent or fewer of the physicians in this country.

I happen to be a member of the American Medical Association, as the gentleman knows, and I am amazed at the position that the American Medical Association has taken on this bill.

But the point I want to make is that the bill that the gentleman and I designed, its first goal was designed to give people care and give it quickly

and appropriately. And the bill that Norwood, Dingell has passed, or passed the House, but not passed the Senate, thank goodness, was not designed to give care quickly. What it was designed was to give a revenue source for the trial bar so that we would in fact punish the HMOs for bad actions in the past. It is almost like it is a revenge bill.

But the point I want to make is what we tried to do is create a system where everybody learned. Think for a minute. I am a practicing physician. Since I have been in Congress, I have delivered over 400 babies, and I have delivered almost over 3,500 in my career. I have three great partners who are covering for me. I should be there and on call tonight, but they are kind enough to cover for me.

What has happened in terms of what we have designed is that if a doctor recommends a treatment that is not appropriate as judged by a 3-doctor panel, a couple of things happen. Number one is the doctor learns, the doctor improves, the doctor gets up to speed on where he or she should be in terms of the latest professionally accepted standards of care.

Mr. Speaker, in Texas where they have a bill similar to what we have proposed, 45 percent of the time the doctor panel finds that the doctors are wrong. Well, what is good about that is that it improves the care. The other part of the time, the 55 percent of the time when the plans have been deemed to be wrong by the doctor panel, the plans learn what is or is not appropriate care. If we bypass all of that and send it to court, we do not get the benefits, number one, of improving the quality of care and educating the managed care company; we bypass all of that, and we spend a tremendous amount of dollars doing that, and the loss is, we do not improve care for the next person.

Mr. Speaker, that is one of the most important aspects of our bill, besides getting care and letting doctors decide, independent doctors, is we designed a system under which we would raise the level of care and the quality of care for everyone in America, whether they had insurance or not insurance, HMO or PPO or managed care, but that doctor who got turned down learned something by being turned down. So therefore, the next time they saw that situation, they were improved in the quality and skills and care that they gave.

Mr. SHADEGG. Mr. Speaker, if the gentleman would yield just on that point, it occurred to me as I listened to the gentleman precisely the point the gentleman is making with regard to improving care. I think it is very important to understand that.

Under the structure we have talked about, if immediately following internal review by the plan, one wants to appeal and one gets to appeal immediately to an external panel of doctors,