

So, in summary, Mr. Speaker, I intend to continue to come to you, to urge that we as a body come up with commonsense solutions. It may sound repetitive, but I have got to drill it in and drill it in. We all need to drill it into each other.

This country demands and deserves that its leaders provide an energy policy. We should follow the direction of the President and the Vice President in trying to put one together. It does not have to be his, but at least we ought to have this debate that we are having tonight.

STRONG HMO REFORM NEEDED

The SPEAKER pro tempore (Mr. KENNEDY of Minnesota). Under the Speaker's announced policy of January 3, 2001, the gentleman from Texas (Mr. GREEN) is recognized for 60 minutes as the designee of the minority leader.

Mr. GREEN of Texas. Mr. Speaker, I am glad to follow my colleague from Colorado. I appreciate his statements on Texas and our power success. Typically, we do have success in power because we build generation plants.

But that is not what I am here tonight to talk about. I am really here to talk about managed care reform and the Patients' Bill of Rights and HMO reform, and give a Texas perspective, because we have had since 1977 a very strong HMO reform bill that is in Texas law. Let me give the reasons why we need a Federal law to that effect.

For one thing, last week the Senate kicked off their debate on legislation that is critical in importance to our Nation's health care system, which is a Patients' Bill of Rights. In the Senate it is the McCain-Kennedy-Edwards bill, and in the House it is the Ganske-Dingell-Norwood Bipartisan Patient Protection Act. They both do the same thing, the Senate and House bills. They ensure patients and their doctors have control over the important medical decisions, and not HMO bureaucrats or someone else who may not know anything about medicine except what they may look at in files.

America's health insurance system has changed dramatically over the last 25 years. When Congress passed the Employee Retirement Income Security Act in 1975, most Americans had some type of traditional insurance indemnity plan, an 80-20 plan like most of us used to have. They went to their doctor, they received the health care they needed, and the doctors were reimbursed by insurance companies.

But all of that has changed with the advent of managed care, which has meant most patients first get preapproval for their health care from their insurance company. If the HMO does not approve the treatment, the patient cannot get it. If that patient is hurt because they are denied appro-

priate health care, that is just too bad under Federal law.

Even worse, a patient cannot seek redress against that HMO for the damages in State court or even Federal Court, although there have been Federal cases filed recently; and some of them may sound better than others. But, again, typically Federal law does not allow a patient to sue under ERISA. ERISA exempts HMOs from being sued in State court, and requires them to be filed in Federal Court.

Again, the Federal courts have not always been the place where you can get real redress for insurance-type lawsuits. Even if an HMO is found guilty of wrongdoing in Federal court, they are only responsible for the cost of the care they denied. So, in other words, if you are not given appropriate treatment for cancer, and 6 months or a year later that HMO is found to have wrongfully denied treatment, then they go back and give you that cancer treatment. But, again, 6 months or a year later health care delayed is health care denied, and your cancer may grow.

So what does all that mean? Let us say an HMO denies bone marrow transplant to a cancer patient, even though it is medically necessary and the only way the patient will survive. That patient dies as a result of that bone marrow transplant being denied. The family of that cancer patient can now sue in Federal Court and only recover the cost of providing that bone marrow transplant. They cannot recover anything for that lost loved one, whether it be lost wages for that spouse or their children who may still be minors, and they cannot be compensated for their loss of that individual.

Really what that means is that insurance company knows that the only thing they are going to have to do is provide that treatment, so why not deny your initial amount, when they know the only thing they are going to have to pay ultimately is that amount? So, in other words, they earn the interest while they are waiting for you to get to Federal Court, which, in most cases, can take months and years. That is hardly justice for anyone who has lost a loved one.

With more than 160 million Americans receiving their health insurance through some kind of managed care, Congress needs to act. That is exactly what the Ganske-Dingell-Norwood Bipartisan Patients' Bill of Rights does. The legislation would hold insurance companies accountable for their decisions that hurt or kill patients, just like a doctor is held responsible for his or her medical decisions that hurt or kill a patient.

Mr. Speaker, there are two entities in this country currently not held responsible in State courts: HMOs and diplomats from another country. It was never Congress' intent to provide HMOs with the blanket immunity part

of the ERISA bill passed in 1975 before we even had managed care and HMOs. It is time we corrected that mistake and close the ERISA loophole and provide for all Americans a meaningful and enforceable Patients' Bill of Rights.

Now, let me get to the point of why it is important to examine the Texas experience, because, again, States can pass laws, and those affect the insurance policies that are licensed and sold and regulated by that.

For example, the State of Texas. That is why insurance policies that are licensed or come under ERISA are not covered by State law. So even though Texas passed a Patients' Bill of Rights in 1997 that is similar to the Ganske-Dingell-Norwood Bipartisan Patient Protection Act, it does not work unless it is under State law.

Sixty percent of the people in my district in Houston, Texas, receive their insurance coverage under Federal law regulation and not State law. The State of Texas passed a Patients' Bill of Rights in 1997. It had a number of good things in it. One was access. Texans had direct access to specialists. Women could directly go to their OB-GYN, and children had direct access to their pediatrician. Communication. The Texas bill eliminates gag clauses which prohibited doctors from discussing treatment options with their patients, even though those treatment options were not part of or provided for in their plan.

It provided for emergency room care for patients who reasonably believe they are suffering and went to an emergency room, an emergency medical condition.

One of the important parts of Texas law is required for internal and external appeals. That ensures patients have access to independent objective panels to determine if treatments are medically necessary, so it is not just the HMO saying you are not eligible for that treatment. You can appeal to an independent and external panel and that decision is made.

Accountability. That is why it is important that any Patients' Bill of Rights includes accountability, because all the other things I have listed are not important if you do not have accountability, accountability in health insurance plans. Denial of claims results in that injury or death to that patient, so you have to have accountability.

In 1997 in Texas they originally passed, maybe it was 1995, they originally passed a Patients' Bill of Rights that then Governor Bush, now President Bush, vetoed. But in 1997 there were compromises made and the bill passed the legislature overwhelmingly. Governor Bush at that time did not sign the bill, but he let it become law without his signature.

My concern is we are hearing some of the same arguments today that we

heard in 1997 about the cost and the increased number of lawsuits against doctors and other health care providers in Texas that they used in 1997. We are hearing that same argument today here 4 years later on the Federal level.

But the exact opposite is true in Texas. Since Texas enacted that law, only 17 cases have been filed. Texas has a strong independent review organization, the external review. Insurance patients must exhaust all appeals processes before they can go to court.

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Also, a patient can only sue their HMO if that HMO disregards that recommendation, that independent review organization. If a plan follows the independent review organization, then they cannot be held liable in State court for that. So we only have had 17 cases in 4 years.

This process ensures that patients get their health care that they need in a timely fashion. They do not have to go to court and wait 2 or 3 years like we do now under ERISA before we get any kind of justice on treatment. Despite cries that this would increase the cost of health care premiums in Texas, premiums have not climbed any faster in Texas than they have in the rest of the Nation, who may not enjoy a State Patients' Bill of Rights. Texas' Patients' Bill of Rights provided patient protections for many of its residents and many Texans, but many Texans cannot benefit from that Texas law because they receive their health insurance through their employer who is covered under ERISA. That is why we need to close the ERISA loophole and enact the Patients' Bill of Rights on a Federal level.

Mr. Speaker, I see my colleague from San Antonio, Texas, who was in the legislature in 1997 and debated the Patients' Bill of Rights in Texas, so I would be glad to yield to my colleague from San Antonio to talk about a little bit of what went on in the Texas Legislature and what he sees that we need to do here on the Federal level now.

Mr. RODRIGUEZ. Mr. Speaker, first of all, I want to congratulate the gentleman for being here tonight. I know it is kind of late, and it is difficult to be home during the weekend and then coming here and spending some late hours at night talking about an issue that is so important to all Americans, including Texans.

Let me just say that the Patients' Bill of Rights is very straightforward. It allows the opportunity, first of all, to see the doctor of one's choice. It makes all the sense in the world. One of the basic principles is that one wants to be able to see the doctor of one's choice, and that is important.

Secondly, what it also does is it allows an opportunity, especially in those cases, and I had some particular constituents of mine who had some dif-

iculties with lupus and some of the serious illnesses that they needed to see specialists for, so that when one has a very serious problem and requires specialists, one does not have to find that they are not only fighting the disease, but also fighting the HMO because they are not being responsive. So it becomes really important that we allow that opportunity, that a physician should have the right to be able to determine whether one should see a specialist or not. We all recognize that they are the ones that are the most qualified to be able to do that, and that we should not depend on someone who is doing the accounting or some insurance company to make their decision based on economics, but it should be based on what is the best thing for that particular patient in terms of seeing a specialist.

In addition, we also talk about the importance of independent review. The gentleman explained it pretty clearly. A lot of times we have a situation, and now, this is one of the areas that we need to correct back at home, where we have a decision that is made by a company that has their own doctor, and the company decides that they are not going to allow that particular doctor to refer or do certain things, and then it is detrimental to the patient, and then that patient has the right to sue.

The guidelines right now in Texas are that if they choose not to go based on the independent review organization recommendations, and something drastically happens that is wrong and bad, then they should have that right to sue.

But as the gentleman indicated, and I have seen some statistics, I just saw an article that showed only 10 lawsuits. There is one other that showed 17.

Mr. GREEN of Texas. Mr. Speaker, there are 17, from my understanding. Again, in Texas, we do not have any hesitation at all about going to the courthouse when we feel aggrieved, and so after 4 years, only 17 lawsuits. We have not had an overwhelming number of lawsuits filed under that law, but we have had people get the health care that they need.

Mr. RODRIGUEZ. Mr. Speaker, as the gentleman indicated, also one of the things that we still have to do that we did not do in Texas, and that is with the businesses. We have a lot of businesses that have their own insurance where they have their own company doctor, and where they might have some other obligations besides the fact of what they are supposed to be doing in terms of access to health care where we need to make sure we hold them accountable.

So this is a very straightforward piece of legislation that allows one to see the doctor of one's choice; that allows one to see a specialist if it is so determined by the physician, and not by an accountant or for financial reasons, and it allows for an external re-

view group that is independent and makes the decision and decides whether one should have access to specialists or not, or whether one should have additional treatment or not. That is important.

I think that it is funny to see right now the amount of money that is being expended by the insurance companies on ads that say that the cost is going to go up. That has not occurred in Texas. In fact, in California they just passed a similar piece of legislation in January; they have not seen any lawsuits as of yet.

I think that with this piece of legislation, and I am really proud that we were able to pass it in a bipartisan effort in the House last year, and we have been able to do that, but it was killed in conference committee. So we are hoping that we can get that bipartisan effort, both in the Senate and the House, and get it out so that the President will sign it. I know that he did not sign our piece of legislation, although he talked about it very proudly in a debate that he had with Al Gore when he talked about the fact that he had done this in Texas, and so that because of that, I think if it is sent to him, I feel very optimistic that he will do the right thing and sign it and allow it to become law, because it is the right thing to do. It is something that has worked in Texas, and it is something that makes all the sense in the world.

Mr. Speaker, once again I want to thank the gentleman from Texas (Mr. GREEN) for his hard work, not only in this area, but in other areas that help out all Texans and other Americans.

Mr. GREEN of Texas. Mr. Speaker, reclaiming my time, I want to thank the gentleman from San Antonio, Texas (Mr. RODRIGUEZ), my colleague. There are 200 miles, or really 199 miles separates Houston from San Antonio. San Antonio is a great city. The gentleman and I served in the legislature together before we came to Congress, and I enjoy serving with the gentleman, working on national issues, particularly his effort on national defense with veterans' issues and a number of military bases that we have in San Antonio. I tell people the only military base, outside of our Reserves in Houston, is our Coast Guard station, and they cannot take that away, because we have the highest foreign tonnage port in the country, so we have to have a Coast Guard station.

Let me go back and talk a little bit about the employer liability sections, which is a big issue here in Washington, just like it was in Texas. Many opponents of the Patients' Bill of Rights argue that employers will be faced with a barrage of frivolous lawsuits if they pass the Ganske-Dingell-Norwood bill. That claim is untrue. The bill exempts employers from liability so long as they do not directly participate in medical decision-making,

and that is why I am following my colleague in saying that this is a divergence in Texas law. This provision encourages employers not to get involved in health care decisions.

Some Members of Congress and Senators believe that all employers should be exempted from liability, even if they are involved in medical decisions. Well, at one time as a business manager, I never wanted to be involved in medical decisions. That is why we contracted that with insurance carriers. But it is bad public policy to create a blanket exemption for employers, even when they actually make medical decisions.

I hope our employers out there are not making those medical decisions. If they buy a policy or they hire someone to administer a plan, that plan needs to be fairly plain, and that employer should not be the one who makes the decision about whether one receives a bone marrow transplant; again, something that is readily accepted all across the country for the treatment of cancer. It is worse policy to create an incentive that gets employers more involved in medicine.

I have said this before, but I think it bears repeating: The Ganske-Dingell-Norwood bill has very strong internal and external review provisions similar to Texas. Any insurer or employer who follows that process will be building a very strong evidentiary record that they had neither acted negligently or maliciously in dealing with a patient, and it would be virtually impossible for an enterprising trial lawyer to build a case for any damages. But one has to have accountability to be able to have a successful internal and external appeals process. Employers who are involved in medical decision-making will be protected from frivolous lawsuits and unlimited liability as long as they play by the rules.

Again, as a former business manager, we have lots of rules we have to play by if one is a businessperson. But if employers are going to play doctor or medical provider, then they should be held accountable, just like doctors and medical providers should be.

Let me talk a little bit about why we need to go to State court, because that is a concern, not only as a former business manager, but as someone who practiced law and enjoyed practicing in State courts instead of Federal courts, because you could get to trial quicker in State courts.

Some proponents of the Patients' Bill of Rights argue that patients do not need access to State courts if they are injured by their plan. They think Federal courts are the appropriate venue to resolve health coverage disputes, but legal experts disagree. The American Bar Association, the National Judicial Conference, the State attorneys general, and numerous Federal judges take the position that medical injury

cases belong in State and not Federal court. Even Chief Justice William Rehnquist stated that, "I have criticized Congress and Presidents for their propensity to enact more and more legislation which brings more and more cases to the Federal court system. Matters that can be adequately handled by States should be left to them."

Well, the States clearly can adequately handle these types of cases. State courts have been the traditional forum for medical injury cases for more than 200 years and have vast experience in dealing with these types of matters. Federal courts, on the other hand, are not an appropriate place for all civil cases for several reasons. First, there are significantly fewer Federal courts than there are State courts. In my home State of Texas, there are 372 State courts available to hear these cases, but there are only 39 Federal courts.

Geographical obstacles also prevent patients from accessing the Federal court. Families may have to travel significant distances to have their cases heard, when we think about the State of Texas with our long distances. Again, there are only 39 Federal courts and 372 State courts.

That is why I say State courts are the best venue. One can get justice quicker for both the plaintiff and the defendant in State court. Keep in mind, in many of these cases an individual suffers from an injury or physical condition, forcing them to go to court in the first place, and this should not happen. Even if an individual gets to the Federal court, there may not be anyone to hear their case. There are currently more than 60 vacancies on the Federal bench.

Mr. Speaker, the Speedy Trial Act of 1974 promised Federal courts to give priority to criminal cases. This means that patients have to wait at the back of the line while the Federal courts deal with all of their criminal cases, including drug cases. And with criminal cases growing into the double digits, this can mean even longer access for individuals with the health care they need.

State courts have always been the appropriate venue for resolving personal injury cases. I know in the State of Texas we have certain criminal courts that handle criminal cases, but we have civil courts that handle our State civil cases. Personal injuries caused by negligent HMOs should not be any different than personal injuries caused by the negligence of a doctor. They should go to the State court.

I hope my colleagues will consider these arguments and recognize that patients need access to the State courts if the Patients' Bill of Rights is to be effective.

Let me talk a little bit about the frivolous lawsuits and independent review organizations. Mr. Speaker, the

opponents of the Patients' Bill of Rights often claim that the passage of this legislation would cause a barrage of frivolous lawsuits. Well, my colleagues have heard about the situation in our State of Texas. We have not had that barrage of lawsuits; in fact, there have only been 17 of them since 1997, considering how many thousands have been filed in State court in Texas.

This law provides nearly identical protections in the State of Texas that we would have in the Ganske-Dingell-Norwood legislation that resulted in the only 17 cases in the State of Texas. That is approximately 4 lawsuits per year, hardly the onslaught that we hear from the naysayers that they warn against.

The reason is that in Texas we have a very strong independent review organization, or an IRO. If a health care plan denies treatment to a patient, he or she must appeal that decision to that independent review organization before proceeding to State court. The IRO is made up of experienced physicians who have the capability and authority to resolve the disputes and the cases involving medical judgment. Their decisions are binding on both the plans and the patients. If an IRO determines that a course of treatment is medically necessary, then an HMO must cover it. If a plan complies with the independent review organization decision, they cannot be held liable for punitive damages.

They have worked well. Since 1997, we have had 1,000 patients and physicians who have challenged the decision of their plans. The process is fair. The independent review organizations do not favor patients or health plans. In fact, in only 55 percent of the cases, the independent review organization fully or partially reversed the HMO.

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Although that shows me that the HMO was wrong more than half the time, but they were corrected without having to go to a courthouse. In fact, the process worked so well that despite the U.S. 5th Court of Appeals' ruling that external appeals are violations of ERISA, Aetna and other HMO agreed to voluntarily submit disputes to the Independent Review Organizations for resolution.

Mr. Speaker, I stated earlier there have been only 17 lawsuits filed in Texas since we passed the Patients' Bill of Rights, and I believe the external appeals process has been instrumental in the success of our plan and is giving the patients what they really want, access to timely, quality medical care while protecting the insurers from the costs of litigation.

I believe that the success of the Ganske-Dingell-Norwood bill provides that same process that we would have. Patients must exhaust all internal and external appeals process before they can proceed to the courts.

They need to be swift appeals, and there is no doubt that any patient who is trying to get health care really does not want to sue their insurance plan. They really want to get their health care.

Let me talk about the costs. We have heard the opponents of the Patients' Bill of Rights argue that it would increase costs so much that an employee would start dropping their coverage. In Texas, however, providing patients with the same kind of protections has not lead to an increase in costs.

Like I said earlier, the costs of insureds, HMOs managed care insurance in Texas has not grown any more than in States that do not have the same protections. Texas premiums are growing at the same rate of insurance rates in other States that do not have a patients' bill of rights.

Even if the costs do go up, as some estimates suggest, it will only rise 4 percent, that equals about \$2 per month per patient. Let us face it, \$2 a month is not a lot of money these days. It barely buys you anything, maybe a cup of coffee, no frills. If you want a cappuccino, you are going to have to pay \$3; six first class stamps; two 20-ounce bottles of Coca Cola or Diet Coke, if you are like I am; for \$2, a 30-minute long distance call; and in some parts of the country, \$2 will not even buy you a gallon of gas.

But, for Mr. Speaker, \$2 a month patients can have access to specialists and emergency room visits and their doctors are working for them and not against them. That is why I do not think it will even be \$2; but even if it is, it is worth that amount of money.

Mr. Speaker, I see my colleague here and there are a lot of issues that I know this House will be talking about that. We passed an HMO reform bill last year, the Ganske-Dingell-Norwood bill, and I would hope this House would again pass a strong HMO reform bill similar to what is passed in some of our States.

Serving 20 years in the legislature, I have always said that States are a laboratory, if States can successfully pass legislation and it works, then we need to look at that on the national basis.

We have had 4 years of experience in Texas, and I think we need to pass a similar law to what to Texas has on the national basis, but we also need to make sure that if employers are involved in medical decisions that they are also held liable just like doctors. Again, I do not want our employers involved in medical decisions because they have enough trouble producing their products and in trying to keep this country great.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, as a Member of Congress from the great state of Texas and a former nurse. I am particularly concerned about this House's ability to pass a Patients' Bill of Rights. We have all heard the horror stories of patients

denied treatment or hospitalization as a result of the assessment of an insurance company or HMO. We have all heard questions from our constituents about federal action on the Patients' Bill of Rights. We all know there is a desire and a need to have a system which allows patients a voice in their health care. Yet because of the fear that the cost of lawyers will drive up the cost of health care, we have failed to act. Mr. Speaker, it is time to replace fear with facts.

In Texas, we passed a Patients' Bill of Rights in 1997. This bill was passed over the veto of then-Governor George Bush. Since that time, the Texas Patients' Bill of Rights has provided patient protection for many of the residents of my state. The bill of rights allows Texans with health insurance to have direct access to specialists. When a patient sees a doctor, the medical professional is allowed to discuss all treatment options, even those not covered by the plan. If there is a disagreement between patient and provider, there is a strong Independent Review Organization that ensures that patients have an appeal process that recommends solutions. All of these protections have been accomplished with only a slight increase in health care premiums. America deserves the kind of patient protections that Texans currently enjoy. Mr. Speaker, I hope that Members of this House can explain to their constituents, why they cannot have the standard of care currently enjoyed in Texas.

THE FUTURE OF AGRICULTURE IN AMERICA

The SPEAKER pro tempore (Mr. KENNEDY of Minnesota). Under the Speaker's announced policy of January 3, 2001, the gentleman from South Dakota (Mr. THUNE) is recognized for 60 minutes.

Mr. THUNE. Mr. Speaker, tomorrow we will engage in a debate on this floor which I think will be the first volley of what will be a very long discussion here in the House about the future of agriculture in America.

Tomorrow we will pass legislation here that provides emergency disaster assistance to our producers. Unfortunately, Mr. Speaker, as that bill moves through the Committee on Agriculture, of which I am a Member, it was pared down from what was originally proposed. I believe that it was a mistake, Mr. Speaker, to do that, because we have a responsibility to the producers of this country.

Frankly, we had set expectations at a certain level about what we were going to do to help address the catastrophic low prices which we have seen now for year after year after year.

Mr. Speaker, the legislation that will move through the House tomorrow, is in my judgment inadequate and insufficient to get the job done for American agriculture in this year. What that debate will do, Mr. Speaker, is begin to lay the groundwork for the ensuing debate and that is the debate over foreign policy in this country.

We are long overdue of making some changes in agricultural policy for

America. The farm bill debate is under way in the House of Representatives. It has been for some time. We have been listening intently across this country to producers about what they want to see in the next farm bill and we have listened from coast to coast in different regions. And we have had hearings after hearings after hearings here in Washington from different commodity groups and grower groups.

Mr. Speaker, it is clear in my mind that producers across the country want a bill, a farm bill that is written specifically for producers, not one that is written with some ulterior policy objective in mind or some other agenda, but a farm bill that is specifically written by producers for producers and hopefully will lay the framework that will help govern our foreign policy as we head into the years ahead.

Mr. Speaker, this is a very, very desperate time for American agriculture. We are seeing people leave the farm. We are seeing outmigration from rural areas. We are seeing the family farm structure which, in my mind, is the backbone of America, start to disintegrate partly because farmers and ranchers cannot make a living on their farms and ranches, as a consequence, we have seen prices fall; we have seen costs go up; we have seen the bottom line get squeezed to where producers are either forced to sell out, go out of business.

They are, unfortunately, in a position where the future of agriculture is very much in question in America, and I think it is high time that this Congress take necessary steps to correct that.

Granted, foreign policy is not going to solve this. We are going to write a farm bill. That is not going to be the only solution. There are a lot of issues that impact agriculture today. We lost some foreign markets. We need to recapture those markets.

We need strong trade policies that recognize that we have to have a level playing field around the world in order for our producers to compete and compete fairly, but when we write this foreign policy, we need to bear in mind, I believe, Mr. Speaker, that there are some very necessary component parts that need to be in it. Of course, the most immediate is what do we do when prices are where they are today.

We need to have a countercyclical repayment program that provides assistance to our producers when prices fall; and as they begin to improve that, that government assistance begins to phase out, but we need a program that recognizes those types of rises and falls in the market and allows our producers to continue to farm.

I believe that we need a heavier emphasis on conservation. We need a farm