

**NLWJC - Kagan**

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**Health - Bill of Rights**

## PATIENTS BILL OF RIGHTS

March 17, 1999

**Q: What is the President's response to the Patients' Bill of Rights legislation that will be marked up by the Senate Labor Committee this Wednesday?**

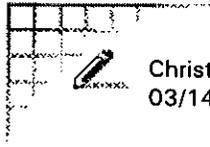
**A:** Today represents the first test of this new Congress to see if it is serious about patient protections. The President is urging that the Committee take the steps it needs to take to pass this test.

Unfortunately, while we have not seen the details of the legislation Senator Jeffords intends to mark up today, all indications are that it will fall far short of passing the test of seriousness when it comes to meeting the needs of patients in a rapidly changing health care system. We understand that the Chairman's plan:

1. leaves tens of millions of Americans without protections because they will not be covered by the legislation;
2. does not have a standard to prevent HMOs from making arbitrary coverage decisions; and
3. has a wholly inadequate mechanism for enforcing patients' rights.

This helps explain why every major patient, doctor, and nurse advocacy organization has concluded that Chairman Jeffords' proposal is flawed and will not adequately protect patients.

**Senator Kennedy and the rest of the Committee Democrats are planning on offering amendments that, if passed, would make this legislation acceptable to the President by addressing these issues.** It is our hope that Senator Jeffords and the rest of the Committee will work toward passing a strong, comprehensive, and bipartisan Patients Bill of Rights that the President can sign.



Christopher C. Jennings  
03/14/99 11:20:56 PM

Record Type: Record

To: Karen Tramontano/WHO/EOP  
cc: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
Subject: Re: Medicare

Thanks for the note. Re Medicare, I think everyone was focused on holding an event around the need to dedicate a portion of the surplus to Medicare. What people were not considering when they originally planned the Medicare event was how it would interact with the Medicare Commission final vote, now scheduled to take place on Tuesday evening. As I understand it now, neither Daschle's or Gephardt's office (or us, of course, for that matter) have made a call re positioning around the vote. (Of course it would help to know what they are voting on and who will vote for what -- details/details). At any rate, you are right, we need to discuss tomorrow morning.

Re Patients' Bill of Rights, I have a meeting with Kennedy's staff and some of the most supportive groups tomorrow afternoon to discuss amendment strategy. It looks like they will pursue an individual as well as a substitute strategy. It has been complicated by the fact that CBO, on Friday evening, gave Kennedy's staff a new and higher score for their version of the PBOR. I will report in tomorrow.

Re PBOR event ideas, Frank Pallone (and the rest of the House Task Force) are desperate for the President to agree to doing satellite feeds into districts during the timeframe you mentioned. I await any final direction re this issue; FYI, Dingell mentioned to me on Thursday that he would like to be the lead coordinator of these events.

# CongressDailyAM

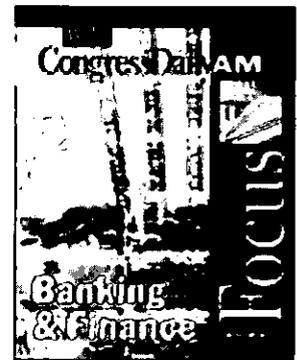
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# FOCUS

LEGISLATIVE

## Health

Continued from page 1

more bipartisan bill is needed to get HMO reform legislation from the drawing board to the signing ceremony."

Ganske said he is instead working on his own bill, one "that will draw on the best of the proposals on the table as well as introduce a new approach to the issue of health plan liability."

Already unveiled is a new version of last year's most popular managed care measure, the Patient Access to Responsible Care Act, or PARCA, by Rep. Charles Norwood, R-Ga.

This year's version is called the Access to Quality Care Act, and it in-

cludes the contentious provision that would let patients sue their health plans for injuries resulting from benefit denials.

As the issue shapes up on Capitol Hill along the same partisan lines as last year, interest groups also remain as divided as ever.

The insurance industry, in particular, continues to oppose all regulations on managed care.

The Democrats' bill, according to the Health Insurance Association of America, "would weaken the ability of managed care plans to control costs and combat waste, fraud, and abuse."

The American Association of Health Plans, which represents the managed

care industry, said, "What we cannot engage in again this year, and what the American people don't want, is an old-style political debate that pits special interest protections against healthcare consumers."

But Families USA, a consumer group that has been among the strongest proponents of the Democrats' measure, noted that "last year the HMO industry and their allies spent millions of dollars to kill patient protection legislation. ... Congress needs to stand up to the industry and pass legislation that truly protects consumers from managed care abuses."

— BY JULIE ROVNER

## Administration Makes Case For Patients' Right To Sue

### HEALTH

A CLINTON administration official Wednesday reiterated the need for patients to have legal remedies against healthcare plans that improperly deny care — arguing that proposals for external reviews must have an enforcement mechanism to be effective.

Leslie Kramerich, deputy assistant secretary for policy at the Labor Department's Pension and Welfare Benefits Administration, told the Senate Health, Education, Labor and Pensions Committee that a health plan that "fails to assure compliance with the time limits or notice provisions of our current regulation is not truly accountable to individual participants for that failure."

Kramerich added, "If the plan's delay in providing a decision or critical information causes injury, the participant has no legal recourse, and the responsible fiduciary suffers no consequences."

Kramerich said the administration plans to move ahead with regulations published Sept. 9, 1998 that would revise minimum standards relating to benefit claims procedures for all employee benefit plans covered by ERISA.

The regulations would require plans to process claims within certain time periods and to make quicker decisions on emergency care. The rules also would require those conducting internal reviews of previously denied

claims not to be subordinate to the person who initially denied the claim.

While the Labor Department has authority to require changes to health plans' internal review processes, Kramerich said only Congress can create binding review processes external and independent to the health plans.

Senate Republicans last week proposed setting up an external review

process as an alternative to having disputes move to the courts, which Republicans argued is more expensive and delays urgent medical decisions.

Kramerich said the administration supports creating an external review process, but that legal recourses also must be made available. She said any external review process should ensure the reviewers are independent.

Bohn Allen, a physician representing the Texas Medical Association, said a new law in Texas setting up an independent review process has "worked well," even though it is under court challenge by Aetna/USHealthcare.

During the year and a half the law has been in effect, only one lawsuit has been filed, Allen said. But he added that a liability law "needs to be in place if the rest of the system fails. Without meaningful accountability, there is no incentive for the health plans. ..."

However, Randall MacDonald, a vice president at GTE, said if healthcare insurers and employer self-insured plans are subject to more regulations and liability, costs of those plans may rise to the point where businesses decide they will no longer offer healthcare benefits to their workers — which would increase the number of uninsured.

"Employers are under attack for what we do voluntarily," he said.

— BY MATTHEW MORRISSEY

### Byrd Vanquishes Fire

■ Sen. Robert Byrd, D-W.Va., entered the Senate impeachment trial Wednesday wearing a white bandage on his left hand after putting out a small car fire with the hand.

"There were flames," a Byrd spokeswoman declared in describing a small reading light that caught fire in Byrd's car as he was riding to the Capitol Wednesday morning. Byrd was not driving.

"He put it out. He put it out with his hand," the spokeswoman said of the "tough guy." Upon arriving at the Senate, Byrd saw a physician who wrapped the hand in a bandage.

## THE PATIENTS' BILL OF RIGHTS: Improved Prospects For Passage In The New Congress?

On July 24, 1998, the Republican-controlled House of Representatives defeated the Democratic *Patients Bill of Rights* legislation by a vote of 217 "nays" to 212 "yeas," with 6 members "Not Voting." The following analysis takes a look at whether the prospects for passage of the bill have improved following the 1998 elections. If re-elected Members cast their votes as they did in 1998, it appears there are *more than* the 218 votes needed to pass the Democratic Patients' Bill of Rights in the new Congress.

### The July 24, 1998 "Patients' Bill Of Rights" Vote

**Summary:**

House Vote #336 on HR 4250

On the Dingell (D-MI) Substitute Amendment consisting of the text of HR 3605, the Democratic-sponsored Patients' Bill of Rights legislation.

<u>Defeated:</u>	212 - 217
Democrats:	201 - 0
Republicans:	10 - 217
Independents:	1 - 0

### The 1999 "Patients' Bill Of Rights" Vote: More Than A Majority For Passage At 221 Votes

**189 Democratic Supporters Returning**

189 Democrats who supported the Patients' Bill of Rights on July 24, 1998 will return to Congress in 1999.

**+22 Freshman Democratic "Yea" Votes  
(Running Vote Count: 211)**

22 newly elected Democratic Members of Congress, most of whom campaigned on the Patients' Bill of Rights, will take seats in Congress in 1999.

**+9 Republican "Yea" Votes Returning  
(Running Vote Count: 220)**

9 of the 10 Republicans who voted with Democrats (see chart below for full list) to pass the Patients Bill of Rights on July 24, 1998 will return to Congress in 1999 -- all except for Jon Fox (R-PA).

**+1 Independent "Yea" Vote Returning  
(Running Vote Count: 221)**

Rep. Bernard Sanders (I-VT) will return to Congress in 1999.

**The 1999 Patients Bill Of Rights Vote:  
Other Possible Votes Beyond 221**

**Summary Of Other Possible Votes:**

<b><i>Narrowly Re-Elected Incumbent Republicans Who Faced Patients' Rights Issue:</i></b>	<b>5</b>
Richard Baker (LA-6); John Hostettler (IN-8); Ann Northrup (KY-3); James Rogan (CA-27); Heather Wilson (NM-1)	
<b><i>Newly Elected Republicans Who Campaigned On Patients' Rights:</i></b>	<b>3</b>
Don Sherwood (PA-10); Ernie Fletcher (KY-6); Judy Biggert (IL-13)	

**WILL ONE OR MORE OF THE 5 NARROWLY RE-ELECTED INCUMBENT REPUBLICANS WHO FACED THE PATIENTS' BILL OF RIGHTS ISSUE DURING THEIR CAMPAIGNS SUPPORT THE BILL?**

Name	District	Election Result	7/24/98 Vote
Baker, Richard	LA-6	51% - 49%	Nay

1. **Baker: "This Issue Is Moving Up The Ladder Of Importance."** According to the Baton-Rouge Advocate: "*The 'patients' rights' issue was caught in election-year politics and was not resolved this year. A wide gulf remains between Republican and Democratic versions of patient-protection legislation. That same gulf exists between the candidates running in the 6th Congressional District - Republican incumbent U.S. Rep. Richard Baker and Democrat Marjorie McKeithen. One of them will face the issue in the next Congress after winning the Nov. 3 election. 'This issue is moving up the ladder of importance, not going down,' Baker said.*" [Advocate (Baton Rouge, La.), 10/12/98 (emphasis added)]

Name	District	Election Result	7/24/98 Vote
Hostettler, John	IN-8	52% - 47%	Nay

**2. Hostettler: Opponent Ran TV Ads And Made Patients' Rights The "Key Issue":**

*"Gail Riecken, the Democrat trying to unseat Rep. John Hostettler in southwestern Indiana's 8th District congressional race, has tried to make HMOs a key issue."*

[Associated Press, 10/19/98 (emphasis added)]

According to Roll Call: *"In Indiana, Democratic House candidate Gail Riecken is running an ad similar to [Georgia Senatorial candidate Michael] Coles' [in which he attacked his opponent's record on HMOs] in which a woman asserts that her baby suffered brain damage when a C-section was refused. Riecken's campaign says she has gone from 20 points behind Republican Rep. John Hostettler to 8 points back, but the HMO issue hasn't put her into the lead yet."* [Roll Call, 10/22/98 (emphasis added)]

Name	District	Election Result	7/24/98 Vote
Northrup, Anne	KY-3	52% - 48%	Nay

**3. Northrup: Opponent Made HMO Reform "No. 1 Issue." According to the National**

Journal: *"Still, Gorman -- who is seeking to unseat first-term GOP Rep. Anne Meagher Northrup -- managed to get Gephardt to attend a fund-raising breakfast with about 40 local supporters, many of them labor-union leaders, and a rally at a senior-citizens center to press for reform of health maintenance organizations, which Gorman has played as his No. 1 issue."* [National Journal, 9/5/98]

Name	District	Election Result	7/24/98 Vote
Rogan, James	CA-27	51% - 47%	Nay

**4. Rogan: Said It Was "Essential" To Pass A Patients' Bill Of Rights. When asked by**

the Los Angeles Times, "If you go to Washington, what kind of agenda will you pursue?"

Rogan responded *"I would want to work to pass an HMO patients' 'bill of rights.' I think it's essential."* [Los Angeles Times, 11/1/98 (emphasis added)]

Name	District	Election Result	7/24/98 Vote
Wilson, Heather	NM-1	46% - 43%	Nay

**5. Wilson: Opponent Made Patients' Rights A Key Issue. According to CongressDaily,**

*"In New Mexico, Democratic challenger Phil Maloof sought to use the issue to tie his opponent to House Speaker Gingrich, chiding Rep. Heather Wilson, R-N.M., in one ad for voting 'with Newt Gingrich' and against key patient rights like minimal hospital stays, the right to sue and guaranteed emergency room treatment."* [CongressDaily, 11/2/98]

**WILL ONE OR MORE OF THE 3 NEWLY ELECTED FRESHMAN REPUBLICANS WHO  
CAMPAIGNED ON THE PATIENTS' RIGHTS ISSUE VOTE FOR THE BILL?**

**1. Rep.-Elect Don Sherwood (PA-10):**

**A Moderate Who Campaigned On His Support For A Patients' Bill Of Rights.**

According to *U.S. News & World Report*, "What the Democrats once viewed as among their brightest opportunities for gaining a congressional seat is now seen as a down-to-the-wire race where the party's best hope is to pull support from independent-minded Republicans who can be persuaded that a GOP vote will hurt education, Social Security, and health care. That's not easy when the Republican candidate, Don Sherwood, talks about his 23 years on the school board in his hometown of Tunkhannock and his support for a patients' bill of rights and for bolstering the Social Security fund. Sherwood is running so centrist that he even voices support for a minimum wage boost..." [*U.S. News & World Report*, 10/12/98 (emphasis added)]

**2. Rep.-Elect Ernie Fletcher (KY-6):**

**A Doctor Who Ran Two TV Ads About Patients With HMO Horror Stories.**

According to the *National Journal's* "1998 Political Ads" section of their Cloak Room web page: "...Fletcher is emphasizing his medical career in his efforts to defeat Democrat Ernesto Scorsone for the 6th District seat being vacated by Senate candidate Rep. Scotty Baesler. Two 60-second spots feature patients of Fletcher's, talking about their experiences. The doctor appears in a casual shirt in his living room, arguing that HMOs let them down, and vowing to pursue reform. Jack Smith says Fletcher saved him from blindness by taking on an indifferent HMO, while Kay Cockrell discusses her fight against breast cancer." [*National Journal's* "1998 Political Ads" (Cloak Room Web Page), 9/21/98 (emphasis added)]

**3. Rep.-Elect Judy Biggert (IL-13):**

**Frm. Chair of Chicago Visiting Nurses Assoc. Who Is Concerned That Health**

**Decisions Are Not Being Made By Doctors.** According to the *National Journal's* New Member Profile of Judy Biggert: "A former chairwoman of the Visiting Nurses Association of Chicago, Biggert is likely to make health care reform an important part of her agenda. She says that 'health care decisions are being made by someone who's not a doctor, someone who's concerned about the bottom line.'" [*National Journal's* "New Member Profiles" (Cloakroom Web Page), 11/4/98]

## The July 24, 1998 "Patients' Bill Of Rights" Vote -- In Detail --

### Overview

### Defeated

217 "Nea" votes  
212 "Yea" votes  
6 "Not Voting"

### *Democrats who voted "Yea"* (201)

Abercrombie (HI), Ackerman (NY), Allen (ME), Andrews (NJ), Baesler (KY), Baldacci (ME), Barcia (MI), Barrett (WI), Becerra (CA), Bentsen (TX), Berman (CA), Berry (AR), Bishop (GA), Blagojevich (IL), Blumenauer (OR), Bonior (MI), Borski (PA), Boswell (IA), Boucher (VA), Boyd (FL), Brady (PA), Brown (CA), Brown (OH), Brown (FL), Capps (CA), Cardin (MD), Carson (IN), Clay (MO), Clayton (NC), Clement (TN), Clyburn (SC), Condit (CA), Conyers (MI), Costello (IL), Coyne (PA), Cramer (AL), Cummings (MD), Danner (MO), Davis (FL), Davis (IL), DeFazio (OR), DeGette (CO), Delahunt (MA), DeLauro (CT), Deutsch (FL), Dicks (WA), Dingell (MI), Dixon (CA), Doggett (TX), Dooley (CA), Doyle (PA), Edwards (TX), Engel (NY), Eshoo (CA), Etheridge (NC), Evans (IL), Farr (CA), Fattah (PA), Fazio (CA), Filner (CA), Frank (MA), Frost (TX), Furse (OR), Gejdenson (CT), Gephardt (MO), Goode (VA), Gordon (TN), Gutierrez (IL), Green (TX), Hall (OH), Hall (TX), Hamilton (IN), Harman (CA), Hastings (FL), Hefner (NC), Hilliard (AL), Hinchey (NY), Holden (PA), Hooley (OR), Hoyer (MD), Jackson-Lee (TX), Jackson (IL), Jefferson (LA), John (LA), Johnson (WI), Johnson, E. B. (TX), Kanjorski (PA), Kaptur (OH), Kennedy (RI), Kennedy (MA), Kennelly (CT), Kildee (MI), Kilpatrick (MI), Kind (WI), Kleczka (WI), Klink (PA), Kucinich (OH), LaFalce (NY), Lampson (TX), Lantos (CA), Lee (CA), Levin (MI), Lewis (GA), Lipinski (IL), Lofgren (CA), Lowey (NY), Luther (MN), Maloney (CT), Maloney (NY), Manton (NY), Martinez (CA), Mascara (PA), Matsui (CA), McCarthy (NY), McCarthy (MO), McDermott (WA), McGovern (MA), McHale (PA), McIntyre (NC), McKinney (GA), McNulty (NY), Meehan (MA), Meek (FL), Meeks (NY), Menendez (NJ), Millender-McDonald (CA), Miller (CA), Minge (MN), Mink (HI), Moakley (MA), Mollohan (WV), Moran (VA), Murtha (PA), Nadler (NY), Neal (MA), Oberstar (MN); Obey (WI), Olver (MA), Ortiz (TX), Owens (NY), Pallone (NJ), Pascrell (NJ), Pastor (AZ), Payne (NJ), Pelosi (CA), Peterson (MN), Pickett (VA), Pomeroy (ND), Poshard (IL), Price (NC), Rahall (WV), Rangel (NY), Reyes (TX), Rivers (MI), Rodriguez (TX), Roemer (IN), Rothman (NJ), Roybal-Allard (CA), Rush (IL), Sabo (MN), Sanchez (CA), Sandlin (TX), Sawyer (OH), Schumer (NY), Scott (VA), Serrano (NY), Sherman (CA), Sisisky (VA), Skaggs (CO), Skelton (MO), Slaughter (NY), Smith, Adam (WA), Snyder (AR), Spratt (SC), Stabenow (MI), Stark (CA), Stenholm (TX), Stokes (OH), Strickland (OH), Stupak (MI), Tanner (TN), Tauscher (CA),

Taylor (MS), Thompson (MS), Thurman (FL), Tierney (MA), Torres (CA), Towns (NY), Traficant (OH), Turner (TX), Velazquez (NY), Vento (MN), Visclosky (IN), Waters (CA), Watt (NC), Waxman (CA), Wexler (FL), Weygand (RI), Wise (WV), Woolsey (CA), Wynn (MD)

*Republicans who voted  
"Yea"*  
(10)

Bilbray (CA); Boehlert (NY); Forbes (NY); Fox (PA); Ganske (IA); Horn (CA); LaTourette (OH); Leach (IA); Morella (MD); Roukema (NJ)

*Independent who voted "Yea"*  
(1)

Sanders (VT)

*Republicans who voted  
"Nea"*  
(217)

Aderholt (AL), Archer (TX), Armey (TX), Bachus (AL), Baker (LA), Ballenger (NC), Barr (GA), Barrett (NE), Bartlett (MD), Barton (TX), Bass (NH), Bateman (VA), Bereuter (NE), Bilirakis (FL), Bliley (VA), Blunt (MO), Boehner (OH), Bonilla (TX), Bono (CA), Brady (TX), Bryant (TN), Bunning (KY), Burr (NC), Burton (IN), Buyer (IN), Callahan (AL), Calvert (CA), Camp (MI), Campbell (CA), Canady (FL), Cannon (UT), Castle (DE), Chabot (OH), Chambliss (GA), Chenoweth (ID), Christensen (NE), Coble (NC), Coburn (OK), Collins (GA), Combest (TX), Cook (UT), Cooksey (LA), Cox (CA), Crane (IL), Crapo (ID), Cubin (WY), Cunningham (CA), Davis (VA), Deal (GA), DeLay (TX), Diaz-Balart (FL), Dickey (AR), Doolittle (CA), Dreier (CA), Duncan (TN), Dunn (WA), Ehlers (MI), Ehrlich (MD), Emerson (MO), English (PA), Ensign (NV), Everett (AL), Ewing (IL), Fawell (IL), Foley (FL), Fossella (NY), Fowler (FL), Franks (NJ), Frelinghuysen (NJ), Gallegly (CA), Gekas (PA), Gibbons (NV), Gilchrest (MD), Gillmor (OH), Gilman (NY), Gingrich (GA), Goodlatte (VA), Goodling (PA), Goss (FL), Graham (SC), Granger (TX), Greenwood (PA), Gutknecht (MN), Hansen (UT), Hastert (IL), Hastings, Richard (WA), Hayworth (AZ), Hefley (CO), Herger (CA), Hill (MT), Hilleary (TN), Hobson (OH), Hoekstra (MI), Hostettler (IN), Houghton (NY), Hulshof (MO), Hunter (CA), Hutchinson (AR), Hyde (IL), Inglis (SC), Istook (OK), Jenkins (TN), Johnson, Sam (TX), Johnson, Nancy (CT), Jones (NC), Kasich (OH), Kelly (NY), Kim (CA), King (NY), Kingston (GA), Klug (WI), Knollenberg (MI), Kolbe (AZ), LaHood (IL), Largent (OK), Latham (IA), Lazio (NY), Lewis (KY), Lewis (CA), Linder (GA), Livingston (LA), LoBiondo (NJ), Lucas (OK), Manzullo (IL), McCollum (FL), McCrery (LA), McDade (PA), McHugh (NY), McInnis (CO), McIntosh (IN), McKeon (CA), Metcalf (WA), Mica (FL), Miller (FL), Moran (KS), Myrick (NC), Nethercutt (WA), Neumann (WI), Ney (OH), Northup (KY), Norwood (GA), Nussle (IA), Oxley (OH), Packard (CA), Pappas (NJ), Parker (MS), Paul (TX), Paxon (NY), Pease (IN), Peterson (PA), Petri (WI), Pickering (MS), Pitts (PA), Pombo (CA), Porter (IL), Portman (OH), Pryce (OH), Quinn (NY), Radanovich (CA), Ramstad (MN), Redmond (NM), Regula (OH), Riggs (CA), Riley (AL), Rogan (CA), Rogers (KY), Rohrabacher (CA),

Ros-Lehtinen (FL), Royce (CA), Ryun (KA), Salmon (AZ), Sanford (SC), Saxton (NJ), Scarborough (FL), Schaefer, Dan (CO), Schaffer, Bob (CO), Sensenbrenner (WI), Sessions (TX), Shadegg (AZ), Shaw (FL), Shays (CT), Shimkus (IL), Shuster (PA), Skeen (NM), Smith (OR), Smith (TX), Smith, Linda (WA), Smith (MI), Smith (NJ), Snowbarger (KA), Solomon (NY), Souder (IN), Spence (SC), Stearns (FL), Stump (AZ), Sununu (NH), Talent (MO), Tauzin (LA), Taylor (NC), Thomas (CA), Thornberry (TX), Thune (SD), Tiahrt (KA), Upton (MI), Walsh (NY), Wamp (TN), Watkins (OK), Watts (OK), Weldon (PA), Weldon (FL), Weller (IL), White (WA), Whitfield (KY), Wicker (MS), Wilson ( ), Wolf (VA), Young (AK)

***Members "Not Voting"***  
*(1 Rep; 5 Dem)*

Ford D-TN (announced "for"); Gonzalez D-TX (absent due to illness); Hinojosa D-TX (announced "for"); Markey D-MA (absent due to death in family); Yates D-IL (absent due to illness in family); *Young R-FL*

THE WHITE HOUSE  
WASHINGTON

November 1, 1998

**PATIENTS BILL OF RIGHTS CEREMONY**

**DATE:** November 2, 1998  
**LOCATION:** Rose Garden  
**BRIEFING TIME:** 12:15 pm - 12:55 pm  
**EVENT:** 1:00 pm - 2:00 pm  
**FROM:** Bruce Reed/Chris Jennings

**I. PURPOSE**

To urge voters to elect a Congress that supports increasing patient protections, and to release a report detailing actions the federal government has taken to implement a Patients Bill of Rights while the Republican Leadership stalled on this issue.

**II. BACKGROUND**

This is an opportunity for you to urge voters to elect a Congress that shares your commitment to passing a strong enforceable Patients' Bill of Rights next year. You should emphasize that while the Republican Leadership stalled on the patients' bill of rights, the Administration has been doing everything possible to implement these protections in Federal health plans. To that end, you will be releasing a new report from the Vice President documenting action that the Federal government is taking within its authority to implement the Patients' Bill of Rights in the health plans it administers or oversees. In your remarks, you should make the following points:

**Criticize the Republican Leadership for allowing Congress to adjourn without passing a strong Patients' Bill of Rights.** For a full year, you have been calling on the Congress to pass a strong enforceable patients' bill of rights. For months, the Republican Leadership used every possible stall tactic to thwart the patients' bill of rights. When the Republican Leadership finally did introduce a bill, their proposal contained more loopholes than patient protections. It did not contain critical protections, such as access to specialists, and offered false promises, such as an appeals process that left the decisions in the hands of HMO accountants. In fact, Senator Lott would not even allow an up or down vote to be held on this issue.

**Urge Voters to Choose A Congress Committed to Passing A Strong Enforceable Patients' Bill of Rights.** You should reiterate your strong commitment to passing a Patients' Bill of Rights in the next Congress and urge Americans to go to the polls

tomorrow to elect a Congress that shares this commitment. This legislation should include enforceable patient protections, such as access to specialists, coverage of emergency room services when and where the need arises, continuity of care protections, an internal and independent external appeals process to appeal decisions made by HMO accountants, and protections to assure that HMOs are held accountable when patients are harmed or injured due to a health plans' decisions.

**Announce the Release of a New Report From the Vice President That Highlights the Administration Is Doing Everything Possible to Implement Patient Protections.** In February, you directed Medicare, Medicaid, the Federal Employee Health Benefits Program, the Department of Defense Military Health Program, and the Veteran's Health Program -- which serve over 85 million Americans -- to, where possible, come into compliance with the Patients' Bill of Rights outlined by the President's Quality Commission. Today, the Vice President released a report highlighting that these agencies have taken all the action within their statutory authority to implement patient protections. As a result, the Federal health plans are now, or soon will be, in virtual compliance with the Patients' Bill of Rights. The report documents that:

- **The 285 participating health plans, covering nine million Federal employees and their dependents, have been directed to implement new patient protections this year.** OPM which oversees the Federal Health Employees Benefits Program (FEHBP) serving nine million Federal employees and dependents, has directed their 285 participating health plans to come into compliance with the Patients' Bill of Rights. Through their annual call letter, OPM has specifically requested that plans implement new protections including access to specialists, continuity of care, disclosure of financial incentives, and access to emergency room services. Finally, OPM has issue new regulations to prevent "gag clauses." OPM is also sending information to beneficiaries to assure they are fully aware of their new patient protections.
- **The 39 million Medicare beneficiaries are benefitting from critical patient protections.** Building on Medicare's commitment to providing essential patient protections, HHS published an Interim Final rule in June that includes a series of new patient protections for Medicare beneficiaries. When this rule is fully implemented, Medicare will be virtually in compliance with the Patients' Bill of Rights, including new protections such as access to emergency services when and where the need arises, patient participation in treatment decisions, and access to specialists.
- **The 38 million Medicaid beneficiaries are being assured essential protections in the Patients' Bill of Rights.** In September, HCFA published a Notice of Proposed Rulemaking (NPRM) adding new

patients protections for Medicaid beneficiaries, such as access to specialists and an expedited independent appeals process to bring the program in compliance with the Patients' Bill of Rights, where possible.

- **Over eight million Americans will receive the protections in the patients' bill of rights by the end of this year as a result of the new policy directive assured by the Defense Department's Military Health System (MHS).** In response to your directive, DoD issued "The Patients' Bill of Rights and Responsibilities in the Military Health System," a major policy directive to all participants in the MHS. This directive outlined new protections for the over 8 million beneficiaries served by MHS, including access to appropriate specialists for women's health needs and chronic illnesses and rights for the full discussion of treatment options and of financial incentives. With this directive, which will be fully implemented by the end of this year, DoD will now be in compliance with the Patients' Bill of Rights.
- **Over three million veterans are or will soon be assured virtually all patient protections.** In July, the Department of Veteran Affairs (DVA) issued an Information Memorandum to participating health providers announcing its intention to have an external appeals process in place by the end of the year. Similarly, DVA established a task force to make recommendations as to how best implement information disclosure requirements consistent with Commission's recommendations and has developed a new brochure to provide beneficiaries the necessary information. With the implementation of these new protections DVA is virtually in compliance with the Patients' Bill of Rights.
- **The 125 million Americans covered by ERISA still are not assured critical patient protections because the Department of Labor does not have the authority to implement them without legislation.** DoL oversees the Employee Retirement Income Security Act (ERISA), governing approximately 2.5 million private sector health plans, that cover about 125 million Americans, issued new regulation to implement an expedited internal appeals process and information disclosure requirements. However, DoL's report underscores unless Congress passes Federal legislation, they do not have the authority to implement most patient protections.

### III. PARTICIPANTS

#### Briefing Participants:

Bruce Reed

Chris Jennings

Karen Tramantano

Program Participants:

**YOU**

Beverly Malone, President of the American Nurses Association

Dr. Robert Weinmann, advocate of HMO reform

Frances Jennings, victim of HMO abuse. Her husband was delayed two months for a referral to a specialist, and died of lung cancer before being able to see the specialist finally approved by the HMO.

To be greeted before event:

Secretary Alexis Herman, Department of Labor

Director Janice LaChance, Office of Personnel Management

Deputy Secretary Gober, Veterans Administration

Gerald McEntee, President of AFSCME

Bill Lucy, Secretary Treasurer of AFSCME

Linda Chavez-Thompson, Executive Vice-President of the AFL-CIO

**IV. PRESS PLAN**

Open Press.

**V. SEQUENCE OF EVENTS**

- **YOU** will be announced onto the stage accompanied by program participants.
- Beverly Malone will make remarks and introduce Dr. Robert Weinmann.
- Dr. Robert Weinmann will make remarks and introduce Frances Jennings.
- Frances Jennings will make remarks and introduce **YOU**.
- **YOU** will make remarks, work a ropeline, and then depart.

**VI. REMARKS**

Provided by Speechwriting.

**PRESIDENT CLINTON RELEASES REPORT DOCUMENTING ACTIONS FEDERAL GOVERNMENT IS TAKING TO IMPLEMENT A PATIENTS' BILL OF RIGHTS AND URGES VOTERS TO SEND BACK A CONGRESS THAT SHARES HIS COMMITMENT TO PASS LEGISLATION TO ASSURE PROTECTIONS FOR ALL HEALTH PLANS**

**November 2, 1998**

Today, President Clinton urged voters to send back a Congress that shares his commitment to passing a strong enforceable patients' bill of rights next year. The President also emphasized that while the Republican Leadership has stalled on the patients' bill of rights, the Administration has been doing everything possible to implement these protections in Federal health plans. To that end, he unveiled a report from the Vice President documenting action that the Federal government is taking within its authority to implement the patients' bill of rights in the health plans it administers or oversees. Today, the President:

**Criticized Republican Leadership for allowing Congress to adjourn without passing a strong patients' bill of rights.** For a full year, the President has been calling on the Congress to pass a strong enforceable patients' bill of rights. For months, the Republican Leadership used every possible stall tactic to thwart the patients' bill of rights. When the Republican Leadership finally did introduce a bill, their proposal contained more loopholes than patient protections. It did not contain critical protections such as access to specialists and offered false promises such as an appeals process that left the decisions in the hands of HMO accountants. In fact, Senator Lott would not even allow an up or down vote to be held on this issue.

**Urged voters to choose a Congress committed to passing a meaningful patients' bill of rights.** President Clinton committed to doing everything possible to pass a strong patients' bill of rights in the next Congress and urged Americans to go to the polls tomorrow to elect a Congress that shares this commitment. This legislation should include enforceable patient protections, such as access to specialists, coverage of emergency room services when and where the need arises, continuity of care protections, an internal and independent external appeals process to appeal decisions made by HMO accountants, and protections to assure that HMOs are held accountable when patients are harmed or injured due to a health plans' decisions.

**Released report from the Vice President that highlighted that while the Republican Leadership delayed, the Administration is acting to implement patient protections in Federal health plans.** In February, the President directed Medicare, Medicaid, the Federal Employee Health Benefits Program, the Department of Defense Military Health Program, and the Veteran's Health Program -- which serve over 85 million Americans -- to, where possible, come into compliance with the patients' bill of rights outlined by the President's Quality Commission. Today, the Vice President released a report highlighting that these agencies have taken all the action within their statutory authority to implement patient protections. As a result, the Federal health plans are now, or soon will be, in virtual compliance with the patients' bill of rights. The report documents that:

- **The 285 participating health plans, covering nine million Federal employees and their dependents, have been directed to implement new patient protections this year.** The Office of Personell Management (OPM), which oversees the Federal Health Employees Benefits Program (FEHBP) serving nine million Federal employees and dependents, has directed their 285 participating health plans to come into compliance with the patients' bill of rights. Through their annual call letter, OPM has specifically requested that plans implement new protections including access to specialists, continuity of care, disclosure of financial incentives, and access to emergency room services. Finally, OPM has issue new regulations to prevent "gag clauses." OPM is also sending information to beneficiaries to assure they are fully aware of their new patient protections.

- **The 39 million Medicare beneficiaries are benefitting from critical patient protections.** Building on Medicare's commitment to provide essential patient protections, HHS published an Interim Final rule, in June, that includes a series of new patient protections for Medicare beneficiaries. When this rule is fully implemented, Medicare will be virtually in compliance with the patients' bill of rights including new protections such as access to emergency services when and where the need arises, patient participation in treatment decisions, and access to specialists.
- **The 38 million Medicaid beneficiaries are being assured essential protections in the patients' bill of rights.** In September, the Health Care Financing Administration published a Notice of Proposed Rulemaking (NPRM) adding new patients protections for Medicaid beneficiaries, such as access to specialists and an expedited independent appeals process to bring the program in compliance with the patients' bill of rights, where possible.
- **Over eight million Americans will receive the protections in the patients' bill of rights by the end of this year as a result of the new policy directive assured by the Defense Department's Military Health System (MHS).** In response to the President's directive, DoD issued "The Patients' Bill of Rights and Responsibilities in the Military Health System," a major policy directive to all participants in the MHS. This directive outlined new protections for the over 8 million beneficiaries served by MHS, including access to appropriate specialists for women's health needs and chronic illnesses and rights for the full discussion of treatment options and of financial incentives. With this directive, which will be fully implemented by the end of this year, DoD will now be in compliance with the patients' bill of rights .
- **Over three million veterans are or will soon be assured virtually all patient protections.** In July, the Department of Veteran Affairs (DVA) issued an Information Memorandum to participating health providers announcing its intention to have an external appeals process in place by the end of the year. Similarly, DVA established a task force to make recommendations as to how best implement information disclosure requirements consistent with Commission's recommendations and has developed a new brochure to provide beneficiaries the necessary information. With the implementation of these new protections DVA is in virtual compliance with the patients' bill of rights
- **The 125 million Americans covered by ERISA still are not assured critical patient protections because the Department of Labor does not have the authority to implement them without legislation.** DoL oversees the Employee Retirement Income Security Act (ERISA), governing approximately 2.5 million private sector health plans, that cover about 125 million Americans, issued a new regulation to implement an expedited internal appeals process and information disclosure requirements. However, DoL's report underscores that unless Congress passes Federal legislation, they do not have the authority to implement most patient protections.

**PRESIDENT CLINTON:  
FIGHTING FOR A PATIENTS' BILL OF RIGHTS**

November 2, 1998

*"Quality health care should not be a partisan issue. Quality health care is a practical issue for patients and their families. Fortunately, when it comes to issues like this one, Americans have an appeals process: it is called an election. I hope all Americans will go to the polls tomorrow and elect a Congress that is 100 percent committed to passing a patients' bill of rights."*

President Bill Clinton  
November 2, 1998

Today at the White House, President Clinton will urge voters to send back a Congress that shares his commitment to pass a strong enforceable Patients' Bill of Rights next year. The President will also unveil a report from the Vice President showing that the Federal government is taking all action within its authority to implement the Patients' Bill of Rights in health plans it administers or oversees.

**THE NEXT CONGRESS SHOULD PASS A STRONG AND ENFORCEABLE PATIENTS' BILL OF RIGHTS.** For a full year, President Clinton has been calling on Congress to pass a strong, enforceable Patients' Bill of Rights that includes: access to specialists, coverage of emergency room services when and where the need arises, continuity of care if an employer switches plans, an internal and independent external appeals process allowing individuals to challenge decisions by HMO accountants, and protections to assure that HMO's are held accountable when patients are harmed or injured due to a health plans' decisions. **The Republican Congressional leadership failed to support the President's plan and instead introduced a bill that contained more loopholes than patient protections. The President is urging Americans to elect a Congress that shares his commitment to passing this important legislation.**

**THE CLINTON ADMINISTRATION IS ACTING TO IMPLEMENT PATIENT PROTECTIONS IN FEDERAL HEALTH PLANS.**

Today, the Vice President released a report highlighting that agencies working with health plans that cover roughly 85 million Americans have taken all action within their statutory authority to implement patient protections. As a result, these health plans are now, or soon will be, in virtual compliance with the Patients' Bill of Rights. The report documents that:

- **Over 9 million federal employees and their dependents will get new patient protections this year.** The Office of Personnel Management (OPM) will specifically request that health plans serving over nine million federal employees and their dependents implement new protections to move closer to compliance with the Patients' Bill of Rights. OPM has also issued new regulations to prevent "gag clauses" and is sending information to beneficiaries to ensure they are fully aware of their new patient protections;
- **39 million Medicare beneficiaries are benefitting from critical patient protections.** The Department of Health and Human Services (HHS) published an Interim Final rule that includes a series of new patient protections for Medicare beneficiaries, that, when implemented, will bring Medicare into virtual compliance with the Patients' Bill of Rights;
- **38 million Medicaid beneficiaries are being assured essential protections in the Patients' Bill of Rights.** The Health Care Financing Administration (HCFA) has published a Notice of Proposed Rulemaking adding new patients' protections for Medicaid beneficiaries to bring the program into compliance with the Patients' Bill of Rights, where possible;
- **Over 8 million Americans in the Defense Department's Military Health System (MHS) will receive the protections in the Patients' Bill of Rights by the end of this year;**
- **Over 3 million veterans are or will soon be assured virtually all patient protections.** The Department of Veterans Affairs (DVA) is implementing plans to offer veterans new protections, bringing DVA into virtual compliance with the Patients' Bill of Rights;
- **The 125 Million Americans covered by ERISA are not assured critical protections.** The Department of Labor, which oversees the Employee Retirement Income Security Act (ERISA), issued a new regulation to implement an expedited internal appeals process and information disclosure requirement; however, the report shows that absent Congressional action to pass legislation, DOL does not have the authority to implement most patient protections.

health-care patients bill of rights

# FINAL VOTE RESULTS FOR ROLL CALL 336

(Republicans in roman; Democrats in *italic*; Independents underlined)

HR 4250 YEA-AND-NAY 24-JUL-1998 1:52 PM  
 AUTHOR(S): Dingell of Michigan Substitute Amendment  
 QUESTION: On Agreeing to the Amendment

	<u>YEAS</u>	<u>NAYS</u>	<u>PRES</u>	<u>NV</u>
REPUBLICAN	10	217		1
DEMOCRATIC	201			5
INDEPENDENT	1			
<b>TOTALS</b>	<b>212</b>	<b>217</b>		<b>6</b>

--- YEAS 212 ---

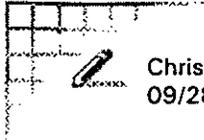
<i>Abercrombie</i>	<i>Gordon</i>	<i>Nadler</i>
<i>Ackerman</i>	<i>Green</i>	<i>Neal</i>
<i>Allen</i>	<i>Gutierrez</i>	<i>Oberstar</i>
<i>Andrews</i>	<i>Hall (OH)</i>	<i>Obey</i>
<i>Baesler</i>	<i>Hall (TX)</i>	<i>Olver</i>
<i>Buldacci</i>	<i>Hamilton</i>	<i>Ortiz</i>
<i>Barcia</i>	<i>Harman</i>	<i>Owens</i>
<i>Barrett (WI)</i>	<i>Hastings (FL)</i>	<i>Pallone</i>
<i>Becerra</i>	<i>Hefner</i>	<i>Pascrell</i>
<i>Bentsen</i>	<i>Hilliard</i>	<i>Pastor</i>
<i>Berman</i>	<i>Hinchey</i>	<i>Payne</i>
<i>Berry</i>	<i>Holden</i>	<i>Pelosi</i>
<i>Bilbray</i>	<i>Hooley</i>	<i>Peterson (MN)</i>
<i>Bishop</i>	<i>Horn</i>	<i>Pickett</i>
<i>Blagojevich</i>	<i>Hoyer</i>	<i>Pomeroy</i>
<i>Blumenauer</i>	<i>Jackson (IL)</i>	<i>Poshard</i>
<i>Boehlert</i>	<i>Jackson-Lee (TX)</i>	<i>Price (NC)</i>
<i>Bonior</i>	<i>Jefferson</i>	<i>Rahall</i>
<i>Borski</i>	<i>John</i>	<i>Rangel</i>
<i>Boswell</i>	<i>Johnson (WI)</i>	<i>Reyes</i>
<i>Boucher</i>	<i>Johnson, E. B.</i>	<i>Rivers</i>
<i>Boyd</i>	<i>Kanjorski</i>	<i>Rodriguez</i>
<i>Brady (PA)</i>	<i>Kaptur</i>	<i>Roemer</i>
<i>Brown (CA)</i>	<i>Kennedy (MA)</i>	<i>Rothman</i>

<i>Brown (FL)</i>	<i>Kennedy (RI)</i>	<i>Roukema</i>
<i>Brown (OH)</i>	<i>Kennelly</i>	<i>Roybal-Allard</i>
<i>Capps</i>	<i>Kildee</i>	<i>Rush</i>
<i>Cardin</i>	<i>Kilpatrick</i>	<i>Sabo</i>
<i>Carson</i>	<i>Kind (WI)</i>	<i>Sanchez</i>
<i>Clay</i>	<i>Kleczka</i>	<i>Sanders</i>
<i>Clayton</i>	<i>Klink</i>	<i>Sandlin</i>
<i>Clement</i>	<i>Kucinich</i>	<i>Sawyer</i>
<i>Clyburn</i>	<i>LaFalce</i>	<i>Schumer</i>
<i>Condit</i>	<i>Lampson</i>	<i>Scott</i>
<i>Conyers</i>	<i>Lantos</i>	<i>Serrano</i>
<i>Costello</i>	<i>LaTourette</i>	<i>Sherman</i>
<i>Coyne</i>	<i>Leach</i>	<i>Sisisky</i>
<i>Cramer</i>	<i>Lee</i>	<i>Skaggs</i>
<i>Cummings</i>	<i>Levin</i>	<i>Skelton</i>
<i>Danner</i>	<i>Lewis (GA)</i>	<i>Slaughter</i>
<i>Davis (FL)</i>	<i>Lipinski</i>	<i>Smith, Adam</i>
<i>Davis (IL)</i>	<i>Lofgren</i>	<i>Snyder</i>
<i>DeFazio</i>	<i>Lowey</i>	<i>Spratt</i>
<i>DeGette</i>	<i>Luther</i>	<i>Stabenow</i>
<i>Delahunt</i>	<i>Maloney (CT)</i>	<i>Stark</i>
<i>DeLauro</i>	<i>Maloney (NY)</i>	<i>Stenholm</i>
<i>Deutsch</i>	<i>Manton</i>	<i>Stokes</i>
<i>Dicks</i>	<i>Martinez</i>	<i>Strickland</i>
<i>Dingell</i>	<i>Mascara</i>	<i>Stupak</i>
<i>Dixon</i>	<i>Matsui</i>	<i>Tanner</i>
<i>Doggett</i>	<i>McCarthy (MO)</i>	<i>Tauscher</i>
<i>Dooley</i>	<i>McCarthy (NY)</i>	<i>Taylor (MS)</i>
<i>Doyle</i>	<i>McDermott</i>	<i>Thompson</i>
<i>Edwards</i>	<i>McGovern</i>	<i>Thurman</i>
<i>Engel</i>	<i>McHale</i>	<i>Tierney</i>
<i>Eshoo</i>	<i>McIntyre</i>	<i>Torres</i>
<i>Etheridge</i>	<i>McKinney</i>	<i>Towns</i>
<i>Evans</i>	<i>McNulty</i>	<i>Traficant</i>
<i>Farr</i>	<i>Meehan</i>	<i>Turner</i>
<i>Fattah</i>	<i>Meek (FL)</i>	<i>Velazquez</i>
<i>Fazio</i>	<i>Meeks (NY)</i>	<i>Vento</i>
<i>Filner</i>	<i>Menendez</i>	<i>Visclosky</i>

Forbes	Millender-McDonald	Waters
Fox	Miller (CA)	Watt (NC)
Frank (MA)	Minge	Waxman
Frost	Mink	Wexler
Furse	Moakley	Weygand
Ganske	Mollohan	Wise
Gejdenson	Moran (VA)	Woolsey
Gephardt	Morella	Wynn
Goode	Murtha	

## -- NAYS 217 --

Aderholt	Gillmor	Paul
Archer	Gilman	Paxon
Armey	Gingrich	Pease
Bachus	Goodlatte	Peterson (PA)
Baker	Goodling	Petri
Ballenger	Goss	Pickering
Barr	Graham	Pitts
Barrett (NE)	Granger	Pombo
Bartlett	Greenwood	Porter
Barton	Gutknecht	Portman
Bass	Hansen	Pryce (OH)
Bateman	Hastert	Quinn
Bereuter	Hastings (WA)	Radanovich
Bilirakis	Hayworth	Ramstad
Bliley	Hefley	Redmond
Blunt	Herger	Regula
Boehner	Hill	Riggs
Bonilla	Hilleary	Riley
Bono	Hobson	Rogan
Brady (TX)	Hoekstra	Rogers
Bryant	Hostettler	Rohrabacher
Bunning	Houghton	Ros-Lehtinen
Burr	Hulshof	Royce
Burton	Hunter	Ryun
Buyer	Hutchinson	Salmon
Callahan	Hyde	Sanford
Calvert	Inglis	Saxton



Christopher C. Jennings  
09/28/98 07:33:12 PM

Record Type: Record

To: Erskine B. Bowles/WHO/EOP  
cc: Kevin S. Moran/WHO/EOP  
Subject: Meeting with pharmaceutical manufacturers tomorrow

Tomorrow morning you are scheduled to drop by for a meeting with pharmaceutical manufacturer executives to discuss a range of issues. Here's a few health issues that may well be raised:

**1. Prescription Drug Fairness Act.** Congressman Waxman, from his position on the Government Reform and Oversight Committee, recently released a report that showed that Medicare beneficiaries pay drug prices that are, on average, over 100 percent higher (sometimes as high as 250-1,000 percent higher) than what the Government purchases the same medications from the Federal Supply Schedule (FSS).

Drug companies are required to give medications purchased off the FSS deep discounts. Community health centers and other public health providers have become quite dependent on these discounts. The DVA, the DoD, and Medicaid obtain similar prices through discount programs. Private sector HMOs, hospitals, and nursing homes also receive very deep discounts. However, because Medicare does not provide for a prescription drug benefit, the program have been historically viewed as having little leverage to demand that its beneficiaries pay less than the highest prices on the market -- drugs purchased retail at the pharmacy. The only coverage beneficiaries can now access is through private Medigap coverage or through Medicare HMO plans that offer prescription drug benefits.

This report garnered enormous local -- and in some cases, national -- media coverage for Congressmen Waxman, Brown, Stupak, Allen, and Turner and others who participated in conducting surveys in their local districts. Older Americans are constantly complaining about the prices of drugs; in fact, medications represent their highest out-of-pocket cost for three-out-of-four seniors.

**The Legislation.** In response to the interest they have been receiving, the House Members introduced the Prescription Drug Fairness Act. This legislation requires drug companies to give participating pharmacists access to drug prices that match those provide to the FSS). The theory of the legislation is the pharmacists would pass along the discounts to beneficiaries, making them much more affordable.

The industry's response to the Committee Report and this legislation is not surprising. They hate both. They believe they provide Government program purchasers discounts because it is their patriotic duty to do so. However, since Medicare is not a purchaser, they reel at the concept that they would have to extend FSS discounts to 38 million Medicare beneficiaries. They believe Medicare has no right to demand these discounts, that such an approach is Government mandating at its worst, that the only affect such legislation would have would be to dry up the discounts that they provide to veterans, community health centers, hospitals and others, and finally that such a bill would threaten the R&D miracles produced by the industry. In short, they will tell you that this legislation in nothing more than a lose/lose prescription.

**Suggested talking points.** I would recommend that you advise the industry that you are well aware and certainly understand their concerns. While you can hint skepticism about the viability of the legislation introduced by Waxman (it obviously has no chance in this Congress or probably any other Congress in the immediately foreseeable future), you should be careful not to discount it altogether. You should advise them that the lack of Medicare coverage for beneficiaries is driving this issue. You can point out that Medicare Commission Members -- on both sides of the aisle -- continually raise the prescription cost and drug coverage issue as the major shortcoming facing the program. Perhaps the most constructive advice you can give them is that they should view the Medicare Commission and the Government Reform Committee report as a wake up call to conduct thorough analysis of the facts and the realistic options to deal with a growing concern about the lack of prescription drug coverage for Medicare beneficiaries.

**2. Managed Care Reform.** Apparently, the pharmaceutical executives are interested in the status of the Patients' Bill of Rights in the Congress. It is unclear exactly what they are interested in here other than a reading of the politics of this issue on the Congressional races and perhaps the prospect of enacting any health care legislation in the near future. (Interestingly, although historically opposed to any Federal health care legislation, the only provision they may have a particular direct interest in is a provision in Ganske/Dingell that requires health plans to cover any prescription drug that a doctor prescribes if medically necessary -- even if it is not on an HMO formulary. The industry probably is secretly rooting for this provision, but it certainly is not enough for them to actively support the whole bill.)

**Suggested talking points.** I think you can say that, despite the bumps in the road, we believe that managed care is still here to stay. That our support of legislation and the President's executive actions are intended to smooth off the rough edges of managed care -- not to kill it. That while legislation looks unlikely this year and we are frustrated with the Senate Leadership's refusal to even schedule a vote on this issue, we have not yet given up trying to get a bipartisan compromise. That we recognize that, despite the drug industry sometimes frustration with managed care's use of limiting access to drugs through the use of formularies, that you know that the drug industry is generally comfortable with the private sector's approach to managing costs. (You should know, Erskine, however, that the number one complaint of the HMO industry in terms of new cost pressures on managed care is NOT patients' rights legislation -- it is prescription drug cost and utilization increases.) In this vein, you might want to seek their advice about how they respond to recent data that shows that drug costs are increasing substantially due to much greater utilization of drugs. They will tell you it is not drug cost inflation; rather it is simply doctors prescribing and patients demanding more medications, and that may be a good thing for overall health care costs (less hospitalization, etc.) You may ask them to provide you some data to back that point up.

cj

## PRESIDENT CLINTON: PATIENTS' RIGHTS FOR ALL

September 17, 1998

*"Here's our bottom line: our health care system should value patients, not just the bottom line. Medical decisions should be made by informed medical doctors, not insurance company accountants."*

President Bill Clinton  
September 17, 1998

Today, President Clinton delivers a speech to the International Brotherhood of Electrical Workers, where he will announce that the Department of Health and Human Services (HHS) has completed work on a new regulation to bring the Medicaid program into compliance with the Patients' Bill of Rights. The President will reiterate his call for Congress to pass strong Patients' Bill of Rights legislation this year.

**GIVING MEDICAID PATIENTS THE PROTECTIONS THEY DESERVE.** The President will announce that HHS has completed a new regulation that will give over 20 million Medicaid beneficiaries in managed care plans the patient protections they deserve. This proposed regulation would require managed care plans in all fifty states to provide needed patient protections to Medicaid beneficiaries, including:

- **Access to the specialists they need;**
- **Anti-gag rules to ensure that health professionals can discuss all medical treatment options with their patients;**
- **Access to providers for women's health services;**
- **Access to emergency room services when and where the need arises;**
- **Disclosure of clear, up-to-date information about benefits, plan operations, and protections;** and
- **A timely internal appeals process as well as an independent external appeals process;**

**ANOTHER STEP FOR PATIENTS' RIGHTS TO AMERICANS IN FEDERAL HEALTH PLANS.** Today's announcement is another step the President is taking to ensure that federal health plans are in compliance with the Patients' Bill of Rights. In June, HHS extended the Patients' Bill of Rights to Medicare beneficiaries, and the Department of Defense, the Department of Veterans Affairs, and the Office of Personnel Management have all taken steps to extend similar patient protections to servicemen and women, veterans, and federal employees. These efforts are extending important patient protections to tens of millions of Americans.

**STANDING WITH AMERICA'S FAMILIES AND WORKERS.** President Clinton is opposed to provisions of the Republican Leadership bills which:

- **Let HMO's, not informed health professionals, define medical necessity;**
- **Fail to guarantee direct access to specialists leaving patients with serious health problems like cancer and heart disease without the assurance that they can see the doctors they need;**
- **Reverse course on emergency room protections that were included in the Balanced Budget Act of 1997;**
- **Fail to protect patients from sudden health care changes which can occur when an employer changes medical plans;**
- **Allow financial incentives to threaten critical patient care by failing to prohibit secret financial incentives to providers;**
- **Undermine existing medical privacy protections, by preempting existing medical privacy protections guaranteed by state law without putting protections in their place;**
- **Fail to compensate patients who have suffered harm as a result of a wrongful health plan action;**
- **Do not cover all health plans and leave millions of Americans unprotected.**

THE WHITE HOUSE  
WASHINGTON

September 16, 1998

**IBEW POLITICAL AND LEGISLATIVE CONFERENCE**

**DATE:** September 17, 1998  
**LOCATION:** Hyatt Regency Hotel  
**BRIEFING TIME:** 9:00 am - 9:20 am  
**EVENT TIME:** 9:40 am - 10:40 am  
**FROM:** Karen Tramontano  
Bruce Reed

**I. PURPOSE**

To announce a new regulation that brings the Medicaid program into compliance with the Patients' Bill of Rights and to reiterate your call on Congress to pass strong patients' bill of rights legislation this year.

**II. BACKGROUND**

The venue selected for this event is the International Brotherhood of Electrical Workers union (IBEW) Political and Legislative Conference. The IBEW supports the HMO Bill of Rights but because it has its own health care fund, IBEW has raised concerns about the enforcement provision. This has not stalled labor's support for the bill's passage, however. Last Thursday the AFL-CIO launched a 1.5 million dollar media campaign in 13 states in support of Daschle/Kennedy.

You will announce that the Department of Health and Human Services has finalized a new regulation that brings the Medicaid program into compliance with the patients' bill of rights. This new proposed regulation will provide critical patient protections to over 20 million Medicaid beneficiaries, including children, people with disabilities, and older Americans. It is part of your ongoing efforts to institute the patients' bill of rights for all federal health plans.

Specifically, you will make the following announcements:

**A NEW REGULATION TO BRING MEDICAID INTO COMPLIANCE WITH THE PATIENTS' BILL OF RIGHTS.** You will announce that HHS has finalized a new regulation that will give the over 20 million Medicaid beneficiaries in managed care plans

the patient protections they need and deserve. This new regulation will require managed care plans in all fifty states to provide needed patient protections to Medicaid beneficiaries including:

- Access to the specialists they need;
- Anti-gag rules to ensure that health professionals can discuss all medical treatment options with their patients;
- Access to providers for women's health services;
- Access to emergency room services when and where the need arises;
- Disclosure of clear, up-to-date information about benefits, plan operations, and protections; and
- A timely internal appeals process as well as an independent external appeals to assure patients can address grievances with their health plans.

**HIGHLIGHT THAT WE HAVE TAKEN EXECUTIVE ACTION TO APPLY THE PATIENTS' BILL OF RIGHTS TO TENS OF MILLIONS OF AMERICANS IN FEDERAL HEALTH PLANS.** The Medicaid regulation is part of your longstanding effort to bring Federal health plans into compliance with the patients' bill of rights. In June, the Department of Health and Human Services extended the patients' bill of rights to Medicare beneficiaries. The Department of Defense, the Department of Veteran Affairs, and the Office of Personnel Management have issued directives extending similar patient protections to servicemen and women, veterans, and federal employees. Taken together, these executive actions are extending protections to tens of millions of Americans.

**UNDERScore NEED FOR STRONG LEGISLATION AND URGED THE REPUBLICAN LEADERSHIP TO STOP STALLING AND PASS A BILL THIS YEAR.** While you have acted to hold Federal health plans implement the patients' bill of rights, Congress must act to ensure that private health plans give their patients the protections they need and deserve. Just yesterday, the Republican Leadership again refused to allow an up or down vote on the patients' bill of rights. This is an opportunity to urge the Republican Leadership to stop stalling and pass a strong enforceable patients' bill of rights this year.

**REITERATE WHY THE ADMINISTRATION CANNOT SUPPORT THE REPUBLICAN LEADERSHIP PATIENTS' BILL OF RIGHTS.** You should reiterate your serious concerns about the shortcomings of the current Republican Leadership bills which:

- **Let HMOs, not informed health professionals, define medical necessity.** The Republican Leadership proposals provide for an external appeals process, but make this process meaningless by allowing the HMOs themselves, rather than informed health professionals, to define what services are medically necessary. This loophole will make it very difficult for patients to prevail on appeals to get the treatment their doctors believe they need.
- **Fail to guarantee direct access to specialists.** The Republican Leadership proposals fail to ensure that patients with serious health problems have direct access to the specialists they need. This means that patients with cancer or heart disease may be denied access to the

doctors they need to treat their conditions.

- **Reverse course on emergency room protections.** The Republican Leadership proposals back away from the emergency room protections that Congress implemented in a bipartisan manner for Medicare and Medicaid beneficiaries in the Balanced Budget Act of 1997. The bills include a watered-down provisions that do not ensure coverage for any treatment beyond an initial screening. These provisions put patients at risk for the huge costs associated with critical emergency treatment.
- **Fail to protect patients from abrupt health care changes.** The Republican Leadership bills fail to assure continuity of care when an employer changes health plans. These deficiencies mean that pregnant women or individuals undergoing care for a chronic illness may have their care suddenly altered mid course, potentially causing severe adverse health consequences.
- **Allow financial incentives to threaten critical patient care.** The Republican Leadership proposals fail to prohibit secret financial incentives to providers. This omission would leave patients vulnerable to financial incentives that limit patient care.
- **Undermine existing medical privacy protections.** The House Republican Leadership bill would preempt some existing medical privacy protections guaranteed by state law, without putting protections in their place. As a result, the Republican bill would increase the number of individuals who can review and give out health records without a patient's knowledge or consent.
- **Fail to compensate patients who have suffered harm as a result of a wrongful health plan action.** The proposed per-day penalties in the Republican Leadership plans fail to hold health plans accountable when patients suffer serious harm or even death because of a health plan's wrongful action. For example, if a health plan improperly denies a lifesaving cancer treatment to a child, it will incur a penalty only for the number of days it takes to reverse its decision; the plan will not have to pay the family for all the damages they will suffer as the result of having a child with a now untreatable disease. And because the plan will not have to pay for all the harm it causes, it will have insufficient incentive to change its health care practices in the future.
- **Do not cover all health plans.** Both Republican Leadership bills leave millions of Americans unprotected. The Senate Republican proposal, for example, covers only self-insured plans, thus leaving out more than 100 million Americans, including millions of Americans in small businesses. These Americans are left to hope that states will provide them with the set of patient protections that the Republicans in Congress will not.

### III. PARTICIPANTS

#### Pre-brief participants

Secretary Shalala  
Secretary Herman  
John Podesta  
Bruce Reed or Elena Kagan  
Chris Jennings  
Karen Tramontano

#### Event participants

Senators Daschle, Kennedy, Harkin  
Representatives Palone, Barry, McDermott, Filner  
Secretaries Shalala and Herman  
AFL-CIO President John Sweeney  
IBEW President Jack Barry  
IBEW Secretary Ed Hill  
IBEW Member Carol Hooper

The audience will be approximately 400 members of IBEW's utility, communications and manufacturing divisions.

### IV. PRESS PLAN

Open Press.

### V. SEQUENCE OF EVENTS

- YOU will be accompanied to the stage by Jack Barry, John Sweeney and Carol Hooper with an off-stage announcement;
- President Barry will introduce John Sweeney;
- John Sweeney will introduce Carol Hooper, an IBEW member and Business Agent;
- Carol Hooper will introduce YOU;
- YOU will make remarks;
- YOU will work a ropeline and depart.

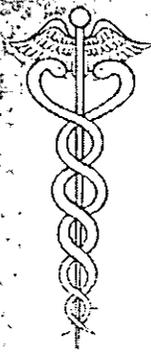
### VI. REMARKS

Remarks provided by Speechwriting.

### VII. ATTACHMENT

Patients Bill of Rights Chart

- \* (note chart will be on stage)



# Americans Deserve a Real Patients' Bill of Rights

**Patient Protection**

**Gingrich/Lott Republican Plan**

**President Clinton/BiPartisan Proposal**

**Assuring HMO Accountants Don't Make Arbitrary Medical Decisions**

**NO**

**YES**

**Guaranteeing Direct Access to Specialists**

**NO**

**YES**

**Providing Real Emergency Room Protections**

**NO**

**YES**

**Keeping Your Doctor Through Critical Treatments**

**NO**

**YES**

**Protecting Patients From Secret Financial Incentives**

**NO**

**YES**

**Protecting Medical Privacy Laws\***

**NO**

**YES**

**Holding Health Plans Accountable For Harming Patients**

**NO**

**YES**

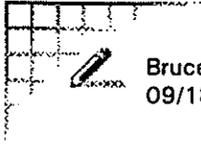
**Covering All Health Plans**

**NO**

**YES**

*\* As Drafted in the House of Representatives*

Health-patients bill of rights



Bruce N. Reed  
09/18/98 09:34:35 AM

Record Type: Record

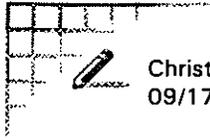
To: Christopher C. Jennings/OPD/EOP  
cc: Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP  
Subject: Re: events



I would love to do events on the road on this. I think it's the perfect issue to highlight the gap b/w the Beltway and real people.

Rahm wondered if we could do some kind of wrap-up event, summing up all we've done by executive action and demonstrating that Congress has done nothing. Maybe a "study" of how many people we're covering, versus how many left uncovered by their inaction.

Health - patients bill of rights



Christopher C. Jennings  
09/17/98 07:59:04 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Laura Emmett/WHO/EOP  
Subject: events

Just received a call from AFL-CIO. They may like us to do some more patients' bill of rights events with them. Jerry Shea suggested that we do an out-of-town event or two. I told him I thought we would need to have an angle that had a chance of receiving some coverage. He said he would start to think creatively and get back to us. He did say, however, that we have to remember that, outside the beltway, this issue seems to continue to be the only issue that sells. I don't know, perhaps that is worth considering. Up to you... (As you know, I write this in hopes that I can get to do yet another patients' bill of rights event to help us prove that it was us who really, really cared about this issue -- and not those evil Republicans).

cj

PATIENT PROTECTION BILLS BEFORE THE 105<sup>TH</sup> CONGRESS

(AMA)

health-patients bill  
of lights

	<i>Hastert-Gingrich (HR 4250)</i>	<i>Dingell-Daschle (HR 3605/S.1890)</i>	<i>Nickles-Lott (S.2330)</i>	<i>Chafee-Graham (S. 2416)</i>
Scope	All beneficiaries of private insurance plans, 161 M people	All beneficiaries of private insurance plans, 161 M people	Applies only to beneficiaries in self-funded plans, 48 M people	All beneficiaries of private insurance plans, 161 M people
Preemption of State Patient Protection Laws	Preempts state patient protection laws for Association Health Plans	Sets ceiling for ERISA plans, floor for state-regulated plans	Preempts state law only with respect to information disclosure and appeals. Other provisions apply to self-funded plans only.	Sets ceiling for ERISA plans, floor for state-regulated plans
Allows Physicians to Define "Medical Necessity"	No. Grants health plans, not physicians, the right to define medical necessity	Yes	No. Grants health plans, not physicians, the right to define medical necessity	Yes
Prohibition of Gag Practices	Contains limited anti-gag provisions for physicians advising their own patients pursuant to contracts with plans	Contains Ganske/Kyl anti-gag provision	Contains limited anti-gag provisions on self-funded plans for health care professionals advising their own patients pursuant to contracts with plans.	Contains broad anti-gag language prohibiting plans from penalizing health care professionals for patient advocacy and for providing medical care information or referrals
Prudent Layperson Emergency Standard	Covers only emergency medical screening exams. Post-stabilization and treatment governed by <i>prudent medical emergency professional</i> standard. Does not eliminate financial penalties for going to closest emergency room.	Contains Cardin Prudent Layperson language for all emergency room services. Eliminates financial penalties for going to closest emergency rooms.	Covers only emergency medical screening exams. Post-stabilization and treatment governed by <i>prudent medical emergency professional</i> standard. Does not eliminate financial penalties for going to closest emergency room.	Contains Cardin Prudent Layperson language for all emergency room services. Eliminates financial penalties for going to closest emergency rooms.
Info Disclosure	Does not require plans to notify individual beneficiaries in writing before changing covered benefits. Plans may charge "a reasonable amount" to answer a request for information limited to once a year. Requests must be in writing and may be answered electronically. Broad disclosure requirements relating to covered services (ER, preventative, drug formularies); limitations/restrictions (excluded benefits, UR, lifetime caps, exp. Treatments, med. Necessity, 2 <sup>nd</sup> opinions, specialty care, continuity); participant's financial responsibility; dispute resolution procedures. Other info. On	Requires plans to notify individual beneficiaries in writing <i>before or after</i> changing covered benefits. Broad disclosure requirements to enrollees and potential enrollees, including service area, covered benefits, cost-sharing, mix/distribution of providers, medical loss ratio, quality assurance protections, credentials of health professionals, prior authorization rules, notice of other info available on request, including UR, method of MD compensation, formulary restrictions, disposition of appeals	Does not require plans to notify individual beneficiaries in writing before changing covered benefits. Broad disclosure required of all plans to enrollees, including covered benefits (inc. out-of-area coverage), cost-sharing, sup. Benefits, advance directives, organ donation, service area, pre-authorization and specialty referral rules, appeal procedures, rules for accessing ER services, exp. Treatments, preventative services. Notice of other info available on request, including participating providers, MD/other provider compensation summary, UR, formulary restrictions, specific coverage exclusions, public info of accrediting bodies. Study on MD-specific information release	Requires plans to notify individual beneficiaries in writing 30 days <i>after</i> changing covered benefits. Requires plans and issuers to provide information regarding service area, covered benefits, access procedures and rights, out-of-area coverage, emergency coverage, prior authorization rules, provider financial incentive information, and grievance and appeals information. Bill would also require that enrollees and potential enrollees have access to info. Regarding: UR activities, aggregate data on grievance and appeals dispositions, methods of physician compensation, participating provider credentials, confidentiality

	request: network characteristics, care mgmt. info; drug formulary inclusions; ways procedures are excluded based on med. Necessity; UR procedures; accreditation; quality performance measures – if any; # of external reviews. Also, MD qualification info/ privileges/ experience on request			policies and procedures, formulary restrictions, participating provider list, medical loss ratio, quality info
<b>Confidentiality</b>	Preempts existing state and federal laws with respect to patient confidentiality	Requires confidentiality of medical records and establishes safeguards. Does not preempt existing patient confidentiality laws.	Requires confidentiality of medical records and establishes safeguards and fines up to \$10,000. Does not preempt existing patient confidentiality laws.	Requires confidentiality of medical records and establishes safeguards and fines up to \$5,000. Does not preempt existing patient confidentiality laws.
<b>Appeals Process</b>	Initial coverage determinations to be made w/in 30 days/10 days (urgent care)/72 hours (emergencies). Plan prevails in cases where plan fails to respond by review deadlines. <b>Internal Review:</b> Only applies to determinations of medical necessity or experimental treatment (as defined by plan). Coverage determinations are not subject to review. 30-day deadline (72-hours for exigent cases). None of internal reviews require independent MD involvement with specialty expert. Non-Binding <b>External Review:</b> Only applies to decisions related to medical necessity or experimental treatment (as defined by plan). Coverage decisions are not subject to review. Patient pays \$25-100 to start de novo external review made by independent fiduciary. 180-day deadline starts upon complete transfer of relevant information to MD not previously involved, (no specialty training required). No financial threshold for external review. <b>Alternative Dispute Resolution:</b> Patient may elect binding ADR by waiving external review.	Requires all plans to formulate procedures for grievances and appeals. Assures continuing use of standards throughout course of individual treatment. <b>Internal review:</b> allows 15 days (72 hours for exigent cases) for conduct of review by previously uninvolved clinical peer. <b>Binding External Review:</b> allows 60 days for conduct of review by clinical peer. Stipulates that patient prevails in cases where plan fails to respond by review deadlines.	All plans/issuers enrollees must have G&A procedure – nonappealable. Initial coverage determinations to be made w/in 30 days (72 hours in emergency). <b>Internal Review:</b> Only applies to questions of medical necessity and experimental treatment (as defined by plan). Only coverage decisions are subject to review. Requires both enrollee and health care professional to appeal. 30-day deadline (72 hours for exigent cases). <b>External Review:</b> Only applies to decisions related to medical necessity or experimental treatment (as defined by plan) over \$1000 threshold. Only coverage decisions are subject to review. 30-day deadline. External reviewers (requires medical expert rather than physician) chosen by plan and not subject to liability for decisions. Evidence-based decision making	Bill extends grievance and appeals, internal and external review to all insurance and ERISA plans. Physicians must be part of all UR, internal and external appeals relating to physicians' clinical decisions. Assures continuing use of standards throughout course of individual treatment. <b>Internal Review:</b> allows physicians or patients to request review of medical necessity determinations by previously uninvolved clinical peer. Sets 30-day limit (72 hours for exigent cases). <b>External Review:</b> allows physician or patient to request review by independent clinical peer within 30 days (72 hours for exigent cases).

<b>Remedies</b>	Does not remove ERISA preemption for state causes of action. Provides HHS authority to impose fines up to \$500/day (up to \$250,000 total) for pattern or practice of repeated denial of care. Dollar amounts not indexed for inflation.	Targeted removal of ERISA preemption (allowing for suits in state courts) for actions based on the exercise of discretion regarding the denial of a covered benefit resulting in injury or death. Protects employers from imputed liability where they did not exercise discretion in denial of benefit.	Does not remove ERISA preemption for state causes of action. The "binding" External Review is not enforced by any penalty. Remedies might not apply in cases where the patient dies before external review.	Does not provide state cause of action under ERISA. Allows access to federal court for self and full-insured individuals for compensatory (economic) damages only. Creates HHS and DOL enforcement for pattern of denial of care up to \$250,000 plus \$10,000/week for failure to act.
<b>Nondiscrimination based on Licensure</b>	No provision	Contains AMA approved language on scope of practice	No provision	No provision
<b>Mastectomy Length of Stay, Breast Reconstctn.</b>	Prohibits the establishment of legal standards for minimum length of stay for mastectomy.	Contains D'Amato language to establish 48-hour mastectomy length of stay and requires plans to pay for breast reconstruction at discretion of physician.	Requires plans to pay for mastectomy and breast reconstruction at discretion of physician with no minimum stay requirement.	Contains D'Amato language to establish 48-hour mastectomy length of stay and requires plans to pay for breast reconstruction at discretion of physician.
<b>Physician Choice</b>	Limited choice provision can be circumvented by documenting potential for 1% premium increase.	Limited choice provision requiring employers who offer only one closed panel HMO to offer at least one other choice (including another closed panel HMO) with exemption for less than 50 employees.	Limited choice provision requiring employers who offer only one closed panel HMO to offer at least one other choice (including another closed panel HMO).	No provision
<b>Network Adequacy</b>	No provision	Requires "sufficient number, distribution and variety" of providers to meet enrollees needs in timely manner.	No provision	Requires plans to provide referrals to specialists when necessary.
<b>OB-GYN, Pediatric Direct Access</b>	Allows access to OB-GYN (only includes routine visits) and pediatrician as primary care.	Allows enrollees to select OB-GYN as primary care provider. No provision for pediatric care.	Allows access to OB-GYN (only includes routine visits) and Pediatrician as primary care	Requires no preauthorization for access to OB-GYN (only includes routine visits) and Pediatrician as primary care.
<b>Protections for Patient Advocacy</b>	No provision	Prohibits retaliation or discrimination for patient advocacy	No provision	Included in Gag Practices section
<b>Continuity of Care</b>	No provision	Provides for continuity of care in cases of institutional care (for up to 90 days) or for pregnancy or terminal illness (until terminated). Provides standing referrals for chronic illness	Provides for continuity of care in cases of institutional care (for up to 90 days) or for pregnancy or terminal illness (until terminated).	Provides for continuity of care in cases of institutional care (for up to 90 days) or for pregnancy or terminal illness (until terminated). Also allows standing referrals for chronic illness and provides protections against involuntary disenrollment in certain cases.
<b>Access to Specialists</b>	No provision	Requires plans to provide timely access to specialists	No provision	Requires plans to provide timely access to specialists
<b>Access to Clinical Trials</b>	No provision	Requires plans to pay routine costs associated with enrollee participation in approved clinical trials.	No provision	Requires plans to pay routine costs associated with enrollee participation in approved clinical trials.

Drug Formulary	No provision	Allows Physicians to prescribe drugs that are not listed on health plan formularies.	No provision	Allows Physicians to prescribe drugs that are not listed on health plan formularies.
Physician Incentives & Payments	Requires plans to disclose method of payment.	Prohibits incentives to deny care. Requires plans to disclose method of payment of physicians.	Requires plans to disclose method of payment.	Prohibits incentives to deny care. Requires plans to disclose method of payment.
Genetic Nondiscrimination	No provision	No provision	Prohibits disclosure and discrimination based on genetic information.	No provision
Quality Review	Quality performance measures information (if any) available on request to participants.	Establishes Health Care Quality Advisory Board to collect and disseminate information on health care quality.	Establishes the Agency for Healthcare Quality Research (AHQR) to conduct/support research; promote public-private partnerships to advance/share quality measures; report annually to Congress on the state of quality and cost of nation's health care; develop state-of-the-art information systems for healthcare quality; assess new technologies in healthcare; coordinate federal quality improvement efforts, and publish/disseminate quality data.	Plans and issuers are required to establish internal quality assurance and improvement program, and disclose to the public quality criteria that are performance and patient outcomes-based.
Effective Date	January 1 of the second calendar year following enactment.	January 1, 1999	January 1 of the second calendar year following enactment	January 1, 1999
Access to Health Insurance Marketplace	Creates HHS- administered HealthMarts (purchasing coops) for small employers. Creates Association Health Plans. Expands MSAs: Repeals limit on # of MSAs – now available to all employers; reduced required deductibles; FEHBP could offer MSAs in some areas.	No provision	Modifies tax code to allow carry over of unused flexible spending accounts up to \$500 /year to next year, roll over into 401(k), MSA, etc. Permit self-employed to deduct 100% of health insurance premiums in 1999. Expand MSAs to all individuals. MSA deductibles would be lowered and funds that exceed deductible could be withdrawn w/o penalty. FEHBP could offer MSAs.	No provision
Lawsuit Reform	Sets \$250,000 cap on non-economic damages (not indexed for inflation). Includes health plan in definition of health care provider	No provision. Allows states to limit awards.	No provision. Allows states to limit awards.	No provision. Allows states to limit awards.
Comments	*Provisions relating to MSAs and Lawsuit Reform are considered to be poison pills because they are not likely to be passed in the Senate or signed by the President. *Furthermore, provisions relating to HealthMarts and Association Health Plans, which we see here	Endorsed by AMA	*For the following reasons federal court would be a less desirable venue than state court for someone who has a minor dispute with their HMO, or someone whose life literally hangs in the balance. 1) The resources necessary to prepare a case for federal court are much greater than in state court, and 2) federal court are	This bill is described as a compromise between two competing Senate bills. However, both Nickles-Lott and Daschle-Dingell contain Point-Of-Service and Mastectomy Length of Stay provisions which were not included in this "compromise" bill.

**Q&As Response to *Washington Post* Managed Care Story  
August 10, 1998**

**Q: Do you stand behind the “horror stories” that you have highlighted in recent months?**

A: We certainly have no reason to doubt the extremely troubling story that David Garvey has told. It is important to note that these cases are almost always in dispute. Not surprisingly, even when the evidence is overwhelming to the contrary, we have yet to come across any HMO or health plan that has acknowledged their responsibility for any wrongful actions.

It is also important to note that we never cite a case that has not been validated by a credible, independent source.

**Q: Administration officials have said they are not confident with Ricka Powers’ story?**

A: First, this case was also referred to us by credible independent sources.\* Subsequent to the event, however, we received additional information, and it was impossible for us to completely validate some of the concerns that were raised. Because we could not fully validate some of the specific concerns raised, we have chosen not to repeat this story. However, that should not suggest to anyone that we are questioning Ricka Powers’ credibility or the horrible situation that she faces.

### **Background on Garvey Case:**

Claim: *The Washington Post* claims that Barbara Garvey had to be moved because the hospital she was at did not perform bone marrow transplants.

Response: Dr. Kaye Kawahara, the attending physician in Hawaii, said in her deposition in the Garvey case that she had recommended that a bone marrow transplant for Barbara Garvey be done in Hawaii. She testified that Queens Medical Center (where Mrs. Garvey was in an isolation room) does have a transplant center, and it typically shares the responsibility for transplants with St. Francis (a nearby hospital in Hawaii). She also said that Mrs. Garvey's transplant could be performed at St. Francis in conjunction with the Queens Medical Center. When told that the HMO would not pay for the transplant on site, Dr. Kawahara tried again to prevent Mrs. Garvey from traveling all the way back to Chicago, by suggesting that the transplant be done in Seattle because "the closer the unit was, the better for the patient." She also testified that the HMO doctor (Dr. Ghalie) said he expected the HMO would not approve a transplant anywhere in the country but Rush Hospital in Chicago.

Claim: *The Washington Post* claims that Garvey's doctor said she ignored advise that to come in for blood tests, instead traveling to Hawaii.

Response: Barbara Garvey was routinely treated for arthritis. She visited with a nurse for routine tests on May 23 and advised the nurse that she would be on vacation. She went on vacation on May 28. Tests came back on or about June 1st that indicated serious problems in low white blood cell count. According to Mr. Garvey, Mrs. Garvey received a voice mail asking her to come in for more tests. There was no mention of any results from any past tests, and there was no indication that this was an emergency rather than a request for standard tests. Regardless, the main dispute is around the cause of death. Once Mrs. Garvey was receiving critical care in Hawaii, she should not have been forced to take the return flight to Chicago, which she was not in condition to withstand, in order to receive needed care.

\* National Breast Cancer Coalition.

Health-patients bill of rights

## TOP TIER TALKING POINTS

**The Republican Leadership Bill (the Gingrich Bill) That Passed the House Yesterday Is More Like A Bill of Goods Than A Patients' Bill of Rights.** The House Republican bill falls far short of giving Americans the patient protections they need and deserve. It leaves out millions of Americans; it leaves out critical patient protections; and it adds in "poison pill" provisions which undermine the possibility of passing a strong bipartisan patients' bill of rights this year.

- The Gingrich bill does not apply to the individual insurance market and therefore excludes millions of Americans.
- It does not include many essential patient protections. It:
  - Does not assure patients direct access to the cancer and heart specialists they need.
  - Does not ensure that care will not abruptly change if a patient's provider is unexpectedly dropped or an employer changes health plans.
  - Does not contain sufficient provisions that prevent patients from being put at risk through unknown destructive financial incentives to limit patient care.
  - Does not have a sufficient enforcement mechanism, as it gives little recourse to patients who are injured or who die because of a health plan's actions.
- Finally, this legislation includes "poison pill" provisions, such as medical malpractice caps, that even the American Medical Association believes are intended to undermine this legislation.

**The Gingrich Bill is Designed to Give Political Cover Rather Than Give Patients the Cover They Need.** Representative John Linder, Chairman of the House Republican Campaign Committee, said this week that Republicans members will be sufficiently protected if they just take a vote on the patients' bill of rights. We believe that Republicans should not just take votes for political cover, but rather we should pass a strong bipartisan patients' bill of rights that gives patients the cover and protections they need.

We are extremely disappointed that the House Republicans tried to jam through legislation to address political pressures, rather than running a fair, open process designed to develop a strong bipartisan patients' bill of rights. Their language was drafted behind closed doors; they never held hearings on this bill; and they never had a mark-up. They simply held an up-or-down vote without an open debate. If

the House Republicans wanted to develop a strong patients' bill of rights rather than a political bill of goods, they would have held fair process that was designed to develop bipartisan consensus on this important issue.

**We Hope the Senate Will Have a Full and Fair Debate To Develop A Strong Bipartisan Patients' Bill of Rights.** The President has called on the Senate to move quickly to have a fair and open debate. We are confident that a fair process, that allows for amendments, will produce a strong, enforceable, and bipartisan patients' bill of rights.

### Q&As

**Q: Yesterday the Gingrich bill passed the House. Do you view this as a setback for the Administration?**

**A:** No we view it as a setback for the American public. We are not only disappointed with what is in the Gingrich bill, but we are dismayed by how it was developed. The Republicans developed this bill behind closed doors, with no committee mark-up, no open debates, and no amendments. The Republican vote was clearly designed to give them political cover, not to give Americans the patient protections they need.

The Gingrich bill leaves out critical patient protections. It does not assure direct access to specialists, so patients can see the cancer doctors or heart specialists they need; it does not prevent patients from being put at risk through unknown destructive financial incentives to limit patient care; and it adds "poison pill" provisions, such as malpractice caps, that are designed to undermine this legislation.

However, we are pleased that the bipartisan Dingell-Ganske substitute legislation received such a strong vote (212-217, including 10 Republican supporters). This legislation covers all health plans, contains strong enforceable patient protections, and has no "poison pill" provisions that have nothing to do with these patient protections. We believe that if there had been a fair and open process to consider this legislation, it would have even received even more support.

**Q: Isn't the only real difference between the Democratic proposal and the Republican bill that passed the House yesterday that the Democrats assure the right to sue an HMO? Why are you making that issue the line in the sand?**

**A:** That is not true. While many in the media have given the impression that this is the only difference in these bills, that is simply not the case. Unlike the

bipartisan Ganske-Dingell bill, or any bill the President could support, the Gingrich bill: leaves out millions of Americans; leaves out critical patient protections; and adds in "poison pill" provisions which undermine the possibility of passing a strong bipartisan patients' bill of rights this year.

- **It does not apply to the individual insurance market and therefore excludes millions of Americans.**
- **It does not include many important patient protections** such as ensuring direct access to cancer doctors or heart specialists that they need, or ensuring that care will not abruptly change if a patient's provider is unexpectedly dropped or an employer changes health plans. This legislation does not contain sufficient provisions that prevent patients from being put at risk through unknown destructive financial incentives to limit patient care.
- **The enforcement mechanism in this legislation is also insufficient** as it gives little recourse to patients who are injured or who die because of a health plan's actions. The President has always said that to make these rights real you need a real remedy.
- **This legislation is undermined by "poison pill" provisions**, such as medical malpractice caps, that even the American Medical Association does not support on this bill, because it has nothing to do with patients' rights.

**Q: But aren't you insisting that this legislation give patients the right to sue their HMOs?**

**A:** The Administration has consistently stated that a right without a remedy is not a right at all. The state court approach in the bipartisan Dingell-Ganske legislation is certainly one approach that the President could accept, but we continue to be open to other meaningful approaches that ensure recourse for patients who have been maimed or who have died as a result of health plan actions.

As was reported recently, judges across the country believe that their hands are tied by the current law. They have explicitly stated that Congress should remove the statutory barriers of ERISA that prevent consumers from seeking a meaningful remedy when they are injured because of their health plans' actions.

**Q: Mr. Norwood said on the floor yesterday that the Administration never pushed the right to sue early on in this process, despite his urging. Isn't it true that now you are pushing enforcement so that you can ensure that the patients' bill of rights becomes a campaign issue rather than the law of the land?**

**A:** No. As we have indicated from the beginning, we want to make sure that patients who have been maimed or who have died because of their health plan's actions have some type of recourse. This has been outlined in the Administration's testimony by the Department of Labor from the beginning of this debate.

**Q: Isn't this going to lead to a proliferation of lawsuits? Is that really what we need in this country -- more lawsuits?**

**A:** We believe that having a strong internal and independent external appeals process in place will address almost all patients' grievances and that very few cases will ever make it into the courts. That is why all of the independent analyses of the Dingell-Ganske enforcement approach, including the one done by the Congressional Budget Office, have scored it as costing between a dime and a dollar per month.

There is no question that this is small price for such an important protection. Under current law, let's say that a patient is denied a critical mammography test recommended by her doctors and she is later diagnosed with stage two breast cancer. Even if it is determined that the HMO was clearly at fault, the patient can only be compensated for the cost of the test -- not for any subsequent treatment she will need and not for pain and suffering. We believe that patients who are maimed or die because of action of their health plans ought to have some type of real compensation.

**Q: The House Republicans say that their legislation does cover everyone covered in the Dingell-Ganske bill. Why are you saying that this is not true?**

**A:** The way the legislation is drafted, it does not amend the law for the individual insurance market. As such, these protections, however limited, do not cover approximately ten million Americans. However, if the Republicans are saying it was their intention to cover all health plans, we certainly welcome that development. I would only say that the fact that this legislation was drafted behind closed doors, was not subjected to any amendments, and was rushed out for a vote, may help explain why a drafting error could occur. Having said this, we all know that the Republican Senate plan does not cover over 100 million Americans. Finally, the Gingrich bill, as I have mentioned, has serious shortcomings and a number of poison

pills that make it unacceptable to the President.

**Q: Are you seriously saying that if the Congress passes a patients' bill of rights that is clearly an improvement from current law, that the President would veto it. Isn't that putting partisanship ahead of progress?**

**A:** The President is not going to sign legislation that is an empty promise. We do not want a bill that is full of provisions designed to please special interests and ignores the needs of the American public.

**Q: We have not heard the President himself say the word veto when referring to the House Republican bill. Is it possible that he is keeping the door open for signing this legislation should it make it through the Congress?**

**A:** Of course not. If the bill that was passed on Friday was presented to the Congress, the President would veto it.

**Q: What is the Administration's position on the Chafee/Graham patients' bill of rights that is likely to be introduced in the Senate next week?**

**A:** We welcome any bipartisan efforts to introduce a strong, enforceable patients' bill of rights. We have not seen the details of this legislation, however, and so it would be premature to comment on it.

**Q: We have heard that the Chafee-Graham legislation has a Federal court remedies approach that provides for economic damages and does not have any caps. Would that meet the Administration's criteria for enforcement?**

**A:** It certainly sounds like an improvement over the Republican Leadership bills' enforcement mechanisms, but without knowing the details it would be ill-advised to comment on it.

**Q: Opponents are labeling the patients' bill of rights as another Kennedy plan for a government takeover of the health care system. Isn't this part of the overall White House strategy to do what you could not do in 1994: takeover the health care system?**

**A:** Of course not. The patients' bill of rights is a narrowly drafted piece of legislation designed to provide basic protections for Americans who already have private health insurance. Supporters of the status quo frequently use

reckless and inaccurate rhetoric to scare the public and the Congress. It will not work this time because the American people are scared that of a system where accountant -- not doctors -- are making medical decisions and where the bottom line is not a patient's health but profit margins.

**PATIENTS' BILL OF RIGHTS ACTIONS**

ACTION	STATUS
<b><u>CBO:</u> Releasing the numbers scoring the Dingell/Ganske/Kennedy legislation.</b>	This/next week. Possible POTUS statement.
<b><u>HHS:</u> Implement regulations that bring Medicaid into substantial compliance with all of the major elements of the "Consumer Bill of Rights," including access to specialists and improved participation in treatment decisions, by no later than next year.</b>	Late July/early August.
<b><u>VA:</u> Implement a sufficient external appeals process is throughout the Veteran's Health System.</b>	Late July.
<b><u>DOD:</u> Assure access to specialists for beneficiaries with chronic medical conditions; implement strong grievance and appeals rights consistent with the "Consumer Bill of Rights" throughout the military health system; and promote greater use of providers who have specialized training in women's health issues.</b>	Possibly late July -- confirming status. Might have to do some of these separately.
<b><u>OPM/DOD:</u> OPM will issue final regulations to prohibit practices which restrict physician-patient communications about medically necessary treatment options. DoD will issue a policy directive to ensure that all patients in the military health system can fully discuss all treatments options. This includes requiring disclosure of financial incentives to physicians and prohibiting "gag clauses"</b>	Early August -- could do in conjunction with DoD anti-gag provisions.
<b><u>OPM:</u> Announce that over 300 private health plans have agreed to come into compliance with the patients' bill of rights as a condition of participation in the Federal Employees Health Benefits Program, including access to specialists, continuity of care, and access to emergency room services, that will be implemented this year.</b>	Early September

health-patients bill of rights  
or

THE WHITE HOUSE  
WASHINGTON

August 25, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Chris Jennings

SUBJECT: New Department of Labor Regulations

You are tentatively scheduled to use this week's radio address to announce the release of a new Department of Labor (DOL) regulation that will require all self-insured health plans, which cover over 50 million Americans, to provide a standard internal appeals process for enrollees. This action builds on the series of initiatives Federal agencies have taken in response to your Executive Memorandum instructing all Federal health plans to come into compliance with the Quality Commission's Patients' Bill of Rights. Because DOL can do no more than require an appeals process, your announcement underscores the need for Congress to pass a strong, enforceable Patients' Bill of Rights.

**Background on Executive Action on Patients' Bill of Rights**

Over the past few months, you have made a number of announcements to bring Federal health plans, which serve 85 million Americans, into compliance with the Patients' Bill of Rights. In June, the Department of Health and Human Services released new regulations to bring Medicare into compliance, and it will implement similar regulations for Medicaid in late September or October. In July, you announced that the Department of Veterans' Affairs had established a new, rapid external appeals process for its 3 million beneficiaries. In August, you announced that the Department of Defense had directed all military health plans, which serve 8 million Americans, to come into compliance with the Patients' Bill of Rights. At your Kentucky rally, you announced a new regulation prohibiting "gag" clauses in plans participating in the Federal Employees Health Benefits Program (FEHBP), which serves 9 million federal employees and their dependents. The Office of Personnel Management will take other steps to bring FEHBP into virtual compliance by late September.

**Department of Labor Internal Appeals Regulations**

The Department of Labor has certain limited authority to regulate self-insured plans. Firms with these plans, which generally have over 100 employees, have elected to self-insure to avoid state regulations and premiums and to have more flexibility to design health plans for their employees. The Department of Labor has extremely limited authority to bring these health plans into compliance with the Patients' Bill of Rights. The Department cannot require self-insured plans to provide most of the consumer protections outlined in the Patients' Bill of Rights, such as

access to specialists, emergency care protections, or an external appeals mechanism. But because DOL has authority under ERISA to regulate how plans evaluate claims, it can require all health plans to provide an internal appeals process to all served employees.

The regulation DOL would issue under this authority would: (1) require plans to notify enrollees of their appeal rights under the plan; (2) drastically reduce the time plans have to respond to non-emergency appeals (from 90 days to 15 days), and require plans to respond to emergency appeals within 72 hours; (3) give enrollees greater access to documents used in reviewing their claims; and (4) require the plan to provide a full appeals process before terminating or reducing benefits for an enrollee in urgent circumstances.

Consumer groups believe this regulation is long overdue and will give it strong support. The business community also will be generally supportive of the regulation, although for a bad reason: they will hope that the regulation bolsters their claim that federal patients' rights legislation is not needed. For this reason, in announcing this regulation, we must clearly articulate the limitations of our authority in this area and reiterate our call for strong, enforceable federal legislation.

### **Conclusion**

Release of this regulation will underscore two important points. First, it will show that you are committed to taking all the action within your authority to bring federal health plans into compliance with the Patients' Bill of Rights. Second, by virtue of the regulation's inescapable limitations, it will highlight the need for federal legislation to ensure that all Americans have needed health care protections.

## PATIENTS' BILL OF RIGHTS Q&AS

**Q: The Republican and Democratic proposals are not that different. Aren't you just playing politics with this issue?**

A: No bill is acceptable if it excludes over 100 million Americans, and that is exactly what the Republican proposal does. We thought one thing that everyone agreed on was that all Americans should have basic patient protections. However, the Republican Senate proposal applies only to Americans in self-insured plans, excluding most Americans in small businesses and millions of other Americans from being assured these important protections. A recent *USA Today* editorial said it best: there are "100 million reasons the GOP health plans fails."

Both the House and Senate Republican Leadership proposals also have many other weaknesses that the President is outlining today. For example, they do not ensure that patients can see oncologists or heart specialists when they need to; they do not limit or require disclosure of dangerous financial incentives for doctors to limit patient care; and they do not compensate patients who have suffered injury as a result of the wrongful conduct of health plans. Although, by any definition, the Republican Leadership plans fall short, the President remains committed to passing a strong patients' bill of rights this year, and hopeful that we will do so.

**Q: By insisting that a bill allow individuals to sue their HMOs, aren't you making it impossible to pass legislation this year?**

A: No. The Administration consistently has stated that a right without a remedy is not a right at all. The right to sue in state courts is certainly one approach, but we continue to be open to other meaningful approaches that ensure recourse for patients who have died or suffered injury as a result of wrongful conduct by health plans. If Republicans are serious about patients' rights, they will work with us in ensuring that patients' bill of rights legislation includes this kind of effective remedy.

It is important to remember that HMOs are one of the few entities in this country that cannot be held accountable for wrongful actions. Americans harmed by bad apple physicians or sloppy manufacturers can be compensated. For some reason, current law prevents HMOs from being held accountable. We simply believe that is unacceptable.

**Q: Do you support the state-enforced remedies in the Democratic bill?**

A: The bipartisan Dingell-Ganske bill enforcement mechanism, which allows patients to bring actions against HMOs in state courts, is certainly one viable approach to giving injured patients an effective remedy. As we have stated before, we are open to considering other meaningful approaches to ensure that these patient protections are real.

**Q: What are other approaches that the Administration would accept?**

A: We are open to anything that will give injured parties adequate recourse, to ensure that these patients' rights are real. Some have suggested allowing actions against HMOs in federal courts, rather than state courts. Of course, the devil is in the details, and we would have to inspect such proposals closely. But the essential principle is clear: when a patient dies or suffers harm because of a health plans' actions, the family must get some type of effective remedy.

**Q: Isn't this legislation going to lead to a proliferation of lawsuits? Is that really what we need in this country -- more lawsuits?**

A: We believe that having a strong internal and independent external appeals process in place will address almost all patients' grievances and that very few cases will ever make their way into the courts. That is why all of the independent analyses of the Dingell-Ganske enforcement approach have been scored as costing so little -- between a dime and a dollar per month.

But it is critically important that this protection exist for the few patients who have been wrongfully denied care, notwithstanding the appeals process, and suffered grave harm as a result. Take, for example, a patient who is denied a critical mammography test recommended by her doctors and is later diagnosed with stage two breast cancer. Even if it is determined that the HMO was clearly at fault, current law provides that the patient can be compensated only for the cost of the test -- not for any subsequent treatment she will need and not for pain and suffering. We believe that patients of this kind, who have died or suffered injury because of the wrongful action of their health plans, ought to have some type of real compensation.

**Q: Some claim that millions of Americans will lose health coverage as a result of the patients' bill of rights. Is this true?**

A. Such claims are nothing more than scare tactics used by insurers and other special interests to try to stall and kill this important legislation. There are absolutely no independent, credible reports that these basic patient protections are going to increase significantly the number of uninsured.

In fact, there are many independent analyses showing that these patient protections will not have a dramatic impact on the cost of health care coverage. A new analysis by the Congressional Budget Office shows that the patients' bill of rights will have only minimal effects on premiums. The CBO estimates that these protections will increase health care costs by \$7 per month. In most cases, the cost to the individual would be only about \$2 per month.

Also, the Kaiser Foundation has estimated that patient protections would increase health insurance premiums less than one percent (less than \$3 per family per month), and

another Kaiser study released last week even found that allowing patients to sue their health plans would only increase premiums between three and 13 cents a month.

There is simply no reason to believe that this kind of cost of increase is going to cause millions of Americans to lose their health care coverage. This is why more than 150 consumer and health care provider organizations around the nation, all of whom are concerned about the number of uninsured, are supporting passing a strong, enforceable patients' bill of rights. These organizations certainly would not be such strong advocates of patients' rights legislation if they thought these concerns were valid.

**Q: What is the Administration's position on the Chafee-Graham patients' bill of rights proposal?**

A: We can pass good health care legislation only when we have strong bipartisan support. The legislation introduced by Senators Chafee and Lieberman does represent a bipartisan attempt to address the patients' bill of rights issue, and we welcome it for that reason. The legislation is not as strong as the Dingell-Ganske bipartisan bill and we are still reviewing its details, but it certainly merits serious consideration. Unfortunately, both the House and the Senate Republican Leadership are refusing to consider any bipartisan approaches to this issue. We hope that the Republicans reconsider this position, so that we can build on the bipartisan bills offered and pass a strong bipartisan patients' bill of rights this year.

**PRESIDENT CLINTON:  
FIGHTING FOR A PATIENTS' BILL OF RIGHTS**

August 10, 1998

*"When the bottom line becomes more important than patients' lives, when families have nowhere to turn when their loved ones are harmed by health care plans' bad decisions, when specialist care is denied and emergency care is not covered even when they are plainly needed and recommended by physicians, we must act. Whether in managed care or traditional care, every single American deserves quality care."*

President Bill Clinton  
August 10, 1998

Today, President Clinton travels to Louisville, Kentucky and delivers a speech on Patients' Bill of Rights. The President outlines his disagreements with Congressional Republican leadership's patients' bill or rights proposals, and announces his commitment to veto any legislation that does not adequately provide patient protections. The President also announces the release of an Office of Personnel Management regulation prohibiting gag rules by the 350 insurance companies who participate in the Federal Employees Health Benefits Program, and serve 9 million federal employees and their families.

**PRESIDENT CLINTON IS WORKING TO ENSURE BASIC HEALTH CARE PROTECTIONS.** Over nine months ago, President Clinton called on Congress to pass strong enforceable Patients' Bill of Rights legislation. The President has outlined protections he supports, including:

- **Guaranteed Access To Needed Health Care Specialists;**
- **Access To Emergency Room Services When And Where The Need Arises;**
- **Continuity Of Care Protections To Assure Patient Care** will not change abruptly if their provider is dropped;
- **Access To A Timely Internal And Independent External Appeals Process** for consumers to resolve their differences with their health plans;
- **A Limit On Financial Incentives To Doctors;**
- **Assuring That Doctors And Patients Can Openly Discuss Treatment Options;**
- **Assuring that Women Have Direct Access To An OB-GYN;**
- **An Enforcement Mechanism That Ensures Recourse For Patients** who have been maimed or die as a result of health plan actions.

**THE PRESIDENT IS STANDING WITH WORKING FAMILIES AGAINST PROPOSALS THAT ARE MORE LOOPHOLE THAN PATIENT PROTECTION.** Current proposals by the Republican leadership in Congress are inadequate, they have more loopholes than protections. If Congress sends such flawed legislation to the President, he will veto it. The Republican leadership proposals:

- **Let HMO's, Not Health Professionals, Define Medical Necessity,** making it very difficult for patients to prevail on an external appeal and get the treatment their doctors believe they need;
- **Allow Financial Incentives To Threaten Critical Patient Care.** Republican proposals claim to protect patients from financial incentives to limit care, but in reality, apply this protection in a very limited number of circumstances;
- **Fail To Guarantee Direct Access To Specialists** for patients with serious health problems;
- **Fail To Compensate Patients Who Have Suffered As A Result Of A Wrongful Health Plan Action;**
- **Undermine Existing Medical Privacy Protections** by preempting some existing medical privacy protections guaranteed by state law, without putting any protections in their place, thereby increasing the number of people who can review and give out a patient's health records without their knowledge;
- **Reverse Course On Emergency Room Protections** by not requiring health plans to cover patients who go to an emergency room outside their network and not ensuring coverage for any treatment beyond an initial screening;
- **Do Not Cover All Health Plans,** leaving, under one proposal, 100 million Americans without any protections.

**A NEW PROTECTION FOR FEDERAL EMPLOYEES.** While the Republican leadership delays passing strong patient protections, the President is implementing the Patients' Bill of Rights for the 85 million Americans in federal health plans. Today, the President is announcing the release of a new regulation by the Office of Personnel Management prohibiting the

350 plans participating in the Federal Employees Health Benefits Program (FEHBP) from using gag clauses. This regulation will help ensure that health professionals can discuss all medical treatment options with their patients.

**THE WHITE HOUSE**

**Office of the Press Secretary**

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**For Immediate Release**

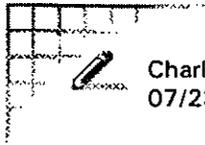
**July 24, 1998**

**STATEMENT BY THE PRESIDENT**

The patients' bill of rights should not be designed for the political needs of any party; it should be designed to meet the health needs of all Americans. Unfortunately, the House Republicans passed legislation today that simply does not meet this test. This bill leaves out millions of Americans; it leaves out critical patient protections; and it adds in "poison pill" provisions which undermine the possibility of passing a strong bipartisan patients' bill of rights this year.

The Republican Leadership's legislation does not apply to the individual insurance market and therefore excludes millions of Americans. It does not include many important protections such as ensuring direct access to specialists, so that patients can see the cancer doctors or heart specialists that they need, or ensuring that care will not abruptly change if a patient's provider is unexpectedly dropped or an employer changes health plans. Moreover, the enforcement mechanism in this legislation is insufficient as it gives little recourse to patients who are injured or who die because of a health plan's actions. Finally, this legislation is undermined by provisions that have nothing to do with patients' rights.

Americans want a patients' bill of rights that gives them the protections they need in a rapidly changing health care system. The legislation passed by the House Republicans today falls far short of ensuring Americans the quality care they need and deserve. It is my strongest hope that the Senate will move quickly to have a fair and open debate that can produce a strong, enforceable, and bipartisan patients' bill of rights this year.



Charles Konigsberg  
07/23/98 02:53:12 PM

Record Type: Record

To: See the distribution list at the bottom of this message  
cc: See the distribution list at the bottom of this message  
Subject: URGENT -- NEED CLEARANCE BEFORE COB TODAY

**Following is a draft SAP on the House GOP patients' rights bill, which will be on the House Floor most of the day tomorrow (Friday). Needs to be cleared for transmittal by COB today. Please contact Chuck Konigsberg and Kate Donovan with any comments or clearance.**

**DRAFT -- NOT FOR RELEASE**

July 23, 1998  
(House)

**H.R. 4250 - Patient Protection Act of 1998**  
(Rep. Gingrich (R) GA and 57others)

Nearly two years ago, the President announced he would establish a non-partisan Quality Commission to make recommendations on how best to assure patient protections and quality health care. When he appointed this Commission, he directed that it develop a patients' bill of rights as its first order of business. Since last November, the President has been calling on the Congress to pass a strong, enforceable patients' bill of rights. It was not until last week that the Republican Leadership finally introduced long-overdue legislation on this issue.

The Administration believes that the Republican Leadership's introduction of H.R. 4250 clearly demonstrates that there is broad-based consensus on the need for Federal legislation to ensure that Americans have patient protections. The President is committed to working with the Congress to pass an enforceable patients' bill of rights this year.

Unfortunately, for the reasons cited below, H.R. 4250 is seriously flawed legislation. As such, the Administration strongly opposes H.R. 4250, as currently drafted, and the President would veto the bill if it were presented to him by the Congress.

First, H.R. 4250 does not apply to the individual insurance market and therefore millions of Americans would not be assured these patient protections. The President has repeatedly stated that every health plan should have to provide its enrollees with a patients' bill of rights.

Second, this legislation does not provide many critical provisions that are necessary to assure

high quality care. The following protections are either absent from this legislation or are insufficient:

Access to specialists. H.R. 4250 does not assure persons with chronic or serious conditions direct access to specialists. Moreover, there is no requirement that a plan cover a specialist that is not in the network if the network does not have sufficient providers to treat the condition. As such, patients would not be assured access to needed specialists to treat, for example, cancer or heart conditions.

Continuity of care protections. H.R. 4250 does not include a requirement that a patient's care will not abruptly change if their provider is unexpectedly dropped from a health plan or if their employer changes health plans. This provision is essential for patients -- such as pregnant women or the chronically ill -- whose care will be seriously undermined by an abrupt change.

Financial incentives for doctors. This legislation does not contain sufficient provisions that prevent patients from being put at risk through unknown destructive financial incentives to limit patient care.

Emergency room services. The emergency room services provision is insufficient, as it does not prohibit plans from limiting access to an emergency room that is outside the plan's network. Moreover, it does not address coverage of post-stabilization care, which puts patients at risk for huge costs for needed treatment that a doctor believes should take place in the facility in which they were initially admitted.

Gag Rules. H.R. 4250 only prohibits gags on physicians in direct contract with a plan. The majority of doctors, however, contract with plans through medical groups, third party administrators, or other arrangements. Therefore, there are no prohibitions of gag rules for most contracts.

External appeals. We are extremely concerned that the external appeals in H.R. 4250 is only advisory -- not binding. The right to an appeal is meaningless if health plans can disregard these decisions. Moreover, patients would be required to pay a copayment to participate in an appeals process, up to \$100. Consumers should be able to address serious grievances without having to pay. In addition, the plan would be allowed to develop its own definition of medical necessity by making it extremely difficult for an enrollee to prevail on appeal.

Insufficient enforcement provision. The enforcement mechanism in this legislation is insufficient as it gives little or no recourse to patients who are injured or who die because of a health plan's actions. The proposed \$250

per day penalties are wholly insufficient for patients who suffer serious harm or even death because of a wrongful action by a health plan.

Third, H.R. 4250 contains provisions that have nothing to do with patients' rights and only serve to reduce the likelihood that an acceptable agreement can be reached on this important issue. Recognizing our concerns with these provisions, the Congress agreed as recently as last year to keep them off bipartisan legislation -- specifically, the Balanced Budget Act of 1997. These provisions include:

Caps on medical malpractice awards and limits on malpractice actions. While the Administration has consistently supported medical malpractice reforms, it opposes federally imposed caps on punitive and non-economic damages in medical malpractice cases.

Expansion of Medical Savings Accounts (MSAs). H.R. 4250 would subvert the MSA demonstration project enacted in the Health Insurance Portability and Accountability Act of 1996. Under H.R. 4250, the MSA tax break may accrue only to the healthiest and wealthiest individuals and attract them out of the general health insurance market, potentially raising premiums for all other people. There is no evidence that the claimed cost containment benefit of MSAs outweighs the cost of providing a tax break primarily for healthy and higher-income individuals.

Association Health Plans (AHPs). H.R. 4250 would create a new insurance option for small groups and individuals that would exempt them from many existing State safeguards in such areas as solvency, marketing, underwriting, rating practices, benefits, and consumer protections. Under current law, States regulate the small group and individual markets, thereby helping to make coverage affordable. H.R. 4250 would permit AHPs to discriminate by cherry-picking healthier groups and individuals. Those remaining in the State's insurance pool would face higher premiums, leading to higher levels of uninsurance and undermining the stability of the State insurance pool.

While we have serious concerns with H.R. 4250, the President remains committed to passing a strong, enforceable and bipartisan patients' bill of rights this year. The bipartisan substitute legislation offered by Mr. Dingell and Dr. Ganske covers all health plans, contains strong enforceable patient protections, and has no "poison pill" provisions that have nothing to do with these patient protections. As such, the President would sign H.R. 3605 into law. It is the President's hope that Republicans and Democrats can work across party lines to put progress ahead of partisanship and pass legislation that provides Americans with the patients' protections they need and deserve.

#### Pay-As-You-Go Scoring

H.R. 4250 would affect both direct spending and receipts; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. OMB's preliminary scoring estimate of the bill is under development.

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#### **(Do Not Distribute Outside Executive Office of the President)**

This Statement of Administration Policy was developed by the Legislative Reference Division (Pellicci) in consultation with Associate Director Mendelson, DPC (Jennings/Bianchi/Rosen), and HD (Clendenin/Miller/Murray/Donnelly). The Departments of Health and Human Services (per Andrea LeVario), the Treasury (per Karen Dorsey), Labor (per Herman Narcho), and Justice (per Greg Jones), and the Office of Personnel Management (per Harry Wolf) were consulted in developing the proposed position.

This version of the SAP includes last minute changes from Chris Jennings, which were not

shared with the affected agencies. Chris advised that he would brief those agencies on the changes.

OMB/LA Clearance: \_\_\_\_\_

H.R. 4250 was introduced on July 16th by Speaker Gingrich. On July 17th, Sen. Nickles introduced S. 2330, the Senate companion bill to H.R. 4250. Neither bill was subject to committee action nor were hearings held on the bills. (The Democrats version of patients' bill of rights legislation was introduced on March 31st, by Sen. Daschle and Rep. Dingel as S. 1890/1891 and H.R. 3605, respectively).

All the patients' rights bills noted above would require health plans to pay for more emergency room visits, forbid plans to "gag" doctors from discussing expensive treatments with their patients, allow patients to visit obstetricians and pediatricians without prior approval, and -- with some variations -- increase patients' ability to appeal denials of care or payment to their insurer and outside grievance boards.

#### Summary of H.R. 4250

H.R. 4250 would amend the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act (PHSA), and the Internal Revenue Code of 1986 to provide new patient protections under group health plans. It would also: (1) amend ERISA to provide for association health plans; (2) amend the PHSA to provide for HealthMarts; (3) provide for Federal reform of health care liability actions; (4) amend the Social Security Act to provide protections for the confidentiality of health information; and (5) expand Medical Savings Accounts (MSAs).

The major provisions of H.R. 4250 are described below.

Information Disclosure to Enrollees and Participants Eligible to Enroll. Detailed disclosure requirements would include plan benefits including: (1) the types of items and services covered as well as the professionals providing the items and services; (2) emergency medical care coverage and definitions; (3) preventive services; (4) whether they use drug formularies; (5) COBRA continuation coverage; (6) limitations and exclusions; (7) participant's financial responsibilities; and (8) and dispute resolution procedures.

Review and Appeal of Health Maintenance Organization (HMO) Decisions. H.R. 4250 would establish a procedure under which health plan participants can appeal HMO denials of care, and would require HMOs to decide appeals on routine care within 30 days. In the case of emergency care, such appeals must be decided within 72 hours, and with regard to urgent care, within 10 days. In addition, the bill would provide for an additional appeal to an external medical

expert of a denial of coverage involving medical necessity or experimental treatment (or where the plan failed to meet the internal appeals deadlines). H.R. 4250 would allow health plans to charge patients who appeal to the external medical expert up to \$100, or 10 percent of the cost of the medical procedure, whichever is less.

Association Health Plans. The bill would allow small businesses and groups such as trade and professional associations, to create association health plans to offer health insurance to their workers or members.

Point of Service Option. H.R. 4250 would require HMOs to offer a point-of-service option (i.e., permit the patient to go outside the network to obtain care, provided he or she pays an additional amount) to employers in conjunction with plans that limit choice. Employers would be able to accept or decline the option. If employers decline, the bill would require the insurance company to offer a point-of-service option as supplemental coverage to employees through the individual market.

Medical Savings Accounts. The bill would lift the current restriction limiting MSAs to small employers, would lower the floor for the deductible from \$1,500 to \$1,000 for individuals, and from \$3,000 to \$2,000 for families, and would permit MSA deposits up to the amount of the deductible. H.R. 4250 would also permit all Federal employees to enroll in MSAs, and would make MSAs a permanent option under law.

HealthMarts. H.R. 4250 would authorize the establishment of HealthMarts, which are private sector partnerships composed of providers, consumers, small employers, and insurers. These partnerships would offer a variety of health plans options from which employees would choose the option that best suits their needs.

Medical Malpractice. The bill would limit the amount of non-economic damages in medical malpractice suits to \$250,000, but would give States the authority to enact higher or lower limits. H.R. 4250 would require that medical malpractice lawsuits be brought within two years of the date of discovery of the injury, but not later than five years from the date of the injury. Under the bill, no punitive damages could be awarded unless the plaintiff provides clear and convincing evidence of a reckless disregard for the victim.

#### Pay-As-You-Go Scoring

According to HD (Miller/Murray), H.R. 4250 would affect both direct spending and receipts; therefore the bill is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. Neither the Joint Committee on Taxation nor CBO has scored the bill; OMB estimates are under development.

health-patients bill of rights

## MORE PATIENTS' BILL OF RIGHTS Q&AS

July 18, 1998

**Q: The Republican and Democratic proposals are not that different. Aren't you just playing politics with this issue?**

**A:** No bill is acceptable if it excludes over 100 million Americans, and that is exactly what the proposal Republicans released this week does. We thought one thing that everyone agreed on was that all Americans should have basic patient protections. However, the Senate Republican proposal only applies to Americans in self-insured plans, excluding most Americans in small businesses and millions of other Americans from being assured these important protections. Friday's *USA Today* editorial said it best: there are "100 million reasons the GOP health plans fails."

Both the House and Senate Republican proposals also have many other weaknesses. For example, they do not assure that patients can see oncologists or heart specialists when they need to; they do not limit or require disclosure of financial incentives for doctors; and they do not compensate patients who are maimed or who die as a result of a wrongful health plan action. Although, by any definition, the Republican plans fall short, the President remains hopeful and committed to passing a strong patients' bill of rights this year.

**Q: By requiring any bill to allow individuals to sue their HMOs, aren't you raising the bar to make it impossible for Republicans to pass legislation this year so you can call them the "do-nothing" Congress?**

**A:** We are not raising any bar. The Administration has consistently stated that a right without a remedy is not a right at all. The right to sue in state courts is certainly one approach, but we continue to be open to other meaningful approaches that ensure recourse for patients who have been maimed or who have died as a result of health plan actions.

As was reported just last week, judges across the country believe that their hands are tied by the current law. They have explicitly stated that Congress should remove the statutory barriers of ERISA that prevent consumers from seeking a meaningful remedy when they are injured because of their health plans' actions.

**Q: But the President said on Thursday that you have to have the right to sue?**

**A:** No. The President said that any patients' bill of rights should give "patients a right to sue or some other enforceable legal right that patients' need." This

is consistent with what the Administration has consistently said in testimony and in statements by Administration officials.

**Q: Do you support the state-enforced remedies in the Democratic bill?**

**A:** The bipartisan Dingell-Ganske bill enforcement mechanism through the state courts is certainly one viable approach. As I have stated before, we are open to considering other meaningful approaches to ensure that these patient protections are real.

**Q: What are other approaches that the Administration would except?**

**A:** There are other meaningful approaches beyond state court enforcement approaches. Some have suggested some type of Federal court approach. However, the devil is always in the details, and I am certainly not going to engage in negotiating the specifics on this show. However, the Administration's position is clear: those Americans who are maimed or who die because of a health plans' actions must get some type of remedy.

It is important to remember that HMOs are one of the few entities in this country that cannot be held accountable for wrongful actions. Americans harmed by bad apple physicians or sloppy manufacturers can be compensated. For some reason, current law assures that HMOs are not held accountable. We simply believe that is unacceptable.

**Q: Isn't this going to lead to a proliferation of lawsuits? Is that really what we need in this country -- more lawsuits?**

**A:** We believe that having a strong internal and independent external appeals process in place will address almost all patients' grievances and that very few cases will ever make it into the courts. That is why all of the independent analyses of the Dingell-Ganske enforcement approach have been scored as costing between a dime and a dollar per month.

There is no question that this is small price for such an important protection. Under current law, let's say that a patient is denied a critical mammography test recommended by her doctors and she is later diagnosed with stage two breast cancer. Even if it is determined that the HMO was clearly at fault, the patient can only be compensated for the cost of the test -- not for any subsequent treatment she will need and not for pain and suffering. We

believe that patients who are maimed or die because of action of their health plans ought to have some type of real compensation.

**Q: Some claim that millions of Americans will lose health coverage as a result of the patients' bill of rights. Is this true?**

**A. Such claims are flawed, widely exaggerated scare tactics used by insurers and other special interests to try to stall and kill this important legislation.** There are absolutely no independent, credible reports that these basic patient protections are going to significantly increase the number of uninsured. The multi-million dollar, industry-sponsored ad campaigns that are scaring Americans with these unfounded claims are based on flawed assumptions that the patients' bill of rights will significantly increase health care costs.

**However, there are numerous independent analyses that these patient protections would not have a dramatic impact on the cost of health care coverage.** A new analysis by the Congressional Budget Office shows that the patients' bill of rights will have only minimal effects on premiums. They estimate that these protections will increase health care costs by \$7 per month. In most cases, the cost to the individual would be only about \$2 per month.

There is no reason to believe that this type of increase is going to cause millions of Americans to lose their health care coverage. Moreover, for good health plans that already provide these basic protections, it should cost almost nothing.

Also, the Kaiser Foundation has estimated that patient protections would increase health insurance premiums less than one percent (less than \$3 per family per month), and another Kaiser study released last week even found that allowing patients to sue their health plans would only increase premiums between three and 13 cents a month.

**Finally, the over 150 consumer and health care provider organizations around the nation that are supporting passing a strong, enforceable patients' bill of rights are also extremely concerned about the number of uninsured.** They certainly would not be such strong advocates of legislation if they had those concerns.

health-children's coverage

PRESIDENT SCHEDULING REQUEST

July 2, 1998

\_\_\_ ACCEPT

\_\_\_ REGRET

\_\_\_ PENDING

TO: Stephanie Streett, Director of Scheduling

FROM: Bruce Reed and Chris Jennings, Domestic Policy Council  
Gene Sperling, National Economic Council  
Ron Klain, Office of the Vice President  
Melanne Verveer, Office of the First Lady  
Ann Lewis, Office of Communications  
Minyon Moore, Office of Public Liaison

REQUEST: "Back to School" event to announce children's health outreach efforts.

PURPOSE: To launch a national and regional children's health care outreach campaign designed to provide insurance to millions of kids, to unveil a new toll-free number, and to sign an executive order creating a public-private advisory council.

BACKGROUND: One of the President's goals is to provide health insurance to up to 5 million uninsured children. Last year, he passed a \$24 billion program-- the largest health expansion for children in 30 years. This event is the part of the President's public-private campaign to educate parents and enroll children in the new program and Medicaid, and follows up on the Vice President's Family Conference and the President's executive order. The President would: (1) launch a paid advertising campaign that includes a 1-800 number; (2) create a high-profile advisory council of Governors, Congressmen, celebrities, and health care providers to oversee a national awareness campaign; and (3) announce other private and local efforts.

DATE & TIME: September 1998

DURATION: 1 hour

LOCATION: East Room

PARTICIPANTS: The President, First Lady, Vice President, advisory council, major corporations, children's health advocacy groups.

REMARKS REQUIRED: Yes

MEDIA: Open

CONTACT: Christa Robinson 6-5165

Health-patients bill of rights

**PRESIDENT CLINTON:  
A GOOD AND BI-PARTISAN PATIENTS' BILL OF RIGHTS  
July 16, 1998**

*"We cannot spare another moment in securing passage of a strong, enforceable Patients' Bill of Rights. To do that, we must work together. To protect our families, to save them from the needless suffering that pains us all, we need a bipartisan approach -- not partisan bills that are about political positioning."*

President Bill Clinton  
July 16, 1998

Today, President Clinton joins Democratic and Republican members of Congress on Capitol Hill to support passage of a good and bipartisan Patients' Bill of Rights. The President will also highlight the bipartisan approach to this issue taken by Reps. Greg Ganske (R-IA) and John Dingell (D-MI).

**President Clinton Calls On Congress To Pass An Enforceable Patients' Bill Of Rights.** President Clinton is working to protect Americans and guarantee Americans fundamental protections in health care decisions. For nine months the President has been urging Congress to pass a Patients' Bill of Rights. In February 1998, the President signed an Executive Memorandum directing the federal health plans overseeing 85 million Americans to implement the Patients' Bill of Rights. The President has said that Patients' Bill of Rights legislation must meet the following objectives:

- **Guaranteed Access To Needed Health Care Specialists;**
- **Access To Emergency Room Services When And Where The Need Arises;**
- **Continuity Of Care Protections To Assure Patient Care** will not change abruptly if their provider is dropped;
- **Access To A Timely Internal And Independent External Appeals Process** for consumers to resolve their differences with their health plans;
- **A Limit On Financial Incentives To Doctors;**
- **Assuring That Doctors And Patients Can Openly Discuss Treatment Options;**
- **Assuring that Women Have Direct Access To An OB-GYN;**
- **An Enforcement Mechanism That Ensures Recourse For Patients** who have been maimed or die as a result of health plan actions.

**The President's Plan Has Broad Support.** President Clinton's plan has been endorsed by many groups, including the American Medical Association, National Breast Cancer Coalition, AIDS Action, and others who believe, as the President does, that medical decisions should be made by patients in consultation with their doctors and nurses.

**Republican Proposals Do Not Provide Adequate Patient Protections.** Republicans are supporting legislative policies that fall short of providing essential protections, for example, they:

- **Do Not Guarantee Access To Specialists.**
- **Do Not Limit Or Require Disclosure Of Financial Incentives For Doctors.** Patients should not be put at risk through unknown financial incentives given to doctors to limit patient care.

- **Do Not Compensate Patients Who Are Maimed Or Die As A Result Of A Wrongful Health Plan Action.**
- **Do Not Provide 100 Million Americans The Patient Protections They Need.**  
Republican proposals only apply to those in self-insured plans. Some 100 million Americans would only receive the protections they need if every state passed every protection into law.
  - **States Patients' Rights Laws Do Not Provide The Protections Patients Need.**  
A report released today by Families USA shows that no state has passed all of the protections in the Patients' Bill of Rights, and most states have only passed a few of these protections.
  - **Millions of Americans Working In Small Businesses Would Not Be Covered.**  
Most Americans who work in small businesses would not be protected by the Republican proposal, which explicitly excludes them.

**The President's Leadership Is Helping Ensure Basic Health Care Protections For Americans.**  
Americans need to be ensured that important protections, like access to a health care specialist or the emergency room is guaranteed. President Clinton has already extended these rights and others to 85 million Americans in federal health plans, now it is time for Congress to act so all Americans can be guaranteed these vital protections.

**PRESIDENT CLINTON:  
A PATIENTS' BILL OF RIGHTS FOR QUALITY HEALTH CARE**

July 15, 1998

*"To ensure that every American is protected by a Patients' Bill of Rights, Congress must also act. In the remaining days left in this legislative session, I call on the Congress once again to pass a strong, enforceable Patients' Bill of Rights, a bill that guarantees access to specialists, so people with cancer, heart disease, and other life-threatening illnesses get the care they need, a bill that guarantees continuity of care, so pregnant women can have the same doctor throughout their pregnancy, even if that doctor is dropped from a plan, a bill that makes these rights real by guaranteeing a remedy to people who have been injured or lost family members as a result of a bad decision. That is the kind of comprehensive Patients' Bill of Rights America needs and deserves. We need progress, not partisanship."*

President Bill Clinton  
July 15, 1998

Today, President Clinton meets with doctors, nurses, and families from around the nation to highlight the need for Congress to pass a strong, enforceable Patients' Bill of Rights this year. During this roundtable event, President Clinton announces that the federal government is implementing the Patients' Bill of Rights for the 85 million Americans in federal health plans and that the Department of Veterans Affairs (VA) is beginning implementation of an external appeals process for the 3 million veterans served by the VA.

**PRESIDENT CLINTON CALLS ON CONGRESS TO PASS AN ENFORCEABLE PATIENTS' BILL OF RIGHTS.** For eight months the President has been urging Congress to pass a Patients' Bill of Rights that includes:

- **Guaranteed Access To Needed Health Care Specialists;**
- **Access To Emergency Room Services When And Where The Need Arises;**
- **Continuity Of Care Protections To Assure Patient Care** will not change abruptly if their provider is dropped;
- **Access To A Timely Internal And Independent External Appeals Process** for consumers to resolve their differences with their health plans;
- **A Limit On Financial Incentives To Doctors;**
- **Assuring That Doctors And Patients Can Openly Discuss Treatment Options;**
- **Assuring that Women Have Direct Access To An OB-GYN;**
- **An Enforcement Mechanism That Ensures Recourse For Patients** who have been maimed or die as a result of health plan actions.

**IMPLEMENTING THE PATIENTS' BILL OF RIGHTS FOR AMERICANS IN FEDERAL HEALTH PLANS.** While Congress has delayed passing Patients' Bill of Rights legislation, the Clinton Administration is taking steps to protect patients. In February 1998, the President signed an Executive Memorandum directing the federal health plans overseeing 85 million Americans to implement the Patients' Bill of Rights. The VA is also beginning the implementation of an external appeals process for the 3 million veterans served by the VA. This new external appeals process builds on other protections already in place at the VA, including: (1) assuring patients full participation in treatment decisions, (2) access to specialists, (4) access to women's health services, (5) preventing anti-gag clauses, (6) financial incentives to limit care, and (7) one of the most extensive internal appeals processes in the country.

**THE REPUBLICAN PROPOSAL FALLS SHORT OF ASSURING PATIENTS THE PROTECTIONS THEY NEED.** With less than forty days left in this Congressional Session, the Republican proposal for patient protections falls short in many areas, it does not include (1) access to specialists, (2) financial incentives for doctors so that patients are not put at risk through unknown financial incentives to limit patient care, (3) a strong, workable enforcement provision that is essential to ensure that these protections are real. Moreover, the Republican proposal only applies to Americans in self-insured plans and excludes the majority of Americans who are in fully-insured plans, leaving tens of millions of Americans excluded from these protections unless the rights they need are passed by their state legislature.

**THE PRESIDENT REMAINS FOCUSED AND COMMITTED TO PASSING A STRONG PATIENTS' BILL OF RIGHTS.** Although the President disagrees with Republican proposals on this issue, he is committed to passing a strong, enforceable Patients' Bill of Rights this year. The President's leadership is ensuring fundamental health protections for 85 million Americans -- now Congress must join the President and pass this vital legislation.

**PRESIDENT CLINTON ANNOUNCES FEDERAL HEALTH PLANS LEAD THE WAY AT  
AN AMA PATIENTS' BILL OF RIGHTS ROUND TABLE UNDERSCORING NEED  
FOR PASSING STRONG LEGISLATION**

**July 14, 1998**

Today, at the American Medical Association (AMA), the President met with doctors, nurses, and families from around the nation who highlighted the critical need for Congress to pass a strong enforceable patients' bill of rights this year. The President of the AMA, Nancy Dickey, praised the President Clinton's leadership and pledged the AMA's continuing efforts to pass a meaningful patients' bill of rights before Congress adjourns. The President also announced that the Federal government is leading the way by implementing the patients' bill of rights for the 85 million Americans in Federal health plans. Today, the Department of Veteran Affairs announced that it is beginning its implementation of an external appeals process for the 3 million veterans served by the DVA. Today, the President highlighted that:

- **Doctors, nurses, families of patients, and benefits managers from around the country endorsed the critical need for Congress to pass a patients' bill of rights.** The individuals that met with the President in today's round table discussion with the AMA include: (1) a man from Chicago whose wife died after her HMO forced her to travel from Hawaii to Chicago in an emergency to be treated at an in-network hospital; (2) a woman from Kansas whose husband died because he was delayed and denied access to specialist for heart surgery until it was too late; (3) a man from Seattle Washington whose sister died after her health plan reversed a treatment decision it should have covered in the first place after it was too late for the treatment to be effective; (4) a Massachusetts oncologist who has seen countless patients who are denied access to the specialists they need; (5) the President of the American Nurses Association who spoke on behalf of thousands of nurses around the country who every day see the devastating health consequences for patients who have been denied access to specialists, or has an abrupt transition in care; and (6) a woman who reviews claims in an oncologists' office and has witnessed, again and again, health plans who deny patients access to the care they need.
- **While Congress delays passing legislation, the Clinton Administration is implementing the patients' bill of rights for Americans in Federal health plans, including unveiling a new external appeals process for veterans.** Today, the Department of Veteran Affairs is announcing that they are beginning the implementation of an external appeals process for the three million veterans served by DVA. This new external appeals process builds on the other protections already in place at DVA, including assuring patients full participation in treatment decisions, access to specialists, access to women's health services, preventing anti-gag clauses, preventing financial incentives to limit care, and one of the most extensive internal appeals processes in the country. In February, the President signed an Executive Memorandum to bring all Federal health plans, which serve 85 million Americans, in compliance with the patients' bill of rights.

- The President reiterated his call on Congress to pass a enforceable patients' bill of rights before they adjourn.** For nine months the President has been calling on Congress to pass a patients' bill of rights that includes: guaranteed access to needed health care specialists; access to emergency room services when and where the need arises; continuity of care protections to assure patient care will not abruptly change if their provider is dropped; access to a timely internal and independent external appeals process for consumers to resolve their differences with their health plans; a limit on financial incentives to doctors; assuring that doctors and patients can openly discuss treatment options; assuring that women have direct access to an OB-GYN. Any bill of rights should include an enforcement mechanism that ensures recourse for patients who have been maimed or who have died as a result of health plan actions. A right without a meaningful remedy is simply not a right.
- The Senate Republican patients' bill of rights proposal announced today is closer to an insurers' bill of rights than a patients' bill of rights.** After nine months of ignoring the President's call for a strong enforceable, bipartisan patients' bill of rights, the Senate Republicans have responded with a rhetoric-laced, partisan proposal that places the interests of insurers above the needs of patients. The proposal, for which their continues to be no legislative language, falls far short of what patients need to ensure that their health plans are held accountable for their basic health care needs. Specifically, it does not include access to specialists, financial incentives for doctors so that patients are not put at risk through unknown destructive financial incentives to limit patient care; and a strong, workable enforcement provision that is essential to ensure that these protections are real. Moreover, the Republican proposal, however inadequate, only applies to Americans in self-insured plans and excludes the majority of Americans who are in fully-insured plans. Therefore, those tens of million of Americans excluded from these protections would only have the rights they need if every state passed every protection into law.
- The President remains committed to passing a strong enforceable patients' bill of rights in this Congress.** Notwithstanding his concerns about the Republican bill, the President will work to pass a strong enforceable patients' bill of rights this year. The patients' bill of rights has been a longstanding priority for the President. In 1996, he called for the establishment of a bipartisan Quality Commission to examine the changing health care system. In March of 1997, he appointed the Commission and instructed them to develop a patients' bill of rights as their first order of business. In November, he endorsed the patients' bill of rights and called on Congress to make it the law of the land. In his State of Union address, he focused the nation on this issue and reiterated his call on Congress to pass this legislation. One month later, he issued an Executive Memorandum directing the Federal health plans overseeing 85 million Americans to implement the patients' bill of rights. Since that time, he has been ensuring that the Federal agencies are implementing these protections and reiterating his call on Congress to pass legislation this year.

health-patients bill  
of rights

THE WHITE HOUSE  
WASHINGTON

July 14, 1998

**PATIENT'S BILL OF RIGHTS ROUND TABLE DISCUSSION**

**DATE:** July 15, 1998  
**LOCATION:** American Medical Association  
**BRIEFING TIME:** 1:15 pm - 1:45 pm  
**EVENT TIME:** 2:00 pm - 3:00 pm  
**FROM:** Bruce Reed/Chris Jennings

**I. PURPOSE**

To highlight your commitment to pass a strong, enforceable Patient's Bill of Rights and to hear first hand accounts on the need for federal legislation. You will also announce that the Veteran's Administration is taking new steps to implement an external appeals process for the 3 million veterans they serve.

**II. BACKGROUND**

You will chair a round table discussion with doctors, nurses, and family members of patients around the nation who highlight the critical need for Congress to pass a strong, enforceable patients' bill of rights this year.

This event will be hosted by the American Medical Association, which strongly supports pass an enforceable patients' bill of rights and has endorsed the Dingell/Ganske/Kennedy legislation.

You will announce that the Federal government is continuing to lead the way in implementing the patients' bill of rights for the 85 million Americans in Federal health plans. You will announce that today the Department of Veteran Affairs is sending a letter to all veteran's health facilities stating that they are implementing an external appeals process for the 3 million veterans served by the VA. This new external appeals process builds on the other protections already in place at VA, including one of the most extensive internal appeals processes in the country. In February, you signed an Executive Memorandum to bring all Federal health plans, which serve 85 million Americans, in compliance with the patients' bill of rights.

There has been more activity on the patients' bill of rights in the last three days than in the last seven months. The House Republican Leadership is planning to release statutory language on their bill no later than Thursday. Senators Graham and Chafee intend to

release their proposal soon after the Senate Republican Leadership introduce their bill, which we just heard will occur tomorrow. The Hill is also holding two patients' bill of rights events in the next two days: tomorrow, they are holding a mock hearing in the morning with patients; and Thursday the Democratic Leadership and Congressman Ganske are participating in an event with you on the Hill to highlight the differences between the bipartisan legislation (Ganske/Dingell/Kennedy) and the Republican proposals.

Because the Senate Leadership will be unveiling their legislation tomorrow, you may be asked to comment on this proposal. Currently, we do not have the details of their legislation, except that we expect that it will have more patient protections than the House Republicans and a stronger enforcement mechanism. We will brief you on the substance of their proposal tomorrow. Although you will likely have to comment on the new Senate proposal, we would recommend you use tomorrow's event to emphasize the problems of managed care that the patients' bill of rights addresses, rather than the differences in various legislative proposals.

As you know, the legislation you have been calling for would include the following patient protections: guaranteed access to needed health care specialists; access to emergency room services when and where the need arises; continuity of care protections to assure patient care will not abruptly change if their provider is dropped; access to a timely internal and independent external appeals process for consumers to resolve their differences with their health plans; a limit on financial incentives to doctors; assuring that doctors and patients can openly discuss treatment options; assuring that women have direct access to an OB-GYN.

### III. PARTICIPANTS

#### **Briefing Participants:**

Secretary Shalala  
Bruce Reed  
Chris Jennings

#### **Event Participants:**

**Mary Kuhl**, her husband died at age 45 after being delayed necessary heart surgery because the hospital that could perform the surgery was out of his network, even though doctor after doctor said no doctor in the health plan was prepared to do this surgery. By the time the surgery was finally approved, his heart had deteriorated too much to withstand surgery and his only option was a heart transplant. He died three months later while waiting for a heart transplant. The patients' bill of rights would have assured this man access to the specialist he needed in time to save his life.

**David Garvey**, his wife was in Hawaii on vacation when she was diagnosed with 'aplastic anemia'. Her HMO in Chicago would not allow her to receive the treatment she needed unless she returned to Chicago, despite the fact that the doctor caring for her in Hawaii said she should not be moved in this emergency situation. She flew back commercially to Chicago, and due to pressure changes had a stroke on the plane. As a result, she then developed a fungal disease which ultimately killed her 7 days later because she did not have the immune system to protect herself from contaminants in the airplane. It was later uncovered that the physician assigned to the case from the HMO also recommended the Ms. Garvey not be moved. However, 40 minutes after that recommendation was filed, that physician was transferred off the case and the new physician assigned recommended that she return to Chicago. This case highlights the need for a protection that assures that patients can be treated for an emergency when and where the need arises. Ms. Garvey was clearly in an emergency condition where she should not have been moved to an in-network hospital.

**Mick Fleming**, his sister, Rhonda Bast, was diagnosed with breast cancer, and then lung cancer. Her doctors prescribed a bone marrow treatment in conjunction with chemotherapy, which, after 3 months of review, the HMO denied. Mr. Fleming is a lawyer and became involved in his sister's review. After discovering that the HMO had been required to provide this coverage as part of its standard medical policy, Mr. Fleming sent a letter to the HMO requesting immediate review. Two weeks later, the HMO agreed that the treatment Ms. Bast was seeking was, in fact, covered under her policy and that discovered that the hospital allegedly contracted with the HMO received was not allowed to notify that the HMO covered this treatment. However, at this point 6 months had passed and her cancer had spread to her brain, and she was no longer eligible for the life-saving treatment.

**Carol Anderson**, Billing Manager for Oncology practice. Carol interacts with HMOs on behalf of patients nearly every day. She regularly submits requests for treatment recommended by the doctors in her office, and sees many of these treatments denied without any recourse for patients. She will discuss specific instances where denials have led to unnecessary suffering, including delays and denials that ended up costing a 12-year-old cancer patient his leg.

**Dr. Jack Evjy**, a Medical Oncologist and Ameritus Medical Director of the Holy Family Hospital Cancer Management Center in Methuen, MA, and Clinical Professor of Medicine, at Boston University School of Medicine in Boston. He is also President-elect of the Massachusetts Medical Society, which publishes the New England Journal of Medicine. Dr. Evjy has been an Oncologist for 30 years and will discuss the many patients he has seen that have been denied access to a specialist by their health plan.

**Dr. Nancy Dickey**, President of the American Medical Association. Dr. Dickey is a family physician and is the first women elected President of the AMA. She will discuss the AMA's support for a strong, enforceable Patient's Bill of Rights, as well as her personal experiences with patient's insured by managed care.

**Beverly Malone**, President of the American Nurses Association. She will discuss the impact she has seen on individuals denied the protections in the patient's bill of rights proposal. The ANA supports the passage of a strong enforceable Patient's Bill of Rights. Beverly served as a member of your Advisory Commission on Quality and Consumer Protection.

**Seated at table without speaking role:**

Secretary Shalala  
Secretary Herman

**Seated in Audience**

Dr. Ken Kizer, Director of Veteran's Health Agency at the Veteran's Administration  
Members of victims families  
Counsel for victims  
Members of the Board of the AMA

**IV. PRESS PLAN**

Open Press.

**V. SEQUENCE OF EVENTS**

- **YOU** will be announced into room accompanied by round table participants.
- AMA President Nancy Dickey will make welcoming remarks.
- **YOU** will deliver an opening statement.
- **YOU** will then call on participants to speak individually. You will have the opportunity to ask follow up questions for each participant. [**\*Specific sequence attached.**]
- At the conclusion of the discussion, you will make informal closing remarks and thank Dr. Dickey, AMA President, for hosting the event.
- **YOU** will then briefly greet members of the audience and depart.

**VI. REMARKS**

Opening Remarks Provided by Speechwriting.

## **SEQUENCE FOR ROUND TABLE ON PATIENTS' BILL OF RIGHTS**

- **Dr. Nancy Dickey**, AMA President, will make brief welcoming remarks.
- **YOU** will deliver opening remarks, and call on each participant to speak about their personal experiences with their health plan or in their role as health care providers.

### **Mary Kuhl, Kansas City, Kansas**

Mary Kuhl's husband, Buddy Kuhl, died at age 45 after being denied necessary heart surgery because the hospital that could perform the surgery was not in his HMO's network. Months later, after several doctors recommended the same treatment, the health plan finally scheduled the surgery - but it was too late. He was no longer able to withstand the surgery.

#### **Applicable patient protections:**

- Access to specialists outside of a network when in-network specialists cannot provide the approved services.
- Information disclosure requirements to assure patients are aware of their benefits or any timely appeals process.
- No remedy for compensation under ERISA.

***Suggested Question: You seem pleased with the doctors that treated your husband. Do you believe that the health plan was micromanaging your relationship with your doctors?***

### **David Garvey, Chicago, Illinois**

Mr. Garvey's wife, Barbara, was in Hawaii on vacation when she was diagnosed with 'aplastic anemia'. Her HMO insisted she be flown back to Chicago in order for her to receive treatment by a hospital within her HMO network, despite the pleading of the doctor treating her in Hawaii. She had a stroke on the plane and died one week later.

#### **Applicable patient protections:**

- Patients should be assured access to services out-of-the-network if there is not a sufficient in-network specialist available for a necessary treatment.
- Patients should have the right to emergency room services when and where the need arises.
- Patients should be assured that they are being told all of their treatment options not just the cheapest.

***Suggested Question: Did your health plan give you confidence that your wife would be able to travel back to Chicago healthy?***

**Dr. Jack Evjy**, Oncologist and Medical Director of the Holy Family Hospital Cancer Management Center in Methuen, MA, and Clinical Professor of Medicine, at Boston University School of Medicine. He is also President-elect of the Massachusetts Medical Society, which publishes the New England Journal of Medicine. Dr. Evjy will discuss the many patients he has seen that have been denied access to needed specialists by their health plans.

**Applicable patient protections:**

- Patients should have access to the specialists they need.

***Suggested Question:*** *You have been oncologist for 30 years, what do you do when an health plan refuses your request for a patient to see a specialist? Are there options? What are your greatest concerns when a patient is denied access to a specialist?*

**Beverly Malone, R.N., President of the American Nurses Association.**

Beverly Malone will discuss the impact she has seen on individuals denied the protections in the patient's bill of rights proposal. The ANA supports the passage of a strong enforceable bipartisan Patient's Bill of Rights. Beverly served as a member of the President's Advisory Commission on Consumer Protections and Quality in the Health Care System.

***Suggested Question:*** *Nurses are on the front lines of our nation's health care system. What impact do these types of experiences have on the confidence Americans have in their health care? How are the patients you are seeing being affected?*

**Mick Fleming, Seattle, Washington**

His sister, Rhonda Bast, was diagnosed with breast and lung cancer. After three months of reviewing her case the health plan denied her the bone marrow/chemotherapy treatment prescribed by her doctors, even though the treatment was covered under her policy. By the time they approved her claim, the cancer had spread to her brain and she could no longer withstand treatment. She died within a year.

**Applicable patient protections:**

- Timely and responsive expedite appeals process, so that these cases are resolved.
- Information disclosure so that patients know what benefits are covered and that they may have access to an appeals process.
- Had no remedy for compensation under ERISA.

***Suggested question:*** *Mr. Fleming you are well-educated as an attorney. Did you find it easy to navigate the system? Did you know all of the options that might be available to your sister? What do you think is the most important patient protection to ensure that your sister's situation does not happen to others?*

**Carol Anderson, Billing Manager at Oncologist office.**

Ms. Anderson requests authorization from health plans on a daily basis for treatments and sees numerous claims denied -- even when doctors are urging the treatment.

**Applicable patient protections:**

- Access to a timely appeals process when disagree with health plans decisions.
- Access to the specialists they need.
- Access to ob-gins.

***Suggested Question:*** *How many of the claims you submit are denied? How many are accepted the second time? What do you do when these people are denied the care they need or access to specialists?*

Health-patients bill of rights

**SENATE REPUBLICAN PATIENTS BILL OF RIGHTS PROPOSAL IS CLOSER TO AN  
INSURERS' BILL OF RIGHTS THAN A PATIENTS' BILL OF RIGHTS**  
July 15, 1998

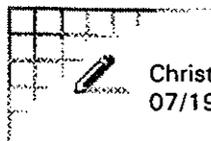
After nine months of ignoring the President's call for a strong enforceable, bipartisan patients' bill of rights, the Senate Republicans have responded with a rhetoric-laced, partisan proposal that places the interests of insurers above the needs of patients. The proposal, for which their continues to be no legislative language, falls far short of what patients need to ensure that their health plans provide patients with basic health care needs. The fact that Republicans have yet to introduce a bill with less than 40 days left in this Congress raises serious questions as to whether they are truly committed to passing a bill of rights or selling a bill of goods American public. The Republican proposal falls short in many areas. For example, it:

- **Does not provide the majority of Americans all of the patient protections they need.** The Republican proposal, however inadequate, only applies to Americans in self-insured plans and excludes the majority of Americans. Therefore, those tens of million of Americans excluded from these protections would only have the rights they need if every state passed every protection into law.
  - **States patients rights laws do not provide the protections patients need.** No state has passed all of the protections in the patients' bill of rights, and most states have passed only a few or none of the protections. For example, as many as twenty states have not passed protections that assure patients access to the specialists they need.
  - **Unfair to Americans in small businesses.** Most Americans who work in small businesses would not be protected by the Senate Republican proposal. The plan explicitly excludes these Americans from these protections and holds them hostage to the hope that every state will some day pass these protections.
  - **Inconsistent with the bipartisan Kassebaum-Kennedy law.** Rejects bipartisan Kassebaum-Kennedy approach that guarantees insurance protections are extended to all Americans. There is no reason the patients' bill of rights should not follow this same structure.
- **Does not guarantee access to specialists.** Assuring access to needed specialists is an absolutely essential protection. We have heard again and again about patients who could not see oncologists or specialists to treat heart conditions or diabetes. The Senate Republicans do not assure that patients with critical health needs have access to the specialists they need.

- **Does not limit or require disclosure of financial incentives for doctors.** Patients should not be put at risk through unknown destructive financial incentives to limit patient care. The Senate Republican proposal explicitly does not provide patients this important protection.
- **Do not compensate patients who are maimed or who die as a result of a wrongful health plan action.** A right without a remedy is simply not a right. The Senate Republican proposal does not have any recourse for patients who are maimed or injured by their health plans. Because it has no enforcement provision, plans who ignore the patient protections will not be held accountable. Moreover, this provision is even weaker than the House Republican proposal.

**The President Remains Committed to Passing a Strong Enforceable Patients' Bill of Rights in This Congress.** Notwithstanding his concerns, he will work to pass a strong enforceable patients' bill of rights this year.

Health-patients bill of rights



Christopher C. Jennings  
07/19/98 11:26:58 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: late term abortion

FYI, just in case you have not all heard this, the AMA left a message advising me that the House is planning on bringing up one of their "partial birth" initiatives for a vote sometime on or around this Wednesday. Soon after resolution on this issue, they will bring up their version of the Patients' Bill of Rights -- probably no later than Friday. I am, of course, focusing on the latter issue because Newt Gingrich is planning on meeting with Nancy Dickey, the President of the AMA, on these and other issues this week.

As you will recall, the AMA was and is taking the opposite position we are vis a vis the late-term abortion issue. I am trying to make sure they do not get soft on us re the Patients' Bill of Rights.

cj

Message Sent To:

Maria Echaveste/WHO/EOP  
Bruce N. Reed/OPD/EOP  
Elena Kagan/OPD/EOP  
Sylvia M. Mathews/OMB/EOP  
Martha Foley/WHO/EOP  
Jennifer L. Klein/OPD/EOP  
Ann F. Lewis/WHO/EOP  
Daniel N. Mendelson/OMB/EOP  
Audrey T. Haynes/OVP @ OVP  
Janet Murguia/WHO/EOP  
Charles M. Brain/WHO/EOP  
Maureen T. Shea/WHO/EOP  
Barbara D. Woolley/WHO/EOP

**PRESIDENT MEETS WITH REPUBLICANS AND DEMOCRATS IN SUPPORT OF  
PASSING A STRONG PATIENTS' BILL OF RIGHTS**

**July 16, 1998**

Today, the President joined Republicans and Democrats on the Hill to support passing a strong bipartisan patients' bill of rights this year. Following his meeting yesterday with families, doctors, and nurses at the AMA, today the President reiterated his call on Congress to pass this legislation before adjournment. The Dingell/Ganske patients' rights legislation underscores the need to address health challenge in a bipartisan manner. Today:

**The President reiterated his call on Congress to pass a strong enforceable patients' bill of rights before they adjourn.** For nine months the President has been calling on Congress to pass a patients' bill of rights that includes: guaranteed access to needed health care specialists; access to emergency room services when and where the need arises; continuity of care protections to assure patient care will not abruptly change if their provider is dropped; access to a timely internal and independent external appeals process for consumers to resolve their differences with their health plans; a limit on financial incentives to doctors; assuring that doctors and patients can openly discuss treatment options; assuring that women have direct access to an OB-GYN. Any bill of rights should include an enforcement mechanism that ensures recourse for patients who have been maimed or who have died as a result of health plan actions. A right without a meaningful remedy is simply not a right.

**The Republicans in the House and the Senate have outlined proposals that fall far short of providing patients' the protections they need.** After nine months of ignoring the President's call for a strong, enforceable, bipartisan patients' bill of rights, the Republican Leadership has responded with a rhetoric-laced, partisan proposals that places the interests of insurers above the needs of patients. The fact that Republicans have yet to introduce a bill with less than 40 days left in this Congress raises serious questions as to whether they are truly committed to passing a bill of rights or selling a bill of goods American public. The Republican proposals fall short in many areas. For example, they:

- **Do not guarantee access to specialists.** We have heard again and again about patients who could not see oncologists or specialists to treat heart conditions or diabetes. The Republican proposals do not assure that patients with critical health needs have access to the specialists they need.
- **Do not limit or require disclosure of financial incentives for doctors.** Patients should not be put at risk by unknown destructive financial incentives to limit patient care.
- **Do not compensate patients who are maimed or who die as a result of a wrongful health plan action.** A right without a remedy is simply not a right. The Republican Leadership proposals do not have adequate recourse for patients who are maimed or injured by their health plans.

**The Senate Republican proposal introduced yesterday contains even fewer patient protections than the proposal in the House. It:**

- **Does not provide over 100 million Americans all of the patient protections they need.** The Senate Republican proposal only applies to Americans in self-insured plans and excludes the majority of Americans. Therefore, those tens of million of Americans excluded from these protections would only have the rights they need if every state passed every protection into law.
  - **States patients' rights laws do not provide the protections patients need.** As a new report released by today Families USA highlights, no state has passed all of the protections in the patients' bill of rights, and most states have passed only a few of the protections.
  - **Unfair to Americans in small businesses.** Most Americans who work in small businesses would not be protected by the Senate Republican proposal. The plan explicitly excludes these Americans from these protections and holds them hostage to the hope that every state will some day pass these protections.
  - **Inconsistent with the bipartisan Kassebaum-Kennedy law.** Rejects bipartisan Kassebaum-Kennedy approach that guarantees insurance protections are extended to all Americans.
- **Does not provide any enforcement provision.** This is even worse than the House proposal which contained a weak enforcement mechanism.

**The President Remains Committed to Passing a Strong, Enforceable Patients' Bill of Rights in This Congress.** The President is committed to working with the Congress to pass bipartisan legislation to provide patients the protections they need.

July 15, 1998

**PATIENTS' BILL OF RIGHTS CONGRESSIONAL EVENT**

**DATE:** Thursday, July 16, 1998  
**LOCATION:** Senate Dirksen-106, The Hill  
**TIME:** 12:00 p.m.  
**FROM:** Larry Stein/Janet Murguia  
Bruce Reed/Chris Jennings

**I. PURPOSE**

To highlight support for strong, bipartisan, and enforceable patients' bill of rights legislation.

**II. BACKGROUND**

Today, the Senate Republicans released their proposal for a patients' bill of rights. Like the House Republicans, the Senate proposal falls far short of providing patients with the protections they need. For example, this legislation does not assure patients access to needed specialists, does not limit or require disclosure of financial incentives for doctors, and does not compensate patients who are maimed or who die as a result of a wrongful health plan action. Moreover, the Senate Republican patients' bill of rights does not even apply to the over 100 million Americans who are not in self-insured plans.

We responded quite strongly to this proposal today stating that it is more of an insurers bill of rights than a patients' bill of rights. Tomorrow, you will be able to highlight the Dingell/Ganske patients' rights legislation. This Administration-backed bill represents the type of bipartisan approach necessary to gain credibility with the public and convince them that we are serious about passing a strong patients' rights bill. In so doing, you will be able to contrast that with the Republican leadership bills that have not been able to attract a single Democrat.

We also expect that tomorrow after the event, that the Congressional Budget Office will likely release the cost estimates on the Dingell/Ganske legislation. They will estimate increases of about 4 percent, or approximately \$7 per month in premiums, although the Democrats will point out that employers pay the majority of these costs and therefore individuals would only pay about \$2 per month. As you know, we are planning a roll out strategy to say that the benefits of any such legislation are more than worth the modest costs.

### III. PARTICIPANTS

#### Pre-Brief

President  
Erskine Bowles  
John Podesta  
Bruce Reed  
Chris Jennings  
Janet Murguia  
Chuck Brain

#### Event

President  
Senator Thomas A. Daschle (D-SD)  
Representative Richard A. Gephardt (D-MO)  
Representative Greg Ganske (R-IA)  
Dr. Randolph Smoak, Chair of the American Medical Association  
Ms. Barbara Blakeney, Second Vice President of the American Nurses  
Association

### IV. PRESS PLAN

Open Press.

### V. SEQUENCE OF EVENTS

- **The President**, accompanied by Senator Thomas Daschle, Representative Richard Gephardt, Representative Greg Ganske, Dr. Randolph Smoak, and Ms. Barbara Blakeney, proceed to stage.

Note: All Members of Congress present will be pre-positioned on the stage.

- Representative Richard "Dick" Gephardt gives remarks and introduces Representative Greg Ganske.
- Representative Greg Ganske gives remarks and introduces Ms. Barbara Blakeney, Second Vice President of the American Nurses Association.
- Ms. Barbara Blakeney makes remarks and introduces Senator Thomas Daschle.

-- Senator Thomas Daschle makes remarks and introduces Dr. Randolph Smoak, Chair of the American Medical Association.

-- Dr. Randolph Smoak makes remarks and introduces **the President**.

-- **The President** makes remarks, works a ropeline and then departs.

**VI. REMARKS**

To be provided by speechwriting.

**VII. ATTACHMENTS**

I. Members of Congress attending event.

## ATTACHMENT I

### Members of Congress Confirmed to Attend

Sen. Daniel Akaka (D-HI)  
Sen. Barbara Boxer (D-CA)  
Sen. Thomas Daschle (D-SD)  
Sen. Byron Dorgan (D-ND)  
Sen. Wendell Ford (D-KY)  
Sen. Patrick Leahy (D-VT)  
Sen. Carl Levin (D-MI)  
Sen. Joseph Lieberman (D-CT)  
Sen. Barbara Mikulski (D-MD)  
Sen. Patty Murray (D-WA)  
Sen. Jack Reed (D-RI)  
Sen. Harry Reid (D-NV)  
Sen. Jay Rockefeller (D-WV)  
Sen. Paul Wellstone (D-MN)

Rep. John Baldacci (D-ME)  
Rep. James Barcia (D-MI)  
Rep. Thomas Barrett (D-WI)  
Rep. Xavier Becerra (D-CA)  
Rep. Ken Bentson (D-TX)  
Rep. Sherrod Brown (D-OH)  
Rep. Lois Capps (D-CA)  
Rep. Jerry Castello (D-IL)  
Rep. John Dingell (D-MI)  
Rep. Sam Farr (D-CA)  
Rep. Greg Ganske (R-IA)  
Rep. Gene Green (D-TX)  
Rep. Maurice Hinchey (D-NY)  
Rep. Sheila Jackson-Lee (D-TX)  
Rep. Paul Kanjorski (D-PA)  
Rep. Dennis Kucinich (D-OH)  
Rep. Nick Lampson (D-TX)  
Rep. John Lewis (D-GA)  
Rep. Nita Lowey (D-NY)  
Rep. Carolyn Maloney (D-NY)  
Rep. Ed Markey (D-MA)  
Rep. Karen McCarthy (D-MO)  
Rep. Jim McDermott (D-WA)

Rep. Mike McIntyre (D-NC)  
Rep. Juanita Millender-McDonald (D-CA)  
Rep. George Miller (D-CA)  
Rep. Richard Neal (D-MA)  
Rep. Major Owens (D-NY)  
Rep. Frank Pallone (D-NJ)  
Rep. Nancy Pelosi (D-CA)  
Rep. Earl Pomeroy (D-ND)  
Rep. Steve Rothman (D-NJ)  
Rep. Lynn Woolsey (D-CA)  
Rep. Albert Wynn (D-MD)

Tob - set - legis outreach  
and  
health patients bill of rights

July 13, 1998

**LUNCHEON WITH SENATOR DASCHLE AND REPRESENTATIVE GEPHARDT**

**DATE:** Monday, July 13  
**LOCATION:** Oval Office  
**TIME:** 12:45 p.m.  
**FROM:** Larry Stein  
Gene Sperling  
Jack Lew  
Bruce Reed

**I. PURPOSE**

To discuss the upcoming legislative activity in the remaining weeks of the 105th Congress.

**II. BACKGROUND**

Given the 25-35 days remaining before adjournment, a significant block of large bills will be compressed into a short, highly partisan, pre-election time frame. The major issues -- Patients' Bill of Rights, what is left of tobacco, appropriations and taxes -- will all ripen in September. Daschle and Gephardt will therefore come to the meeting with elections on their minds. Given the pre-determined outcome in the Senate, the governing question is who will control the House. Gephardt's refrain will be "keep the bar high." Following are topics that will definitely come up.

Patients' Bill of Rights

Senator Lott and Senator Daschle are apparently about to reach an agreement to bring up the Patients' Bill of Rights for a Senate floor vote immediately after the Senate completes activity on the Agriculture Appropriations bill. To start this debate, Lott will offer the legislation that is currently being drafted by the Senate Republican Health Task Force headed by Senator Nickles. This legislative approach apparently largely reflects the House Republican proposal, but could have less patient protections and may not include medical malpractice provisions. The fact that Senator Nickles has shifted from a 'no bill' strategy to a relatively substantive quality standards bill underscores how much the political ground has shifted. However, as you know, we have consistently stated that the Republican proposal has inadequate patient protections and contains many poison pills

(malpractice caps, multiple employer welfare associations, medical savings accounts).

Later this week, probably Thursday, the Congressional Budget Office will likely release the cost estimates on the Dingell-Kennedy-Ganske legislation. They will estimate increases of about 4 percent, or approximately \$7 per month in premiums, although the Democrats will point out that employers pay the majority of these costs and therefore individuals would only pay about \$2 per month. As you know, we are planning roll out strategy to say that the benefits of any such legislation are more than worth the modest costs. To that end, we are planning an event with the Democrats next Thursday. You are also tentatively scheduled to lead a round table with the American Medical Association on the Patients' Bill of Rights on Wednesday to increase your visibility on this issue.

The Democratic Leadership will be seeking assurances that we will send a consistent clear message that we insist on a strong, enforceable Patients' Bill of Rights. We recommend that you address their concerns and explicitly outline your position that the current Republican protections are totally inadequate and their enforcement mechanism appears to be too weak. We would recommend that you not specifically address an alternative enforcement or remedies option. You should, however, highlight that you agree it will be extremely difficult to envision passing state-enforced remedies because of the opposition by labor, business, and insurers.

### Taxes

The Republicans, under pressure from their conservative base, are determined to pass a big election year tax cut. The likely base tax cut would be marriage penalty relief. The difficulty they face is how to pay for such a tax cut. To the extent that gimmicks, such as dynamic scoring of capital gains taxes, fall short, they are likely to go after the surplus. Less likely, but possible, would be significant cuts in Medicaid and other entitlements. The Republicans will probably pass a bare bones budget resolution for the sole purpose of producing a reconciliation tax cut bill in September. The value of reconciliation is that it cannot be filibustered in the Senate.

We have indications that the Democratic Hill leadership would like our help putting together a possible Democratic alternative, which would be fully paid for. In your conversation, it would be good to recognize the political pressure they face, especially on the marriage penalty, and to express your willingness to help them come up with an alternative tax cut that they could support, while strengthening their resolve to continue to advance "Saving Social Security First."

1

We would envision marriage penalty relief being a key component of any alternative, along with other priorities, such as your school construction tax cuts and the extension of the research and experimentation tax credit. Additionally, such an alternative could provide an opportunity to advance a long-term care tax cut, which would be a big positive for us and for them.

The big issue, as it is for Republicans, is how an alternative would be paid for. Our budget includes a series of corporate tax changes that would raise about \$23 billion over five years. Reinstating a couple of Superfund taxes would bring this total up to about \$30 billion. The problem one inevitably runs into in using our offsets to pay for a Democratic alternative tax cut is that each individual revenue raiser ends up having a group of Members who oppose it. If the past is any guide, a quick vetting would likely shrink the potential list of offsets dramatically -- though there are some foreign tax raisers, which we oppose, that Democrats could include in an alternative. Yet you should recognize that even if the \$30 billion proves acceptable, it is unlikely to be enough for Democrats to feel they have a politically viable alternative.

For all of these reasons, the major issue that we and Congressional Democrats face is whether or not to use a tobacco tax increase to pay for new targeted tax cuts. Given the shifting dynamics, and with a possible state tobacco settlement moving forward, tobacco receipts are a promising option. It could provide the resources to support a significant Democratic alternative tax cut. For example, a 50 cent per pack increase would raise \$35-40 billion over five years to support a marriage penalty tax cut, while still including a new long-term care tax cut, your school construction tax cut and other priorities. Both parties would be for marriage penalty relief and other tax cuts. We would be raising tobacco prices to discourage smoking and they instead would be draining the surplus that should be reserved for Social Security -- a strong hand for us.

#### Agriculture:

Senator Daschle may raise in the meeting his concerns with the state of the agricultural economy, especially in the Upper Midwest. In particular, he is concerned about the combination of repeated natural disasters and lower crop prices that is now affecting the region. Wheat prices are down 25 percent from last year and declined 10 percent over the last two months, due largely to greater domestic supplies on top of high beginning stocks and lower exports of wheat than in 1997. The Dakotas have endured several consecutive years of bad weather as well as wheat scab disease that has reduced wheat yields. Senator Daschle has cited the sharply lower net farm income of Northern Plains farmers and the higher number of farmers leaving farming.

To address this situation, Senator Daschle is promoting a revision to the 1996 Farm Bill to lift the cap on commodity loan rates. Farmers take out nine-month commodity loans from USDA generally around harvest time, to allow them to avoid selling their crops when prices typically are lowest (at harvest time). The "loan rate" is a price per bushel of commodity farmers put up as collateral for the loan. If market prices are above the loan rate, farmers repay the loans at face value when they sell their commodities; if market prices are below the loan rate, farmers repay the loans at the lower market prices and the Federal government pays the difference.

An Administration team of White House offices and USDA is working through a number of options, including reviewing Senator Daschle's loan rate proposal. The team has serious concerns with lifting the cap on loan rates because of both its cost and policy implications. The proposal would increase the cost of commodity loans from an estimated \$150 million under current law to \$1.9 billion in FY 1999. On policy grounds, it would represent intervention in the free market's operations by directly affecting market prices and by ultimately inviting Federal production controls in order to temper budget costs. The proposal has the strong support of Democrats from the Upper Midwest, but many other Democrats and most Republicans would oppose it as too far-reaching a change to the 1996 Farm Bill for this localized a problem.

The Administration team is considering targeted solutions to address Senator Daschle's concerns. These options would build on existing farm risk mitigation and disaster programs, be responsive to the parts of the country experiencing the most difficulty, and would have a "disaster" orientation that could be designated as "emergency" actions not subject to the budget spending caps.

You will be meeting again with Senator Daschle and other Senators and House Members on agricultural issues on Wednesday. At that time, you will have the opportunity to explore these issues and proposals in more depth.

#### Appropriations:

We have raised serious objections to a number of House and Senate appropriations bills based on inadequate aggregate funding levels, specific cuts in important priority programs, and numerous legislative riders. The Interior, Labor/HHS/Education, and Commerce/Justice/State Appropriations bills are the most contentious -- both in terms of funding levels and riders. We anticipate that there will be substantial conflict over at least these bills until September or October. In addition, the House and Senate allocations for the Foreign Operations bill are \$300 million below 1998 and \$1 billion below your request

for these activities. While the public fight is likely to focus on domestic issues like education and the environment, we will also need to include Foreign Operations in a year-end negotiation.

Our appropriations strategy has been to defend the budget request fully, emphasizing education and environmental initiatives, while resisting offensive policy changes such as the effort to prohibit the use of sampling in the decennial census. We need support from the Democratic leadership for the strategy of hanging tough until the end of the session to apply maximum leverage for negotiations in September. To make these negotiations successful, we will need Congress to approve the emergency designations for the year 2000 computer conversion fund and Bosnia, and adopt a package of offsets to finance your priorities.

#### Tobacco:

Next week, the state attorneys general will meet to consider a possible new agreement between the states and the tobacco industry. The industry is interested in a new "state-only" deal that would give the states the \$200 billion over 25 years they negotiated last year in return for settling the state cases. No federal or state legislation would be required. The deal would produce a price increase of 30-35 cents per pack, but would not say anything about FDA authority, farmers, lookback surcharges, or federal investments in research, counteradvertising, cessation and so on (although states would have substantial funds to invest in counteradvertising, tobacco education and prevention, etc.). The industry would agree to the advertising restrictions from the Minnesota settlement (no billboards, no promotional products, no film placements). Apart from settling the state cases, the industry would receive none of the liability protections of the June 20th agreement.

If such a deal materializes, we believe we should 1) embrace it, and try to bring the attorneys general to the White House to announce it; and 2) challenge Congress to finish the job by passing a streamlined bill that includes a smaller (e.g. 50-cent) tax increase to pay for targeted tax cuts (marriage penalty, long-term care), along with FDA authority, counteradvertising, and lookback surcharges. We'll still need to figure out what to do about farmers (paid for by the industry) and whether we can persuade the states to use a portion of their settlement for tobacco control, children's health, and/or child care. The state-only deal may take some pressure off Hill Republicans on tobacco (although it's not clear they were feeling much pressure anyway). But they remain under intense pressure to find revenue for a tax cut, and they can hardly sustain the argument that it's better to use Social Security and the surplus than tax tobacco.

In the Senate, Senators Conrad and Kerry have developed a streamlined bill that would settle the state cases in return for a 75-cent price increase (with another 50-cent increase in five years if teen smoking is not cut in half), FDA authority, warning labels, and other public health provisions, but no new federal programs. Three-quarters of the money would go to the states, which would have to spend one-third on tobacco control and one-third on our menu, with one-third unrestricted. The rest of the money would go for a marriage penalty tax cut. The industry would be required to pay for Ford's tobacco farmer program over the next ten years. Conrad and Kerry have approached Domenici and Gorton: Domenici does not seem very interested in a comprehensive bill, even at 75 cents, and Gorton raised concerns about the FDA authority and the proposal's lack of attorneys' fees limitation (a state-only settlement would diminish Gorton's interest as well). On Monday, when the Agriculture Appropriations bill is brought to the Senate floor, Daschle will have the opportunity to modify the tobacco amendment he already has on the bill to embody either the Kerry/Conrad approach or else a stripped down McCain that doesn't spend money and therefore has no point of order against it.

In the House, we can expect Representative Pryce to unveil the Republican Leadership's tobacco legislation any time after the House returns from recess. Although we have not yet seen the legislative language, we are preparing to say that it will not save lives because it lacks a significant price increase and contains weak advertising restrictions (OMB and Treasury are preparing draft estimates based on likely scenarios). You have, of course, stated you would sign the Hansen-Meehan-Waxman bill if provisions were added to protect farmers, and have called upon the House Leadership to take up that bill.

### III. PARTICIPANTS

#### Pre-Brief

President

Vice President

Erskine Bowles

John Podesta

Larry Stein

Rahm Emanuel

Gene Sperling

Jack Lew

Bruce Reed

Ron Klain

Luncheon

President  
Vice President  
Erskine Bowles  
Senator Thomas A. Daschle (D-SD)  
Representative Richard A. Gephardt (D-MO)

**IV. PRESS PLAN**

Closed Press.

**V. SEQUENCE OF EVENTS**

As usual.

**VI. REMARKS**

None.

**VII. ATTACHMENTS**

Political Affairs will provide an additional memo on the Unity Events.

 Elena Kagan  
07/13/98 08:27:30 AM

Record Type: Record

To: Laura Emmett/WHO/EOP  
cc:  
Subject: patients' bill o' rights

----- Forwarded by Elena Kagan/OPD/EOP on 07/13/98 08:32 AM -----

 Christopher C. Jennings  
07/13/98 01:17:32 AM

Record Type: Record

To: See the distribution list at the bottom of this message  
cc: Sarah A. Bianchi/OPD/EOP, Jeanne Lambrew/OPD/EOP  
Subject: patients' bill o' rights

We are semi-on-track for at least two patients' bill of rights events for the President. The first would be on Wednesday with the AMA for a roundtable discussion with patients, doctors, and perhaps nurses to document the real-life tragedies that have resulted from actions/non-actions by managed care plans. We spoke with AMA reps over the weekend and they assured us that they want to work with us to deliver a good event. (At this event, we could also announce the implementation of the Presidentially-ordered appeals rights at the DVA.)

On Thursday, we are currently contemplating a POTUS Democratic unity event on the Hill that would likely include the release of a new Families USA report. This report documents how many Republican Governors and legislatures have already enacted many of these rights. (The report undermines charges that a PBo'R bill represents a Government take-over, all-the-while also emphasizing the need for uniformity and how far short the state-passed protections go.) It could also include the release of the CBO numbers for the Dingell-Ganske bill. (As of this writing, however, the Hill is currently targeting Tuesday for the release of the CBO numbers.)

The Hill also has asked the AMA to attend, but the association is nervous and thinks it is politically unwise to make this a Democrats-only unity event. They believe (and I agree) it undermines the success that Senator Kerrey and others have had -- as recently as on "THIS WEEK" -- in characterizing this as a bipartisan bill that the Republican Leadership and their followers are tying up. Perhaps we should suggest that Ganske and other Republicans (who we think helpful and appropriate) should come?

The Democrats on the Hill are tentatively preparing at least three events:

1. Tuesday -- The Hill Democrats have just recently concluded that it would be advisable to release the CBO numbers on the Dingell-Ganske bill on Tuesday. They thought it should be a separate

news story. (I think this is an unwise decision and hope that we can push back the release of these numbers a couple of days;

I fear that an early release will be the big news story of the week and, although the numbers should be viewed fairly positively, they will not get a free ride from the the Republican Leadership OR the press.

2. Wednesday -- The Hill mock hearings appear to be locked in. Our only outstanding question is how we assure that the hearing does not coincide with the POTUS AMA event; the Hill doesn't want our event to swallow their hearing.

3. Thursday -- The Hill event with the President in conjunction with the release of the Families USA state-by-state report is getting locked down. I do think, however, that we need to discuss the potential downside of doing this with no Republicans. It could play right into the media perception that we are looking for an issue -- not a strong, bipartisan, enforceable bill. (If we decide that we would be better served by the release of the CBO numbers on Thursday, it is possible we could convince the Hill Dems to hold off until then; should we do a quick Hill consultation call later today?)

cj

Message Sent To:

John Podesta/WHO/EOP  
Bruce N. Reed/OPD/EOP  
Gene B. Sperling/OPD/EOP  
Lawrence J. Stein/WHO/EOP  
Rahm I. Emanuel/WHO/EOP  
Paul E. Begala/WHO/EOP  
Ann F. Lewis/WHO/EOP  
Elena Kagan/OPD/EOP

MEMORANDUM

Health - Patients Bill of  
Rights

June 29, 1998

TO: Rahm Emanuel

FR: Chris Jennings *CGJ*

RE: Patients' Bill of Rights Status

cc: Sylvia Matthews, John Podesta, Bruce Reed, Larry Stein, Gene Sperling, Ron Klain, Elena Kagan, Janet Murguia, Chuck Brain, Sally Katzen

This memo responds to your request for an up-to-the-moment status report on the House Republican Leadership's Patients' Bill of Rights. It also outlines positioning options for the President's consideration on the legislation and, more specifically, on the enforcement provisions.

**House Republican Patients' Bill of Rights.** The reaction to the House Leadership's announcement of their intention (they have provided no details) to introduce a Patients' Bill of Rights has been almost universally negative. The base Democrats, the consumer advocates, and the providers have labeled it a "sham;" the insurers and big business community are criticizing it as overly regulatory. Notwithstanding these reactions, it is remarkable how far the Republicans apparently have moved toward the President's position.

*Status of Policy.* With the exception of the access to specialist/out-of-network referral, continuity of care, and requirement for financial disclosure provisions, the House Republicans appear to have included virtually every one of the consumer protections recommended by the President's Quality Commission. They have even (reportedly) included a Federal Court-enforced remedies provision that has a damages cap between \$100,000 and \$250,000. Less than two months ago, many conservative Democrats and most Republicans would have labeled the current Republican plan as something between excessively regulatory and a Government takeover of the health care system. In fact, just 4 months ago, the President's Quality Commission would not even touch the issue of enforcement. The political ground has obviously shifted dramatically.

*Administration Reaction of Republican Proposal.* We have taken the position that the Republican proposal both affirms the President's longstanding position that strong, Federal, and enforceable legislation is needed and confirms (both through their bill's added and missing provisions) that the Republican Leadership is not serious. In short, we say that any bill without all of the Quality Commission's protections and a strong enforcement provision is nothing more than a "bill of goods." We also charge that any bill that piles on "poison pill" provisions (like MEWAs, arbitrary caps for medical malpractice, and MSAs) is designed to kill, rather than enhance, the chances of an acceptable bill emerging. We will find out how or if the Republicans respond to our criticism when they introduce a bill -- which will not happen until after the July 4th recess.

**The Dingell/Ganske/Kennedy Bill and Democratic Positioning.** The Democratic Leadership and base Members have been even more critical of the Republican plan than us. Their bill starts with more provisions than were recommended by the Quality Commission and, particularly in the absence of CBO cost estimates for their bill, they are extremely comfortable criticizing the much less comprehensive Republican plan.

The Democratic plan builds on the Quality Commission's recommendations by adding, among other provisions, requirements for ERISA remedies, a medical necessity provision (that prohibits any insurer from denying coverage for any service that a physician deems is medically necessary), mandatory clinical trial coverage, mandatory 48-hour hospital coverage following a mastectomy, mandatory coverage for breast reconstruction following a mastectomy, required access to prescription drugs that are not on a plan's formulary if a doctor deems necessary, and a "whistle blower" provision, which protects health professionals against retribution if they report and document quality problems. Although most of these provisions are generally defensible policy and certainly politically attractive, they do add costs (at least 2 percent higher premiums than the Quality Commission's recommendations.)

*Congressional Budget Office (CBO) Estimate.* The next big hurdle for the Democrats will be next Wednesday's or Thursday's expected release of the CBO premium estimates of the Dingell/Ganske bill. We anticipate that the premium will be projected to increase by about 4 percent for the average employee, which amounts to about \$6 a month. We are working on a positive roll-out strategy for this estimate to buttress our claim that the benefits of any such legislation are more than worth the modest cost. If all agree in the White House, we might want to have the President (next Monday?) or the Vice President announce the generally good-news estimate during the next week.

*Likely Republican Response to CBO's Scoring of Dingell/Ganske Bill.* The Republican (and the insurer and big business) response to the CBO estimate will be swift and critical. They will cite overall health care expenditure increases (that will amount to billions of dollars, although a small fraction of the nation's trillion dollar health expenditures base) and flawed coverage loss projections (probably in the neighborhood of 200,000 to 2 million Americans.) It is important to point out that the likely CBO cost estimate for the Republican bill will be much lower than the Dingell bill -- about one fourth of it (1 percent). If the opponents' cost and coverage argument takes hold, it could seriously undermine momentum for the Patients' Bill of Rights. We are currently in the process of working on a strong, message document, as well as some Qs & As, to help ensure that we get a positive message from the CBO numbers.

*"Blue Dog" Democrats Could Create Difficulty.* Finally, it is important to note that some "blue-dog" House Democrats may seriously consider joining up with the Republicans when and if their bill goes to the floor. They are generally most influenced by the small business lobby and the Republican bill has received its only real support from the NFIB. Similarly, the Senate is populated by numerous Democrats who are and always will be uncomfortable with standing by Senator Kennedy. As a consequence, if the Senate Republicans feel pressured to develop their own Patients' Bill of Rights (and Chafee is now drafting a bill), there may be a number of Democrats who could sign on, particularly if the "poison pill" provisions are dropped and a few more patients' protections are added.

### **Enforcement/Liability/Remedies Provision.**

Because of the popularity of HMO regulation, it is probable that a consensus can be achieved on most if not all of the traditionally-desired patient protections. Decisions on what protections make it in will be linked to two variables: CBO cost estimates and perceived political pain associated with opposition to popular provisions. With the possible exception of some of the unrelated "poison pill" provisions mentioned earlier, the only seemingly apparent "line-in-the-sand" issue that could define the difference between Republicans and Democrats might be the issue of need for strong remedies for those aggrieved parties that have suffered serious health consequences or death because a health plan wrongly denied care.

To date, the Administration has consistently stated that this legislation must include a strong enforcement provision -- that a "right without a remedy is no right." To provide us with some flexibility and consistent with our directions from senior staff, we have never locked ourselves into a particular approach.

Both the Dingell-Ganske and the Norwood bills include state-court enforced liability provisions. Simply stated, the bills explicitly clarify that the Employee Retirement Income Security Act (ERISA) would no longer pre-empt or supersede state laws that provide for a right of action against a health plan that has denied care to a patient. Without this provision, the only current remedy a patient can obtain through ERISA law is payment for the cost of the benefit he or she should have had. In other words, for the 122 million Americans in ERISA covered plans, patients cannot get any compensation for treatment costs, pain and suffering, or lost wages.

*Current Law Example:* Dr. Welby wanted to refer Mrs. Jones to a specialist to conduct a needle biopsy to determine if she has cancer. The plan refused the referral and denied any coverage for the test. The patient, as a consequence, did not go to the specialist or take the test. Six months later, she came back with a more noticeable lump. Dr. Welby argued with the HMO to cover the specialist and the needle biopsy; this time, the HMO paid for it. The specialist then found the patient had a cancer that had spread throughout her body and that it was now untreatable. Had they had the test results 6 months earlier, they could have successfully treated the cancer. Now the patient must undergo a radical mastectomy and, even with that, her survival odds are very low. She is furious and asks her lawyer to sue the HMO. Her lawyer tells her she can, but the only thing she can get compensated for is the cost of the original cancer screening test. She can collect no damages to pay for the mastectomy, the chemotherapy and any other treatment her doctor may order. She gets no compensation for the lost wages from the job she must leave and she gets no enumeration for all the pain and suffering she is going through as a consequence of her HMO denying her treatment.

*Fears of Business and Labor (Taft-Hartley) Community.* The prospect of opening up health plans to law suits at the state level petrifies both the business and the Taft-Hartley plans. (Labor has been quiet to date because it is poor P.R., and would hurt our chances of passing a good bill.) They fear that the trial lawyers will ride herd over their plans and that costs will balloon (in terms of lawsuit settlements and/or because their health plans will be so nervous that they will stop making even appropriate denials).

Business-underwritten analyses are projecting an unbelievably high 10-30 percent premium increase. For the last two months, this community has used highly dubious rhetoric that state-based enforcement would leave many businesses no choice other than to drop their health benefits. But the real underlying fear is modifying, in any way, the protections ERISA affords against suits from the states and from aggrieved employees on any benefit an employer provides (health, pensions, leave, etc.).

*CBO Projections Do NOT Confirm Concerns of Business Community.* Notwithstanding the fears of the liability provisions of the House bills and unprecedented lobbying by the business, insurer and Republican Leadership, however, the preliminary (not for attribution or dissemination) projections from CBO seem to assume that the existence of a state-based right of action would increase premiums by only about 1 percent, about one-fourth the total premium hike projected for the Dingell-Ganske bill. (This figure will not be released by CBO until after it reports on the Dingell bill, which will take place sometime in the next week.) CBO believes that most of the suits are now being directed at doctors and that any new suits against managed care plans would generally substitute for -- not add onto -- what is already out there.

Regardless of the true number, the opponents will pull out all of the guns to stop any state-based liability provision from becoming law. They will use inflated cost projections and attempt to terrify the public into believing that the result of any Patients' Bill of Rights legislation will be more regulation, more costs, and a lot more uninsured -- as people will no longer be able to afford needed health insurance.

**Enforcement Options.** Although there will be numerous other provisions within any Patients' Bill of Rights bill that will be debated fiercely, the main outstanding issue is how we resolve the enforcement provision. Remarkably, the issue now is not whether there will be an enforcement mechanism, but rather what that mechanism will be. There are numerous different approaches that could be taken, but there are three primary options:

- (1) **State-Based Remedies.** The Norwood and the Dingell-Ganske et al Patients' Bill of Rights bills have a provision that precludes health plans or businesses who make illegal denials of coverage that result in death or injury from using ERISA to pre-empt state-court enforced remedies (if a state has enacted laws that authorize such remedies). As mentioned above, although this provision is expected to receive a modest premium estimate from CBO, the business community will use all their resources to kill it. No one several months ago believed that any real enforcement mechanism had a chance of passing the Congress; however, buoyed by strong polling, comfort with this provision (and the right to sue HMOs) appears to be growing in the Congress, particularly with the Democrats.

**Advantages:**

- Already in bills that have received bipartisan support.
- Would not require any new Federal rules (e.g., provisions regarding whether this should include punitive damages, pain and suffering, caps, etc.)
- Relatively easy to explain; opponents have more difficult burden as to why HMOs have more liability protections than practically any other industry in the nation. (Recent polls indicate strong support to allow individuals to sue HMOs).
- If we want to have the bar set at a place that the Congress is unlikely to meet, this is probably the only one that meets that criteria WITHOUT us taking a new position and looking overly political.

**Disadvantages:**

- Would make us the target of an all out campaign from the business and insurer industries over an issue that we could well lose in the end.
- The well-financed, largely unanswered and highly orchestrated campaign may succeed in making this an issue about greedy trial lawyers, health care costs, and loss of insurance coverage.
- There is a real chance that neither the House nor the Senate could pass this provision; pushing for such a provision would risk the whole bill, particularly if we make it a line in the sand issue.
- Could risk criticism from some elites who may charge that we are grabbing too much too soon, and blowing any real chance of getting some important patient protection standards enacted into law.

- (2) **Federal Court Enforcement.** A frequently raised alternative to the Dingell-Ganske state-court approach is to provide for a new Federal cause of action (with new rules and remedies) for aggrieved parties. This approach is being considered because it could assure greater uniformity than the state approach and to address employers fear of local bias in the state court system.

**Advantages:**

- Probably more likely to get passed out of the Congress.
- Although the business community would not like this approach, they could probably live with it -- particularly if caps on awards were provided.
- Labor (Taft-Hartley plans) would likely support this approach.

**Disadvantages:**

- Would require a great deal of deliberation as to how to structure the new Federal rules (e.g., should there be punitive, pain and suffering, caps, etc.?)
- Assuming the pressure from the business community successfully produced award caps, this approach would make us much more vulnerable on similar medical malpractice cap issues.
- It will be more expensive and time consuming for consumers to have their cases heard and resolved.
- Federal courts have no experience in trying these cases.

- (3) **Civil Monetary Penalties -- either enforced through Federal Courts, Administrative Law Judges or HHS/Labor.** To avoid time-consuming, jury-involved cases, a new system of civil monetary penalties could be devised for aggrieved consumers. Unlike traditional CMPs, the penalties paid by the plans would go directly to the aggrieved party -- not back to the courts or government.

**Advantages:**

- Much more likely to pass the Congress as it seems to most resemble rumors about the Republican enforcement provisions. Face saving on both sides could be achieved by simply raising the CMPs that could be awarded.
- Business would support since long, drawn-out court proceedings could be avoided and there would be no unpredictable punitive/pain and suffering settlements.
- Consistent with current ERISA enforcement practices in other areas.

**Disadvantages:**

- Individuals could not seek and obtain punitive/pain and suffering awards, which some would argue would most influence good behavior by health plans.
- Because individuals could obtain, some would argue the remedy cannot be calibrated to actual harm.
- If the Departments were to be enforcers of CMPs, we would have to obtain more administrative resources, which the Congress would likely not fund.
- If we want to keep the bar high enough to make it impossible for Republicans to support, we would not choose this option.

In conclusion, because of the interest on the Hill on this issue, we need to fully recognize that our positioning on the Patients' Bill of Rights may not be fully adopted by the Democrats on Capitol Hill. While much of our base is taking a "keep the bar high and do not pass legislation" position, our moderate Democrats generally want to see a bill passed. There are exceptions to this rule, but it is clear that we will have to keep close tabs of our Democrats to ensure that our position -- whatever it is -- is not undermined. Larry Stein believes we will need to continue to hold meetings with the Members and the staff to assure that outcome.

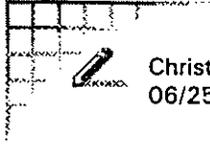
I hope this information is useful. In order to assure the Administration is on same page regarding positioning and policy strategy, I would advise we hold a meeting in short order to review options. In preparation, I am enclosing a one page side-by-side document comparing the provisions of the various proposals. Please call if you have any further questions.

**COMPARISON OF NORWOOD LEGISLATION TO THE HOUSE REPUBLICAN  
TASK FORCE PROPOSAL AND DINGELL/KENNEDY\***

<b>PROVISION</b>	<b>REPUBLICAN TASK FORCE</b>	<b>QUALITY COMM.</b>	<b>NORWOOD</b>	<b>DEMOCRATS</b>
<b>Access to Emergency Services</b>	Yes	Yes	Yes	Yes
<b>Anti-Gag Rules</b>	Yes	Yes	Yes	Yes
<b>Access to Ob-Gyns</b>	Yes	Yes	No	Yes
<b>Internal Appeals</b>	Yes	Yes	Yes	Yes
<b>External Appeals</b>	Yes	Yes	Yes	Yes
<b>Mandatory Point-of-Service Option</b> with same reimbursement rates and fair and reasonable premiums.	Yes	No	Yes	Yes
<b>Information Disclosure</b>	Yes	Yes	Yes	Yes
<b>Confidentiality</b>	Yes	Yes	Yes	Yes
<b>Access to Specialists</b>	No	Yes	Yes	Yes
<b>Continuity of Care</b> to assure patients that care will not change abruptly if their provider is unexpectedly dropped from a health plan.	No	Yes	Yes	Yes
<b>Financial Incentives.</b> A plan should not have incentive clauses for providers that limit medically necessary care.	No	Yes	Yes	Yes
<b>Non-Discrimination Provisions</b>	No	Yes	Yes	Yes
<b>Out of Network Referral When Network Inadequate</b> - must have sufficient number of health providers to ensure that all services are covered.	No	Yes	Yes	Yes
<b>Clinical Trials</b>	No	No	No	Yes
<b>Mastectomies</b>	No	No	No	Yes
<b>Breast Reconstruction</b>	No	No	No	Yes
<b>Medical Necessity</b>	No	Not addressed	No	Yes
<b>Enforcement</b>	Yes, but limited provision.	Not addressed	Yes	Yes

**\*POISON PILLS -- in House Republican Task Force But Not Norwood include medical malpractice caps, Multiple Employer Welfare Associations, and possibly expanding Medical Savings Accounts.**

health - patient bill of rights



Christopher C. Jennings  
06/25/98 10:46:54 AM

Record Type: Record

To: See the distribution list at the bottom of this message  
cc: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
Subject: Republicans' Patients' Bill of Rights Message

Attached is the statement that the Vice President gave yesterday on the Republican patients' bill of rights proposal. As you will note, it commends the Republicans for finally entering the debate on this important issue -- which validates the President's longstanding call for a Federally-enforceable patients' bill of rights. It also points out the many flaws in this proposal, criticizing it for lacking many important patient protections, such as access to specialists, and for including poison pills, such as medical malpractice provisions.

Different media sources picked up on different parts of this message. We will be sending in a memo on the Republican proposal later today with options on how we want to continue to position ourselves with regard to this proposal.

Please feel free to call me with any questions or comments.

  
cj VP.STA

Message Sent To:

Sylvia M. Mathews/WHO/EOP  
John Podesta/WHO/EOP  
Rahm I. Emanuel/WHO/EOP  
Paul E. Begala/WHO/EOP  
Joseph P. Lockhart/WHO/EOP  
Michelle Crisci/WHO/EOP  
Kevin S. Moran/WHO/EOP

**VICE PRESIDENT'S REMARKS ON THE REPUBLICANS' PATIENTS' BILL OF RIGHTS PROPOSAL**  
**June 24, 1998**

President Clinton and I have repeatedly called on this Congress to pass a Patients' Bill of Rights -- so crucial medical decisions are made by doctors, not accountants. Today, House Republicans are announcing their intention to introduce long-overdue legislation on this issue. We are glad that they have entered this debate. We are pleased to see they recognize that Federal legislation is needed, and we hope that this effort will produce a strong bipartisan bill.

However, from what we have heard, the Republican proposal does not provide the protections that Americans need in a patients' bill of rights.

It does not guarantee patients access to the specialists they need. It does not ensure continuity of care -- so that vulnerable patients do not have their care changed abruptly if their provider is dropped from a health plan. It does not include strong remedies for people who are seriously injured or who die because a health care plan wrongly denied them care. Yet it does include poison pill provisions that are clearly designed to stall this legislation.

Without these important protections, the Republicans' Patients' Bill of Rights is nothing more than a bill of goods. But we remain committed to working together to pass a strong, bipartisan bill before this Congress adjourns.

Tob - sac - new Legit Repub House bill

and

Health - patients Bill of rights

## June 25, 1998 - Daily Report

**DPC -- Tobacco:** The House Republican Leadership released a very skeletal outline of their tobacco bill today, indicating that the bill would: (1) give the FDA authority to regulate tobacco (but it is not clear how extensive this authority would be); (2) provide enhanced authority for the FTC to police tobacco advertising to youth; (3) launch a national anti-smoking and anti-drug campaign funded through the Drug Czar's Office; (4) create a federal model for States to enact laws penalizing youth smokers and retailers who sell to them; and (5) "permit states to retain all proceeds from lawsuits against the tobacco industry provided lawyers are paid only reasonable, documented fees and expenses." The bill would not contain a price increase, lookback surcharges, or provisions to protect farmers. It also would not contain any liability protection. The Vice President plans to make a statement today expressing our opposition to this initiative on the ground that it would not succeed in reducing youth smoking. He also will characterize the bill as a cynical attempt to provide Republican Members with political cover. Rep. Waxman and other Democrats in the House are expected to make similar statements.

**DPC -- Update on Republican Patients' Bill of Rights:** As you know, the Republican House leadership announced yesterday that it would introduce a Patients' Bill of Rights bill. Although the legislation provides less protection for patients than do existing bills and although it also includes several poison pills, there is little doubt that the Republicans have come a long way toward your position. They reportedly will include in their legislation many (but not all) of the major protections you have called for and even will include some (although modest) remedies to enforce the protections. Nonetheless, the reaction to the Republicans proposal has been very negative: consumer advocates and providers have labeled it a "sham," and the insurers and big business community are criticizing it as overly regulatory.

In our public statements, we have taken the position that the Republican legislation falls far short of what is necessary. We have noted that it does not include a provision ensuring access to specialists or a provision ensuring continuity of care (which would allow patients to continue to see a physician even if he is dropped from a plan in the middle of a treatment). We also have emphasized that the bill does not contain the kind of strong remedy provisions that are necessary to ensure that the patients' rights are truly enforceable. Finally, we have been very critical of the "poison pill" provisions included in the bill: medical malpractice caps, a new Medical Savings Account provision, and a new Multiple Employer Welfare Association provision that could destabilize the small insurance market and would pre-empt state-based patient protections.

The Democratic Leadership, believing that the Patients' Bill of Rights is a great issue for the election, wants to keep the bar extremely high; the Leadership is definitely in the "issue, not law" mode. Some other Democrats and moderate Republicans would probably be generally supportive of the Republican bill if the poison pill provisions were dropped and some relatively modest consumer protections were added. (They would be less insistent on significant changes to the remedy provisions.) We are now in the process of drafting a memo that presents policy and strategic options for your consideration.

**COMPARISON OF NORWOOD LEGISLATION TO THE HOUSE REPUBLICAN  
TASK FORCE PROPOSAL\***

<b>PROVISION</b>	<b>NORWOOD</b>	<b>HOUSE REPUBLICAN TASK FORCE</b>
<b>Access to Emergency Services</b>	Yes	Yes
<b>Anti-Gag Rules</b>	Yes	Yes
<b>Access to Ob-Gyns</b>	No*	Yes
<b>Internal Appeals</b>	Yes	Yes
<b>External Appeals</b>	Yes	Yes
<b>Mandatory Point of Service Option</b> with same reimbursement rates and fair and reasonable premiums.	Yes	Yes
<b>Information Disclosure</b>	Yes	Yes
<b>Confidentiality</b>	Yes	Yes
<b>Access to Specialists</b>	Yes	No
<b>Continuity of Care</b> to assure patients that care will not change abruptly if their provider is unexpectedly dropped from a health plan.	Yes	No
<b>ERISA Remedies</b>	Yes	Unclear ... Not Fully Addressed in Task Force Bill.
<b>Financial Incentives.</b> A plan should not have incentive clauses for providers that limit medically necessary care.	Yes	No
<b>Out of Network Referral When Network Inadequate</b> -- must have sufficient number of health providers to ensure that all services are covered.	Yes	No
<b>Non-Discrimination Provisions</b>	Yes	No

**\*POISON PILLS -- in House Republican Task Force But Not Norwood include: medical malpractice award caps, Multiple Employer Welfare Associations (MEWAs) and possibly some expansions of Medical Savings Accounts (three provisions that we rejected and required dropping in the 1997 BBA negotiations.)**

**\*\* Ob-gyn provision -- In Quality Commission's recommendations; not in Norwood.**

Health-patients bill  
rights

Karen Tramontano

06/25/98

12:17:17 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Eleanor S. Parker/WHO/EOP

Subject: Health Care Bill of Rights

I know several of us talked this morning about how to drive home the difference between the R's HMO Bill of Rights and Ours --- one thought:

i doubt the R's have the whistle blower protections in their bill -- and we have --thus far -- leaned away from this provision --- if we were to lean in to this provision we would have a natural constituency--the issue could be framed as a way to ensure quality --by health care workers who are the direct service providers

one last note to Chris -- the afl-cio has been in conversation w/ Kennedy and Daschle's folks about the remedy section of the bill --- the mutli-employer plans have concerns w/ the state court enforcement remedy section -- they are vetting a federal court enforcement --- I understand that one of the differences between the R's bill and ours is the remedy section -- I asked Gerry Shea to call you ASAP to discuss this -- my obvious concern is that we ramp up the differences on the remedy section and one of our strongest constituencies for the bill is trying to modify that section as you are writing --- gerry can be reached at 637-5237--because it's an issue for the multi-employer plans this is a labor/employer issue not just a labor one --

Message Sent To:

Elena Kagan/OPD/EOP  
Christopher C. Jennings/OPD/EOP  
Ann F. Lewis/WHO/EOP  
Michelle Crisci/WHO/EOP  
Stacie Spector/WHO/EOP

Health-patients Bill g-TJ

**THE WHITE HOUSE****Office of the Press Secretary****For Immediate Release****June 23, 1998****STATEMENT BY THE PRESIDENT  
Medicare and the Patients' Bill of Rights**

I am pleased to add my voice in support of today's efforts by Representatives Ganske and Dingell to file a discharge petition enabling an up or down vote in the House of Representatives for a patients' bill of rights. Since November of last year, I have been calling on Congress to pass such legislation.

It is now 7 months later and Congress has been unable to pass legislation, let alone hold even one Committee mark-up on a bill. With so many Americans' health at stake, I welcome the action taken today by Representatives Ganske and Dingell and I believe it will help ensure an open debate on this issue that will allow for all parties, including Representative Norwood, to bring patients' rights legislation to the floor for vote.

Passing patients' rights legislation would build on the actions I have already taken to extend patient protections to Americans in federal health plans. This Friday, we will publish a Health Care Financing Administration (HCFA) regulation to implement new rules for all Medicare managed care plans. The HCFA regulation will implement the new Medicare plan choices I signed into law last year as a part of the bipartisan balanced budget agreement. It will also include many of the patient protections I directed Medicare to implement last February, when I signed an Executive Memorandum ordering all Federal health plans -- which serve 85 million Americans -- to come into compliance with the patients' bill of rights. These regulations ensure that Medicare beneficiaries in managed care plans have a range of important patient protections, including access to the specialists they need, access to ob-gyns, access to emergency room services and an independent appeals process to address grievances with their health plans.

Now we need the Congress to pass a Patients' Bill of Rights that guarantees all Americans these important patient protections. It is my hope and expectation that the bipartisan action being taken today in Congress will spur the House and the Senate to pass a strong, enforceable and long-overdue bill.

-30-30-30-

MEMORANDUM

Draft

Health-patients  
bill of rights

June 29, 1998

TO: Rahm Emanuel

FR: Chris Jennings

RE: Patients' Bill of Rights Status

cc: Sylvia Matthews, Bruce Reed, Larry Stein, Gene Sperling, Ron Klain, Elena Kagan, Janet Murguia, Chuck Brain, Sally Katzen

This memo responds to your request for an up-to-the-moment status report on the House Republican Leadership's Patients' Bill of Rights. It also outlines positioning options for the President's consideration on the legislation and, more specifically, on the enforcement provisions.

**House Republican Patients' Bill of Rights.** The reaction to the House Leadership's announcement of their intention (they have provided no details) to introduce a Patients' Bill of Rights has been almost universally negative. The base Democrats, the consumer advocates, and the providers have labeled it a "sham;" the insurers and big business community are criticizing it as overly regulatory. Notwithstanding these reactions, it is remarkable how far the Republicans apparently have moved toward the President's position.

*Status of Policy.* With the exception of the access to specialist/out-of-network referral, continuity of care, and requirement for financial disclosure provisions, the House Republicans appear to have included virtually every one of the consumer protections recommended by the President's Quality Commission. They have even (reportedly) included a Federal Court-enforced remedies provision that has a damages cap between \$100,000 and \$250,000. Less than two months ago, many conservative Democrats and most Republicans would have labeled the current Republican plan as something between excessively regulatory and a Government takeover of the health care system. In fact, just 4 months ago, the President's Quality Commission would not even touch the issue of enforcement. The political ground has obviously shifted dramatically.

*Administration Reaction of Republican Proposal.* We have taken the position that the Republican proposal both affirms the President's longstanding position that strong, Federal, and enforceable legislation is needed and confirms (both through their bill's added and missing provisions) that the Republican Leadership is not serious. In short, we say that any bill without all of the Quality Commission's protections and a strong enforcement provision is nothing more than a "bill of goods." We also charge that any bill that piles on "poison pill" provisions (like MEWAs, arbitrary caps for medical malpractice, and MSAs) is designed to kill, rather than enhance, the chances of an acceptable bill emerging. We will find out how or if the Republicans respond to our criticism when they introduce a bill -- which will not happen until after the July 4th recess.

**The Dingell/Ganske/Kennedy Bill and Democratic Positioning.** The Democratic Leadership and base Members have been even more critical of the Republican plan than us. Their bill starts with more provisions than were recommended by the Quality Commission and, particularly in the absence of CBO cost estimates for their bill, they are extremely comfortable criticizing the much less comprehensive Republican plan.

The Democratic plan builds on the Quality Commission's recommendations by adding, among other provisions, requirements for ERISA remedies, a medical necessity provision (that prohibits any insurer from denying coverage for any service that a physician deems is medically necessary), mandatory clinical trial coverage, mandatory 48-hour hospital coverage following a mastectomy, mandatory coverage for breast reconstruction following a mastectomy, required access to prescription drugs that are not on a plan's formulary if a doctor deems necessary, and a "whistle blower" provision, which protects health professionals against retribution if they report and document quality problems. Although most of these provisions are generally defensible policy and certainly politically attractive, they do add costs (at least 2 percent higher premiums than the Quality Commission's recommendations.)

*Congressional Budget Office (CBO) Estimate.* The next big hurdle for the Democrats will be next Wednesday's or Thursday's expected release of the CBO premium estimates of the Dingell/Ganske bill. We anticipate that the premium will be projected to increase by about 4 percent for the average employee, which amounts to about \$6 a month. We are working on a positive roll-out strategy for this estimate to buttress our claim that the benefits of any such legislation are more than worth the modest cost. If all agree in the White House, we might want to have the President (next Monday?) or the Vice President announce the generally good-news estimate during the next week.

*Likely Republican Response to CBO's Scoring of Dingell/Ganske Bill.* The Republican (and the insurer and big business) response to the CBO estimate will be swift and critical. They will cite overall health care expenditure increases (that will amount to billions of dollars, although a small fraction of the nation's trillion dollar health expenditures base) and flawed coverage loss projections (probably in the neighborhood of 200,000 to 2 million Americans.) It is important to point out that the likely CBO cost estimate for the Republican bill will be much lower than the Dingell bill -- about one fourth of it (1 percent). If the opponents' cost and coverage argument takes hold, it could seriously undermine momentum for the Patients' Bill of Rights. We are currently in the process of working on a strong, message document, as well as some Qs & As, to help ensure that we get a positive message from the CBO numbers.

*"Blue Dog" Democrats Could Create Difficulty.* Finally, it is important to note that some "blue-dog" House Democrats may seriously consider joining up with the Republicans when and if their bill goes to the floor. They are generally most influenced by the small business lobby and the Republican bill has received its only real support from the NFIB. Similarly, the Senate is populated by numerous Democrats who are and always will be uncomfortable with standing by Senator Kennedy. As a consequence, if the Senate Republicans feel pressured to develop their own Patients' Bill of Rights (and Chafee is now drafting a bill), there may be a number of Democrats who could sign on, particularly if the "poison pill" provisions are dropped and a few more patients' protections are added.

#### **Enforcement/Liability/Remedies Provision.**

Because of the popularity of HMO regulation, it is probable that a consensus can be achieved on most if not all of the traditionally-desired patient protections. Decisions on what protections make it in will be linked to two variables: CBO cost estimates and perceived political pain associated with opposition to popular provisions. With the possible exception of some of the unrelated "poison pill" provisions mentioned earlier, the only seemingly apparent "line-in-the-sand" issue that could define the difference between Republicans and Democrats might be the issue of need for strong remedies for those aggrieved parties that have suffered serious health consequences or death because a health plan wrongly denied care.

To date, the Administration has consistently stated that this legislation must include a strong enforcement provision -- that a "right without a remedy is no right." To provide us with some flexibility and consistent with our directions from senior staff, we have never locked ourselves into a particular approach.

Both the Dingell-Ganske and the Norwood bills include state-court enforced liability provisions. Simply stated, the bills explicitly clarify that the Employee Retirement Income Security Act (ERISA) would no longer pre-empt or supersede state laws that provide for a right of action against a health plan that has denied care to a patient. Without this provision, the only current remedy a patient can obtain through ERISA law is payment for the cost of the benefit he or she should have had. In other words, for the 122 million Americans in ERISA covered plans, patients cannot get any compensation for treatment costs, pain and suffering, or lost wages.

*Current Law Example:* Dr. Welby wanted to refer Mrs. Jones to a specialist to conduct a needle biopsy to determine if she has cancer. The plan refused the referral and denied any coverage for the test. The patient, as a consequence, did not go to the specialist or take the test. Six months later, she came back with a more noticeable lump. Dr. Welby argued with the HMO to cover the specialist and the needle biopsy; this time, the HMO paid for it. The specialist then found the patient had a cancer that had spread throughout her body and that it was now untreatable. Had they had the test results 6 months earlier, they could have successfully treated the cancer. Now the patient must undergo a radical mastectomy and, even with that, her survival odds are very low. She is furious and asks her lawyer to sue the HMO. Her lawyer tells her she can, but the only thing she can get compensated for is the cost of the original cancer screening test. She can collect no damages to pay for the mastectomy, the chemotherapy and any other treatment her doctor may order. She gets no compensation for the lost wages from the job she must leave and she gets no enumeration for all the pain and suffering she is going through as a consequence of her HMO denying her treatment.

*Fears of Business and Labor (Taft-Hartley) Community.* The prospect of opening up health plans to law suits at the state level petrifies both the business and the Taft-Hartley plans. (Labor has been quiet to date because it is poor P.R., and would hurt our chances of passing a good bill.) They fear that the trial lawyers will ride herd over their plans and that costs will balloon (in terms of lawsuit settlements and/or because their health plans will be so nervous that they will stop making even appropriate denials).

Business-underwritten analyses are projecting an unbelievably high 10-30 percent premium increase. For the last two months, this community has used highly dubious rhetoric that state-based enforcement would leave many businesses no choice other than to drop their health benefits. But the real underlying fear is modifying, in any way, the protections ERISA affords against suits from the states and from aggrieved employees on any benefit an employer provides (health, pensions, leave, etc.).

*CBO Projections Do NOT Confirm Concerns of Business Community.* Notwithstanding the fears of the liability provisions of the House bills and unprecedented lobbying by the business, insurer and Republican Leadership, however, the preliminary (**not for attribution or dissemination**) projections from CBO seem to assume that the existence of a state-based right of action would increase premiums by only about 1 percent, about one-fourth the total premium hike projected for the Dingell-Ganske bill. (This figure will not be released by CBO until after it reports on the Dingell bill, which will take place sometime in the next week.) CBO believes that most of the suits are now being directed at doctors and that any new suits against managed care plans would generally substitute for -- not add onto -- what is already out there.

Regardless of the true number, the opponents will pull out all of the guns to stop any state-based liability provision from becoming law. They will use inflated cost projections and attempt to terrify the public into believing that the result of any Patients' Bill of Rights legislation will be more regulation, more costs, and a lot more uninsured -- as people will no longer be able to afford needed health insurance.

### **Enforcement Options.**

- (1) **State-Based Remedies.** The Norwood and the Dingell-Ganske et al Patients' Bill of Rights bills have a provision that precludes health plans or businesses who make illegal denials of coverage that result in death or injury from using ERISA to pre-empt state-court enforced remedies (if a state has enacted laws that authorize such remedies). As mentioned above, although this provision is expected to receive a modest premium estimate from CBO, the business community will pull out all the stops to kill it. No one several months ago believed that any real enforcement mechanism had a chance of passing the Congress; support for this provision (and the right to sue HMOs) appears to be growing.

#### **Advantages:**

- Already in bills that have received bipartisan support.
- Would not require any new Federal rules (e.g., provisions regarding whether this should include punitive damages, pain and suffering, caps, etc.)

- Relatively easy to explain; opponents have more difficult burden as to why HMOs have more liability protections than practically any other industry in the nation. (Recent polls indicate overwhelming support to allow individuals to sue HMOs).
- If we want to have the bar set at a place that the Congress is unlikely to meet, this is probably the only one that meets that criteria WITHOUT us taking a new position and looking overly political.

**Disadvantages:**

- Would make us the target of an all out campaign from the business and insurer industries over an issue that we could well lose in the end.
- The well-financed, largely unanswered and highly orchestrated campaign may succeed in making this an issue about greedy trial lawyers, health care costs, and loss of insurance coverage.
- There is a real chance that neither the House nor the Senate could pass this provision; pushing for such a provision would risk the whole bill, particularly if we make it a line in the sand issue.
- Could risk criticism from some elites who may charge that we are grabbing too much too soon, and blowing any real chance of getting some important patient protection standards enacted into law.

- (2) **Federal Court Enforcement.** A frequently raised alternative to the Dingell-Ganske state-court approach is to provide for a new Federal cause of action (with new rules and remedies) for aggrieved parties. This approach is being considered because it could assure greater uniformity than the state approach and to address employers fear of local bias in the state court system.

**Advantages:**

- Probably more likely to get passed out of the Congress.
- Although the business community would not like this approach, they could probably live with it -- particularly if caps on awards were provided.
- Labor (Taft-Hartley plans) would likely support this approach.

**Disadvantages:**

- Would require a great deal of deliberation as to how to structure the new Federal rules (e.g., should there be punitive, pain and suffering, caps, etc.?)
- Assuming the pressure from the business community successfully produced award caps, this approach would make us much more vulnerable on similar medical malpractice cap issues.
- It will be more expensive and time consuming for consumers to have their cases heard and resolved.
- Federal courts have no experience in trying these cases.

- (3) **Civil Monetary Penalties -- either enforced through Federal Courts, Administrative Law Judges or HHS/Labor.** To avoid time-consuming, jury-involved cases, a new system of civil monetary penalties could be devised for aggrieved consumers. Unlike traditional CMPs, the penalties paid by the plans would go directly to the aggrieved party -- not back to the courts or government.

**Advantages:**

- Much more likely to pass the Congress as it seems to most resemble rumors about the Republican enforcement provisions. Face saving on both sides could be achieved by simply raising the CMPs that could be awarded.
- Business would support since long, drawn-out court proceedings could be avoided and there would be no unpredictable punitive/pain and suffering settlements.
- Consistent with current ERISA enforcement practices in other areas.

**Disadvantages:**

- Individuals could not seek and obtain punitive/pain and suffering awards, which some would argue would most influence good behavior by health plans.
- Because individuals could obtain, some would argue the remedy cannot be calibrated to actual harm.
- If the Departments were to be enforcers of CMPs, we would have to obtain more administrative resources, which the Congress would likely not fund.
- If we want to keep the bar high enough to make it impossible for Republicans to support, we would not choose this option.

health-patient bill of rights

**PRESIDENT CLINTON:  
"WE MUST PASS A BIPARTISAN PATIENTS' BILL OF RIGHTS"**

May 28, 1998

*"This bill says, how can you let some person with the mentality of an accountant, who will only see the number of what it costs to have somebody do her surgery, who will only see the number at the bottom line of what the chemotherapy costs, make a decision. We're not that kind of people; we're not that kind of society."*

President Bill Clinton  
May 28, 1998

Today, President Clinton is joined by Vice President Gore, Secretary of Health and Human Services Donna Shalala, and Secretary of Labor Alexis Herman, in calling on Congress to pass a Patients' Bill of Rights, legislation which offers certain protections to all Americans when they become ill. The President will also release a report showing the impact of health care issues on women, and why a Patients' Bill of Rights is necessary to protect all Americans.

**Patients' Bill of Rights.** The nation's health care system is undergoing significant change. Many Americans worry that these changes may reduce their health care options and lower the standards of care. The President has already signed an executive order requiring that all federal agencies substantially comply with the Patients' Bill of Rights. Now, these protections must be extended to all Americans. A Patients' Bill of Rights would give Americans much needed protections, including:

- **Access to health care specialists** to ensure patients receive the appropriate care they need;
- **Access to emergency services** when and where the need arises;
- **Access to easily understood information** to help patients make informed decisions;
- **Grievance and appeals processes** for consumers to resolve their differences with their health plans and health care providers.

**A Patients' Bill Of Rights Helps Ensure Women Get Access To the Services They Need.** Women are particularly affected by health care issues. A new study shows that:

- **Over 60 percent of physician visits are made by women, and women make three quarters of the health care decisions in American households.** Without adequate patient protections, women will be unable to effectively navigate through the nation's rapidly changing health care system.
- **Women in managed care plans are increasingly dissatisfied with the quality of care.** Nearly 70 percent of privately insured women ages 18 to 65 are in managed care plans. Almost two-fifths of these women worry that they will not be able to get speciality care when they need it. And 27 percent of these women worry that they will be denied a medical procedure they need.
- **Without a patients' bill of rights, women may not receive important preventive services.** The consumer protection that gives women direct access to an obstetrician/gynecologist is not only necessary to make sure that pregnant women get the care they need, but is also important to ensure that women get important preventive services. Studies show that gynecologists are almost two times as likely as internists to perform timely, needed women's preventive services.
- **Patients' Bill of Rights legislation must be passed.** The only way to assure that all women, and all Americans, have the patient protections they need is to pass and enact a Federally-enforceable Patients' Bill of Rights.

**State Laws Cannot Protect All Citizens.** The President congratulates the 44 states who have passed at least one element of the Patients' Bill of Rights. However, over 122 million Americans are enrolled in health care plans which are not fully governed by state law, and therefore do not enjoy the full protection that these laws are intended to give.

**Challenging Congress To Pass A Federally-Enforceable Patients' Bill Of Rights This Year.** The President renews his call to Congress to pass a Patients' Bill of Rights this year. Without this legislation, the millions of Americans in private health plans will never be assured these basic protections.

health-patient bill  
rights

THE WHITE HOUSE  
WASHINGTON

May 27, 1998

**PATIENTS' BILL OF RIGHTS EVENT**

**DATE:** May 28, 1998  
**LOCATION:** 450 OEOB  
**BRIEFING TIME:** 9:15 am - 9:45 am  
**EVENT TIME:** 9:50 am - 10:50 am  
**FROM:** Bruce Reed

**I. PURPOSE**

To highlight the need for a federal Patients' Bill of Rights, and to demonstrate the special importance of these protections for women.

**II. BACKGROUND**

You will announce the release of a White House report pointing out the need for federal patients' rights legislation. As the report documents, a patchwork of non-comprehensive state laws cannot provide Americans with the protections the Quality Commission recommended. Even if states were to pass all of the patient protections in the "Consumer Bill of Rights," states do not have full authority over the 122 million Americans who are in health plans that are governed by ERISA. States have no ability to protect the 50 million Americans in ERISA self-funded health plans, and states have limited authority over the 72 million Americans in fully-insured ERISA plans. Therefore, even if each state in the nation were to pass a comprehensive patients' bill of rights, millions of Americans would be without the full range of patient protections recommended by the Quality Commission

The report also demonstrates the particular importance of the protections in the Patients' Bill of Rights to women. Women are more frequent users of health care services than men, and they have specific health needs that are directly addressed by the patients' bill of rights. For example, the Quality Commission's recommendation that women have direct access to an obstetrician/gynecologist is not only necessary to make sure that pregnant women get the care they need, but is also important to ensure that women obtain important preventive services. Studies show that gynecologists are almost two times as likely as internists to perform needed women's preventive services, such as pelvic exams, Pap tests, and breast exams.

In addition to their own health needs, women are also more likely to be responsible for the health care of others. Women make three-quarters of the health care decisions for their families and are more likely to be caregivers when a child, parent, or spouse is ill. Therefore, patient protections that ensure that health plans and health providers provide information and appeals rights are particularly important for women.

This report underscores the urgent need for Congress to pass a bipartisan federally enforceable Patients' Bill of Rights this year. Attending this event will be: approximately 100 health care advocates, providers and practitioners, and women's health advocates.

### **III. PARTICIPANTS**

#### **Briefing Participants:**

The Vice President  
Secretary Shalala  
Secretary Herman  
Bruce Reed  
Chris Jennings

#### **Event Participants:**

The Vice President  
Secretary Shalala  
Secretary Herman  
Dr. Regina Benjamin, Family Physician on the Board of Directors of AMA, who strongly supports a federal patients' bill of rights.  
Ricka Powers, a woman recently diagnosed with cancer.

### **IV. PRESS PLAN**

Open Press.

### **V. SEQUENCE OF EVENTS**

- **YOU** will be announced into the room accompanied by the Vice President, Secretary Shalala, Secretary Herman, Dr. Regina Benjamin, and Ricka Powers.
- Secretary Shalala will make remarks and introduce Secretary Herman.
- Secretary Herman will make remarks and introduce Dr. Regina Benjamin.
- Dr. Regina Benjamin will make remarks and introduce the Vice President.
- The Vice President will make remarks and introduce Ricka Powers.
- Ricka Powers will make remarks and introduce **YOU**.
- **YOU** will make remarks, work a ropeline, and then depart.

### **VI. REMARKS**

Remarks provided by Speechwriting.

*Health - FDA reform*

## MEMORANDUM FOR ERSKINE BOWLES

THROUGH: Franklin D. Raines

FROM: Donald R. Arbuckle

SUBJECT: FDA Proposed Rule on "Off-Label" Uses

We will be concluding review by COB Tuesday of a proposed FDA rule allowing the dissemination of information on unapproved uses (commonly referred to as "off-label" uses) for marketed drugs, biologics and medical devices. The proposal implements the off-label provision of the Food and Drug Modernization Act of 1997 (FDAMA) which permits manufacturers to disseminate certain written information on the safety, effectiveness, or benefits of a product's use that has not yet been approved by FDA. For example, an antibiotic may be approved by FDA for use in treating sinus infections but also may be widely used by doctors in treating ear infections -- a use not yet approved for that particular drug. The proposal would require that sixty days before disseminating the information, manufacturers must first submit to FDA for approval a complete copy of the information and an application seeking approval for the new use.

The proposed rule also sets limits on the types of information that manufacturers can disseminate: it must be in the form of an unabridged medical journal article and must disclose that the use has not been cleared by FDA. And, the proposal limits who may receive the information -- doctors and insurance companies, for example, but not individual patients.

This provision was a key Administration concern during FDA reform that was resolved during the legislative process. The rule adheres closely to that compromise. While it may gain some attention in the press, we do not expect it to be highly controversial. FDA is anxious to publish the proposed rule as soon as possible in order to meet a statutory deadline for publication of a final rule by November 21st of this year.

Please let me know if you have any questions.

Health - patients' bill of rights

**STATEMENT BY PRESIDENT WILLIAM J. CLINTON  
ON THE NEW KAISER FOUNDATION REPORT  
ON THE PATIENTS' BILL OF RIGHTS  
April 22, 1998**

Good  
↙

Today, the Kaiser Family Foundation released a new report that confirms our longstanding belief that the cost of the Quality Commission's patients' bill of rights, which I have endorsed, is modest and well worth the protections it would provide. The Kaiser Report reaffirms recent estimates by the Congressional Budget Office (CBO) that these protections would increase health insurance less than 1 percent (less than \$3 per family per month).

Many Americans today lack the protections necessary to ensure high quality health care. They may not be able to see the specialists they need, or to get emergency care wherever and whenever a medical emergency arises. They may not be able to talk freely with doctors and nurses about all the medical options available -- not only the cheapest. They may have no place to go to present grievances about their health care. The Quality Commission's patients' bill of rights guarantees Americans these and other common sense protections. The improvement in the quality of health care that will result from these protections is more than worth the very modest premium increases projected by both Kaiser and CBO.

By affirming the CBO estimates, the Kaiser report convincingly rebuts the scare tactics that some have used to undermine bipartisan efforts in the Congress to pass a patients' bill of rights this year. This report again shows the utter groundlessness of claims that a patients' bill of rights will significantly increase health care costs.

With this new information, there is no excuse left for inaction. I therefore call on Congress again to send me legislation that gives Americans the health care protections they need and deserve. I look forward to working with members on both sides of the aisle to ensure that we pass a strong patient's bill of rights this year.

MEMORANDUM

health - ~~policy~~  
patient bill of rights  
and  
health - employer  
mandate

April 21, 1998

TO: Bruce R., Gene S., Rahm E., Elena K.

FR: Chris J.

RE: Kennedy's Employer Mandate Legislation and Patients' Bill of Rights Update

This memo seeks your guidance on two health care issues that are coming up today (Wednesday): first, is our response to the employer mandate legislation being introduced by Senator Kennedy; and second, is whether we should highlight a new Kaiser study being released estimating that both the President's Quality Commission's and Congressman Norwood's patients' bill of rights would increase health insurance premiums by less than one percent.

**Kennedy Employer Mandate Legislation**

As you know, Senator Kennedy is planning on introducing his health care employer mandate legislation today. Neither Senator Daschle, nor any other member of the Senate, is planning to co-sponsor this legislation. Kennedy's office has requested a letter from the President that would explicitly state or imply that we are supporting this legislation. It has become clear that we cannot draft a letter that both reflects a public position on this bill that we are comfortable with and that would be satisfactory to Senator Kennedy. As a consequence, I am recommending that we do not send a letter.

I have talked to Senator Kennedy's office about this matter, and although they would clearly prefer a supportive letter, they believe that sending a letter that suggests we are not fully supportive is worse than sending no letter at all. In fact, their hope is that our oral responses to inevitable questions about his legislation will sound more positive than a written response. We are preparing Q&As for Mike and others that commend Senator Kennedy for his longstanding commitment to improving access to affordable, quality health insurance and state our willingness to work with him and any one else in the Congress to achieve this goal.

## Patients' Bill of Rights Update

- **Kaiser Foundation Study**

Also this morning, the Kaiser Family Foundation is releasing a new study estimating that the Quality Commission's patients' bill of rights, endorsed by the President, would increase health insurance premiums by less than \$3 per month for a family policy (less than 1 percent). We believe that this report, which validates recent CBO findings, will add further momentum to a legislative solution. Because of the media's high regard for the Kaiser Family Foundation, we believe we should highlight this report through a White House statement to urge Congressional action on this issue. (It is important to note that the study does not provide estimates for the recently introduced Democratic bill. It does, however, provide estimates for the impact of Congressman Norwood's legislation, and although a number of provisions that could increase costs are not included in this analysis, it will be reported as a less than one percent increase as well).

- **Dingell Meeting with Congressman Ganske**

Later this morning, Congressman Ganske is meeting with Congressman Dingell, ostensibly for the purpose of informing him that he has been successful in attracting at least five Republicans to cosponsor the Dingell/Gephardt patients' bill of rights legislation. He is likely to indicate that he may well be able to get more Republican support and will suggest the possibility of a press conference to announce these Republican additions sometime next week. Congressman Dingell will likely request Administration participation at such an event.

THE WHITE HOUSE

WASHINGTON

Gaborone

March 31, 1998

Dear Senator Daschle and Representative Gephardt:

I am writing to commend you on the Patients' Bill of Rights Act of 1998 that you are introducing today on behalf of the Democratic Caucuses of both Houses of Congress. This bill represents a critically important step towards enacting a long overdue "Patients' Bill of Rights" that Americans need to renew their confidence in the nation's rapidly changing health care system.

States across the nation have already begun to enact reasonable patient protections. In fact, 44 states, including 28 of the 32 states with Republican Governors, have passed at least one of the protections that my Advisory Commission on Consumer Protection and Quality recommended, and that I endorsed last year. However, a patchwork of non-comprehensive state laws cannot provide Americans with adequate patient protections, particularly because state health care laws do not have jurisdiction over more than 100 million Americans. Federal standards are essential to assure that all patients get the protections they need.

You have done a remarkable job bringing a broad-based coalition of Democrats together to move this important issue forward. I would particularly like to commend Senator Kennedy and Representative Dingell for their leadership in developing this legislation.

The Patients' Bill of Rights Act of 1998 includes important patient protections, such as the right to emergency care wherever and whenever a medical emergency arises; the right to talk freely with doctors and nurses about all the medical options available, not only the cheapest; and the right to an internal and external appeals process that allows patients to address their concerns and grievances. I am particularly pleased that it includes every protection recommended by the Advisory Commission. This bill also improves on other patients' rights legislation before the Congress because it does not include expensive protections for health care providers that have the potential to increase premiums excessively.

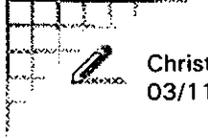
The bill you are introducing today provides a critical step towards developing bipartisan legislation that will pass the Congress. I look forward to working with the Congress to enact a "Patients' Bill of Rights" Act that I can sign into law this year.

I am confident that, working in a bipartisan fashion, the Congress will produce a bill that achieves the important balance of providing patients the protections they need without undermining health care affordability. We must ensure that whether they have traditional care or managed care, Americans have access to quality care. Thank you again for your strong leadership and commitment to this end.

Sincerely,

A handwritten signature in black ink, appearing to read "Pat Cloutier". The signature is written in a cursive style with a long, sweeping underline.

The Honorable Thomas A. Daschle  
The Honorable Richard A. Gephardt  
United States Congress  
Washington, D.C.



Christopher C. Jennings  
03/11/98 11:13:25 AM

Record Type: Record

To: John Podesta/WHO/EOP, Bruce N. Reed/OPD/EOP, Lawrence J. Stein/WHO/EOP  
cc: Elena Kagan/OPD/EOP, Janet Murguia/WHO/EOP  
Subject: Patients' Rights bill

First, please accept my sincere apology for interrupting you (John) and Larry this morning. I am jammed schedule wise and I was way over-anxious to make sure you knew about the latest quality developments before talking to the President.

Janet Murguia got hit up this morning by Congressman Dingell on the whistle-blower protection provision. He called the provision a "bill killer" and indicated that he had expressed his strong reservations to Congressman Gephardt. He believes, however, that -- without White House intervention -- he fears that Gephardt decide to insist that the provision goes in.

Dingell said he is one of Labor's best friends, but emphasized that he strongly feels they are wrong on this issue. He said he would support a free-standing whistleblower protection provision for hospital workers, but said its inclusion in the Patients' Rights bill will weigh it down and assure that Stenholm, Tanner, and Barry -- his close Blue-Dog buddies -- will not go on.

Keeping in mind that Congressman Gephardt and Senator Daschle are apparently coming to the White House tomorrow, and that this issue will almost inevitably come up, the question arises: Do we want to anything about this? There are obvious issues on all sides. Can we discuss?

~~will push for the provision and Dingell will then be forced to comply. He asked Janet if the White House said he believes if Congressman Gephardt forces him to put in the provi~~

**PRESIDENT CLINTON RELEASES NEW REPORT AND URGES CONGRESS TO PASS PATIENT BILL OF RIGHTS, COMPREHENSIVE TOBACCO LEGISLATION, AND THE MEDICARE BUY-IN PROPOSAL**

**March 9, 1998**

In a speech to the American Medical Association (AMA) today, the President renewed his call to Congress to pass a patients' bill of rights, comprehensive tobacco legislation to reduce teen smoking, and his proposal to allow hundreds of thousands of Americans ages 55 to 65 to buy into Medicare. In his speech, which marks the first time a President has spoken to the AMA in fifteen years, President Clinton highlighted that he and the AMA are united on the need for a patients' bill of rights and tobacco legislation, and urged the AMA to lend its strong support to his Medicare buy-in proposal. Underscoring the bipartisan support for a patients' bill of rights, the President released a report showing that 44 states -- including 28 states with Republican Governors -- have enacted the "Consumer Bill of Rights" that the President's Quality Commission recommended and the President endorsed last year. In his speech, the President:

**RELEASED NEW REPORT SHOWING THAT 44 STATES -- INCLUDING 28 STATES WITH REPUBLICAN GOVERNORS -- HAVE ENACTED AT LEAST ONE OF THE PROVISIONS IN THE PATIENTS' BILL OF RIGHTS.** The President released a new report that underscores the bipartisan support for the patients' bill of rights he endorsed last year. Highlights from this report are as follows:

- **Forty-four states have enacted at least one of protections in the patients' bill of rights.**
- **Patient protection laws have been enacted by Democratic and Republican Governors alike.** Twenty-eight of the 32 states with Republican Governors have enacted at least one of these protections.
- **Each of these patient protections has been enacted in at least eight states around the country and some have been enacted in as many as forty-one states.** For example:
  - Twenty-eight states -- including 16 with Republican Governors -- have enacted protections to assure access to emergency room services.
  - Thirty states -- including 15 with Republican Governors -- have enacted protections to give direct access to certain specialists, including access to qualified specialists for women's health services.

**URGED CONGRESS TO PASS FEDERAL LEGISLATION BECAUSE, DESPITE STATE LAWS, STATES HAVE NO JURISDICTION OVER MORE THAN 100 MILLION AMERICANS.** A patchwork of non-comprehensive state laws cannot provide Americans with the protections they need -- especially because state laws do not even have jurisdiction over more than 100 million Americans. For example, they do not cover tens of millions of Americans in self-insured plans covered under the Employee Retirement Income Security Act (ERISA). The only way to ensure that all health plans serving all Americans provide the protections envisioned by the Quality Commission is to pass and enact bipartisan Federal legislation.

**CALLED ON CONGRESS TO PASS COMPREHENSIVE TOBACCO LEGISLATION THIS YEAR.** The President also reiterated his call for Congress to pass comprehensive tobacco legislation this year that includes his five key principles:

- A comprehensive plan to reduce youth smoking, including: significant price increases; tough penalties on tobacco firms that continue to market to youths; public education and counter advertising; and expanded efforts to restrict access and limit appeal.
- Full authority of the Food and Drug Administration to regulate tobacco products.
- Changes in how the tobacco industry does business, including an end to marketing and promotion to children and broad document disclosure.
- Progress towards other public goals, including a reduction of secondhand smoke; promotion of cessation programs; public health research; and the strengthening of international efforts to control tobacco.
- Protection for tobacco farmers and their communities.

**REITERATED THAT THIS TOBACCO PROPOSAL COULD PREVENT UP TO ONE MILLION PREMATURE DEATHS OVER THE NEXT FIVE YEARS.** The recent Treasury Department's study, based on conservative estimates from well-respected analytical models, concluded that the Administration's proposal to increase the price of cigarettes by \$1.50 per pack -- coupled with proposed sales and advertising restrictions -- would:

- Keep up to 1.9 million Americans from smoking in 2003 -- a 39 to 46 percent reduction in youth smoking. Over the next five years, the cumulative number of young people kept from smoking would be up to 2.8 million.
- The direct result of these policies over the next five years is that as many as 1 million of today's young people will be spared from premature deaths resulting from smoking-related diseases.

**URGED CONGRESS TO ACT NOW TO PASS HIS TARGETED PROPOSAL TO GIVE AMERICANS AGES 55 TO 65 ACCESS TO HEALTH INSURANCE.**

- **Americans ages 55 to 65 are one of the most difficult to insure populations:** they have less access to and a greater risk of losing employer-based health insurance; and they are twice as likely to have health problems.
- **The President has a carefully-targeted, fiscally-responsible proposal that would allow hundreds of thousands of vulnerable Americans to gain access to more affordable health care coverage by:** allowing Americans ages 62 to 65 to buy into the Medicare program; allowing displaced workers age 55 and over a similar buy-in option; and allowing Americans 55 and over who have lost their retiree health benefits to buy into their former employers' health plan.
- **The Congressional Budget Office just confirmed that this proposal will help hundreds of thousands of Americans without burdening the Medicare Trust Fund or the budget.**

**PRESIDENT CLINTON RELEASES WHITE HOUSE REPORT REVEALING THAT  
STATES HAVE ENACTED EACH OF THE PATIENT PROTECTIONS HE HAS ENDORSED  
-- INCLUDING MANY STATES WITH REPUBLICAN GOVERNORS  
March 9, 1998**

- **Thirty-four states -- including 21 states with Republican Governors -- have enacted information disclosure provisions.** At least 34 states have enacted provisions that require health plans to disclose information to help consumers make informed decisions about their health plans, health professionals, and health facilities.
- **Ten states have enacted provider network adequacy provisions -- including four states with Republican Governors.** At least ten states have enacted provisions to help ensure that health plan networks provide access to sufficient numbers and types of providers without unreasonable delay.
- **Thirty states -- including 15 states with Republican Governors -- have enacted protections to give direct access to certain specialists, including qualified specialists for women's health services.** At least 30 states have enacted provisions to give patients greater access to needed specialists, including giving women greater access to qualified specialists for women's health services.
- **Seventeen states have enacted continuity of care protections -- including ten states with Republican Governors.** At least 17 states have enacted protections to help ensure continuity of care for enrollees who are involuntarily forced to change providers.
- **Twenty-eight states have enacted protections to assure access to emergency room services -- including 16 states with Republican Governors.** At least 28 states have enacted legislation to help ensure that patients have access to emergency room services when and where the need arises. These provisions require health plans to pay for the initial screening examination and stabilization care -- regardless of whether the emergency room is in the plan's network -- when an enrolled person needs emergency services. Twenty of these states require the use of a prudent layperson standard to determine whether an emergency exists, to ensure that any person who reasonably thought they were having an emergency is covered by their health plan.
- **Forty-one states have enacted anti-gag clauses -- including 26 states with Republican Governors.** At least 41 states have enacted "anti-gag" clauses prohibiting health plans from using contract clauses that restrict providers' communications with their patients.
- **Eighteen states have enacted provisions that require health plans to disclose financial incentives -- including 12 states with Republican Governors.** At least 18 states have passed protections requiring health plans to disclose any financial arrangements with their physicians.
- **Nineteen states have enacted provisions to protect confidentiality of health information -- including ten states with Republican Governors.** At least 19 states have enacted some type of provision to help protect the confidentiality of health information for health plan enrollees

- **Eight states have enacted anti-discrimination provisions, including six states with Republican Governors.**
- **Twelve states now require that health plan enrollees have access to an external appeal process, including eight states with a Republican Governor.** At least 12 states now require that health plan enrollees have access to specially designated and independent external appeals entities, which are funded and empowered to hear and act upon such appeals.

Last November the President endorsed the “Consumer Bill of Rights” recommended by his Advisory Commission on Quality and Consumer Protection. These rights included: information disclosure; a choice of providers including provider network adequacy provisions, access to specialists (including qualified specialists for women’s health services), and transitional care provisions; access to emergency room services; participation in treatment decisions including prohibiting anti-gag clauses and requiring disclosure of financial incentives; protection of the confidentiality of health information; anti-discrimination provisions; and access to an appeals process.

**PRESIDENT CLINTON:  
PATIENTS' BILL OF RIGHTS**

February 20, 1998

*"The Patients' Bill of Rights is the next important step we must take to ensure that every American family has the quality health care it needs to thrive. This is especially important as our health care system changes to meet the needs of an emerging new economy. I believe that we have an obligation to give Americans the tools to meet these challenges -- and to make sure that whether they have traditional care or managed care, all Americans have quality care."*

President Bill Clinton  
February 20, 1998

Today, the President releases an Executive Memorandum directing all Federal health plans, which serve over 85 million Americans, to come into substantial compliance with the President's Quality Commission's Consumer Bill of Rights. The Executive Memorandum follows a report that the Vice President forwarded to the President on the current status of compliance with the Consumer Bill of Rights. The President also reissues his challenge to Congress to pass legislation that assures that these patients' bill of rights will become the law of the land for all Americans.

**PATIENTS' BILL OF RIGHTS.** The nation's health care system is undergoing significant change. Many Americans worry that these changes may reduce their health care options and lower the standards of care. A Patients' Bill of Rights should give Americans much needed protections, including:

- **Guaranteed Access To Needed Health Care Providers** to ensure that patients are provided appropriate high quality care;
- **Access to Emergency Services** when and where the need arises;
- **Confidentiality of Medical Records** to ensure that individually identifiable medical information is not disseminated and to provide consumers the right to access and amend their own medical records;
- **Grievance and Appeals Processes** for consumers to resolve their differences with their health plans and health care providers.

**AMERICA'S FEDERAL HEALTH PROGRAMS ARE LEADERS IN PROVIDING PATIENT PROTECTIONS.** Although citing some shortcomings, the Vice President's report on the compliance status of Federal health programs with the Consumer Bill of Rights concludes that Federal health plans (including Medicare, Medicaid, Indian Health Service, the Federal Employee Health Benefits Program, the Department of Defense Military Health Program, and the Veteran's Health Program) are already largely in compliance. This finding illustrates that implementing consumer protections to help Americans navigate through a changing health care system, can be and has been done without excessive costs or regulations.

**DIRECTING FEDERAL AGENCIES TO ACCOMPLISH EVEN MORE.** Although the Federal government is taking a leading role to assure consumer protections are in place, the Vice President's report concluded it has the authority to do more. The President is issuing an Executive Memorandum to ensure that Federal programs come into substantial compliance with the Consumer Bill of Rights by no later than next year.

**CHALLENGING CONGRESS TO PASS FEDERALLY-ENFORCEABLE PATIENT'S BILL OF RIGHTS THIS YEAR.** The President renews his call to Congress to pass a patients bill of rights this year. The Vice President's report underscores that most consumer protections cannot be assured to patients in private health plans without additional legislation. Without this legislation, the millions of Americans in private health plans will never be assured these protections.