

comes to peace agreements that disintegrate and erode, it is our relationship and response to these agreements, the fact that we have formally taken part as signatories to these agreements, that compels us and authorizes Presidents to step into war. Even under those circumstances, constitutional authority to declare war has been questionable.

But this case is different altogether. It is different because we are talking now about a sovereign nation, a nation that did not act as an aggressor to a neighbor or some other jurisdiction around the world. We are talking about a conflict that does not involve an attack upon any of our NATO partners. NATO, being a defensive organization, its charter does not envision attacking sovereign countries as it has now been used to do.

So this profound question that needs to be answered, and I guess at this point Congress has asserted its authority, has denied the President a declaration of war to carry out his war in Kosovo.

The President now continues to carry out an act of war without the consent of Congress. And the only remedy remaining for us now is to test this question of the War Powers Act before our great courts. As a country, I think we need to certainly be concerned about the conflict that is the heart of the debate. But, also, we need to be very, very concerned about the status of our Constitution, that the War Powers Act maintains its integrity clear through to today's point in time, and to ensure the American people that this Congress will find the courage, as it has today, to stand for and assert its constitutional authority. And that is what we did.

I guess some Members in Congress just an hour ago were here on the floor lamenting the fact that we stood up for our constitutional responsibility and the fact that we honored that constitutional responsibility, in their opinion, is the cause of some kind of personal discomfort for them. I am sorry about that. But we swore an oath to that Constitution to stand up for it when called upon.

We were called upon to do it today. Some of us did. Others did not. And this is a matter to be sorted out now by the American people at the next election.

Mr. BRADY of Texas. I think, too, that as the gentleman from Colorado has pointed out our constitutional duty, I always try to support the President, any President, in military action and we have in every case in Congress. But my duty and the duty of my colleague is not to the President, it is to the Constitution. And I think we have a higher moral duty to our young American soldiers.

And they are young. I mean, they are young, bright, wonderful people who are serving our country and think that if they fight and risk their lives it will be for freedom, not to allow Milosevic

to live, not to allow a Serbian army to go untouched, not to flinch when sent into war because of their constraint on them as individuals.

Our duty today was not to cover the President for a terrible decision. That would have been disloyal, in my opinion. Our duty was to our American soldiers who are over there right now and the belief that we ought not sacrifice their lives when we do not have the courage, when our commanders in chief of this whole operation politically do not have the courage that we are asking of them.

No one should ever ask more of their troops than they ask of themselves. And in this case, we ask too much.

Mr. SCHAFFER. Stepping forward to a conflict such as this requires preparation, requires considerable forethought, and to allow to prepare our armed services.

And again, over the last 7 years in Congress, this has been a point of clear debate between the Congress and the presidency. This President has cut the funding of our armed services year after year after year, to the point where our soldiers, sailors, and airmen express legitimate concern for the resources for the equipment, for the backup, and for the training that they receive.

And there may be times when they need to be deployed. This is not one of them. We are not prepared to win and win decisively. And winning, as we have pointed out earlier, is a nebulous term in and of itself with respect to this engagement.

Mr. Speaker, I appreciate the chance to be recognized for this special order hour. I am grateful to the gentleman from Texas (Mr. BRADY) for sharing in this special order hour.

I want to once again urge all of our constituents, people throughout the country, to write their Congressman, call their Congressman, let us know what is on their minds, help us lead the country. The voice of the people is the most powerful force in our political system, and all American citizens should be compelled to exercise it tonight.

□ 2215

MANAGED CARE REFORM

The SPEAKER pro tempore (Mr. WAMP). Under the Speaker's announced policy of January 6, 1999, the gentleman from New Jersey (Mr. PALLONE) is recognized for 60 minutes as the designee of the minority leader.

Mr. PALLONE. Mr. Speaker, it is not my intention to use the entire hour this evening. I wanted to spend some time, though, talking about HMO reform, or managed care reform.

One of the things that I want to really stress is that there is a major difference between the approach that the Democrats have been taking on the issue of HMO reform versus the approach of the Republican leadership. A

lot of times I worry that Americans and our constituents think that what we are proposing on both sides of the aisle is essentially the same and that everyone is trying to do something to protect patients' rights during this managed care reform debate. But I just think it is important to stress the differences. I really feel very strongly that the Patients' Bill of Rights, the Democratic bill that has been put forward and is cosponsored by almost every Member on the Democratic side, really protects patients' rights, whereas the Republican leadership bills that have been put forward both in this Congress and in the previous Congress really do not do an adequate job of protecting patients and too often look towards the interests of the insurance industry instead.

Mr. Speaker, in the last session of Congress, in the last 2 years, in 1997 and 1998, there was some debate on the issue of HMO reform, but the issue was essentially left unfinished in the 105th Congress, in the last Congress. On the House side, the Democrats' Patients' Bill of Rights was defeated by just five votes when it came to the floor. It was considered on the floor as a substitute to the Republican leadership's managed care bill which did pass and which in my opinion was really not a good piece of legislation and did not do anything significant to protect patients. In fact, the Republican leadership in the House has reintroduced a bill in this session of Congress that is virtually identical to what it moved last year. On the Senate side, the Senate Republicans in the so-called HELP Committee approved a managed care bill which really in my opinion is a sham reform bill and does not allow patients to sue the insurance companies but does allow the insurance companies and not the doctors and patients to define what is medically necessary, what types of procedures, what length of stay, what kind of operations would be performed and would be acceptable under an individual insurance policy.

I just wanted to, if I could, take a little time this evening to talk about why this Republican bill that passed the Senate, the Republican leadership bill in the Senate, really does not do an adequate job of trying to protect patients' rights. If you look at the bill that passed the Senate or that came out of committee, I should say, in the Senate this year, it leaves out more than 100 million Americans, two-thirds of those with private health insurance. It fails to grant key protections needed by children, women, persons with disabilities and others with chronic conditions or special health care needs. And it allows medical decisions to continue to be made by insurance company executives instead of by health care professionals and patients.

Mr. Speaker, the main difference that I have tried to point out between the Democrats' Patients' Bill of Rights and the Republican leadership bills that have been sponsored in the House

or in the Senate really come down to two points, and, that is, that the Republican bills really leave it up to the insurance companies to decide what kind of treatment you are going to get, and with regard to enforcement they do not have adequate enforcement because if you want to appeal a decision about your treatment that you felt that you should have a particular operation, you should be able to stay an extra day or so in the hospital, if you try that appeal, there is really no process whereby you can appeal the decision of the insurance company and be successful; and certainly if you suffer damages, you cannot sue for those damages under the Republican bill.

What the Democrats tried to do on the Senate side in committee, in the HELP Committee when this Republican HMO bill came up, they tried a number of times through amendments to improve the Republican bill. All those Democratic amendments were essentially defeated, but I wanted to give you a little idea, if I could, about the kinds of things that the Democrats were trying to do to improve what was essentially a bad bill that did not provide adequate protections for patients in HMOs.

The committee Republicans in the Senate rejected on a 10-8 party line vote an amendment by Senator TED KENNEDY to extend the scope of the bill to all privately insured Americans. As I said, the Republican bill leaves more than 100 million people unprotected because most of its patient protections are narrowly applied to only one type of insurance and that is self-funded employer plans. The committee Republicans also rejected on the same 10-8 party line vote Senator KENNEDY's amendment on external appeals. Again, as I mentioned before, the Republican bill does not create a truly independent external review of plan decisions. So if you feel that you are not getting covered adequately and you try to appeal, there really is no effective external appeal. Under the committee bill, the Republican bill, the so-called external review is controlled by the HMOs and contains loopholes to allow HMOs to delay or prevent patients from appealing a bad medical decision by an HMO bureaucrat. Many HMO decisions could not even be appealed under the Republican bill.

Just to give you another idea of some of the examples, I talked about the issue of medical necessity and how it is defined. The committee Republicans in the Senate rejected, again on a party line vote, 10-8, an amendment offered by Senator KENNEDY to define the term "medical necessity" and to prohibit HMOs from arbitrarily interfering with medical decisions. Again just to give you an example of how this operates, this amendment would have prevented insurers from arbitrarily interfering with the decisions of the treating physician on issues relating to the manner, in other words, the length of stay in the hospital, or the setting, inpatient

versus outpatient care. It would have stopped HMOs from overruling doctors and going against accepted and best practices of medicine. The committee Republican-passed bill does nothing to protect patients when an insurance company bureaucrat tells them they must have a medical procedure on an outpatient basis or be discharged from the hospital prematurely. The Republican bill allows HMOs to continue to define what is medically necessary, giving them the ability to deny promised benefits.

Another example, the issue of emergency room care. Many of my constituents have complained to me that their HMO policy does not allow them to go to the emergency room when they think it is necessary. Or they have to go to a different hospital that is pretty far away if they want to go to an emergency room. They cannot go to the hospital near where they live or where they work. Well, Senator MURRAY tried to put in an amendment that again was rejected on a party line vote, 10-8, to strengthen coverage for emergency care. Under the Republican bill, it is not clear whether a true prudent layperson standard applies to all of the plans covered. Prudent layperson says that if the average prudent person would think it was necessary to go to the emergency room, then you can go to whatever emergency room is close by and readily available. Well, many insurance policies, many HMOs do not allow that. And so the Democrats are saying, we want to have that prudent layperson standard put into the HMO reform bill. Instead, what happened is that in this case, again the ability to apply that prudent layperson standard was rejected by the committee and what that means is that under the Republican bill there still is no guarantee that you can go to the closest emergency room or that even if you go to the emergency room and later the HMO decides, well, you really should not have gone because it was not really an emergency, that they can just deny coverage and say, "You shouldn't have gone to the emergency room; therefore, we're not going to pay for the emergency room care."

Another example that I think is important is with regard to specialists. Many of my constituents complain that their HMO reform bill does not provide them with access to specialists that they may need in a given circumstance. Senators HARKIN and REED had an amendment to this Republican bill that again was rejected along party lines that would ensure that patients have access to needed specialists. Under the Republican bill, patients could be charged more for out-of-network specialty care even if the plan is at fault for not having access to appropriate specialists within the plan. So if you decide that you want to go to a doctor, I will give you an example, perhaps you want to go see a pediatrician but as many people know today, that for children, there are pediatric spe-

cialists for different areas of pediatrics. Under the Republican bill if there is nobody that has that specialty and you decide that you want to see that kind of pediatrician for your child, then you can go out of the network but you have to pay for it. Again what we were saying with this Democratic amendment is that access to specialty care should be provided outside the HMO if there is no one within the HMO that has that specialty and is part of the network, but again that was an amendment that was rejected.

I will only mention one more effort on the Democrats' part to try to improve this bad bill, if you will, and there are many others but I will only mention one other one, and that was Senator KENNEDY's amendment, again rejected on a 10-8 party line vote with regard to liability. The Republican bill fails to hold HMOs accountable when their actions result in injury or death. I mentioned this before. You cannot sue. The Republican plan would protect most HMOs from liability even when someone becomes disabled or is killed. Senator KENNEDY's amendment in the Democrats' Patients' Bill of Rights would allow 123 million patients who receive coverage through private employers to hold their HMOs and health insurance plans accountable under State laws for their abuses. This is one of the loopholes, if you will, in the current law, and that is that if you are not covered by certain State laws and your health insurance comes from your private employer, oftentimes you cannot sue. We were trying to correct that as well.

Mr. Speaker, if I could just say that basically what I am trying to point out tonight is that there are major differences here and that when we look at what is happening on the issue of HMO or managed care reform, it is obviously important that we have an opportunity in this session of Congress to get a vote on this issue. One of the criticisms that I have of the Republican leadership is that frankly it is now April, almost May, and they have not even allowed us to have any kind of a vote, there has not been any movement in subcommittee, in the Committee on Commerce that I am a member of or in the full committee to bring any kind of HMO or managed care reform to the floor. So we need to at least start the movement. But when that movement starts and when we do have an opportunity to vote on HMO reform, we have to understand that there is a major difference between the Patients' Bill of Rights which is being brought forth by the Democrats and the Republican leadership proposal.

Now, you do not have to take my word for it. One of the things that I think is important is that we look at some of the commentators and what they are saying about the differences between the Democrats and the Republicans on this issue. But I wanted to read, if I could, all or some parts of an editorial that appeared in the New

York Times on Saturday, April 10, earlier this month, that talked about the differences between the Democrats and the Republicans on the issue of patient rights:

“Just about everyone on Capitol Hill professes interest in producing legislation that protects patients from unfair health insurance practices. But the prospect of actually passing meaningful protections as opposed to talking about it is uncertain. President Clinton tried to whip up support for Democratic proposals but the Republicans are balking at Democratic plans as too burdensome on the managed care industry. Yet it is the Democratic proposals that more fully reflect the recommendations of a presidential advisory commission to improve health plan quality. The Republican Senate bill, S. 326, sponsored by Senator JEFFORDS of Vermont, is too limited to accomplish that purpose. The bill, which was approved by the Senate HELP, or Health, Education, Labor and Pensions Committee on a straight party line vote of 10-8, contains some consumer protections but it is unacceptable because most of the provisions would apply only to 48 million individuals covered by plans in which large employers act as their own insurers, leaving 110 million Americans in other plans unprotected. The Republican bill would grant appeal rights to an additional 75 million privately insured individuals but those rights would be quite restrictive. Appeals to an external reviewer would be allowed only when an insurer refused to pay for a procedure on the grounds that it was not medically necessary or was experimental. Critics say this would give health plans power to limit appeals by simply asserting that a denial is not based on medical necessity. It would exclude appeals where a plan unilaterally decided that the benefit was not covered under the contract, even if medical judgments were involved in that contract interpretation. The Republican bill does not adequately ensure access to specialty care by allowing a patient to see an out-of-network specialist if the plan has an insufficient number of specialists available. Both the Senate Democratic proposal, which has White House support, and a bipartisan bill sponsored by Senators JOHN CHAFEE, JOSEPH LIEBERMAN and others would be substantially stronger in allowing external review of coverage disputes and defining medical necessity and in giving enrollees greater rights to take health plans to court. The insurance lobby has already embarked on a media blitz to defeat any new regulations as too costly but consumer protections under the Democratic plan would increase health plan costs by only 2.8 percent, according to Congressional Budget Office estimates made last year.

□ 2230

“Health plans should be made to deliver what they promise their enrollees and held accountable when they fail.”

Mr. Speaker, I think that New York Times editorial really sums up what I am trying to say tonight which is the fact of the matter is that if the Patients' Bill of Rights, the Democratic Patients' Bill of Rights, would be substantially stronger in almost every aspect of managed care reform over the Republican proposal.

Now I just wanted to briefly mention again the important areas where the Patients' Bill of Rights, a Democratic bill of rights, really provides for a very good protection for patients.

Once again and most importantly, the Democratic Patients' Bill of Rights allows doctors and patients rather than insurance company bureaucrats to make medical decisions using the principles of good medicine.

In addition, it would first guarantee access to needed health care specialists. The Democratic bill provides access to emergency room services when and where the need arises. The Democratic bill provides continuity of care protections to assure patient care if a patient's health care provider is dropped. The Democrats' Patients' Bill of Rights gives access to a timely, internal and independent external appeals process, and the Democratic Patients' Bill of Rights assures that doctors and patients can openly discuss treatment options and not be gagged because the insurance company says that you cannot talk about something that is not covered.

The Patients' Bill of Rights would also assure that women have direct access to OB/GYN, and finally and almost as important really as the medical necessity issue is that the Democrats Patients' Bill of Rights provides an enforcement mechanism that ensures recourse for patients who have been maimed or die as a result of health plan actions.

Mr. Speaker, I sound very partisan this evening, and I do not mean to suggest that there are not Republican Members on the other side of the aisle that are supportive of the Patients' Bill of Rights or the types of protections that I think that are needed in a comprehensive HMO reform bill. I know that there are Members on the other side that would like to see these types of protections provided under the law. But the bottom line is that the Republican leadership, which is in charge of the House, keeps producing legislation or keeps proposing legislation both in the House and in the Senate that does not adequately protect patients, and I think it is very important that we not only move ahead in this session of Congress and quickly on HMO reform, but that we move ahead with an HMO reform that adequately protects patients' rights, that is comprehensive and addresses what I consider the major issue that my constituents and most Americans seem to be concerned about at this time.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. YOUNG of Florida (at the request of Mr. ARMEY) for today from 1:30 until 3:30 on account of a family emergency.

Mr. TAUZIN (at the request of Mr. ARMEY) for today and on April 29 on account of family illness.

SPECIAL ORDERS GRANTED

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

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

Mr. FILNER, for 5 minutes, today.

Ms. NORTON, for 5 minutes, today.

Mr. FALEOMAVAEGA, for 5 minutes, today.

Ms. WOOLSEY, for 5 minutes, today.

Ms. NAPOLITANO, for 5 minutes, today.

Mr. BISHOP, for 5 minutes, today.

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

Mr. REGULA, for 5 minutes, today.

Ms. ROS-LEHTINEN, for 5 minutes each day, today and on April 29.

Mr. METCALF, for 5 minutes, today.

Mr. BEREUTER, for 5 minutes, today.

Mr. PAUL, for 5 minutes, today.

Mr. WHITFIELD, for 5 minutes, today.

Mr. JONES of North Carolina, for 5 minutes, today.

Mr. SOUDER, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. OBEY, for 5 minutes, today.

BILL PRESENTED TO THE PRESIDENT

Mr. THOMAS, from the Committee on House Administration, reported that that committee did on this day present to the President, for his approval, a bill of the House of the following title:

H.R. 800. To provide for education flexibility partnerships.

ADJOURNMENT

Mr. PALLONE. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 33 minutes p.m.), the House adjourned until tomorrow, April 29, 1999, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

1761. A letter from the Administrator, Commodity Credit Corporation, Department