First of all, it ignores the fact that State law applies, and the vast majority of States have limits on recoveries.

Second, the evidence shows that in California and Texas—the two States that use legislation similar to ours—virtually no cases have ever gone to court. The cases get resolved in the appeals process. It is the way our legislation is designed. Cases go to court only as a matter of absolute last resort.

Finally, he suggests there will be forum shopping from State to State, where a patient will choose to go to another State to file a case because somehow that is more beneficial to them. Well, unfortunately, that has nothing to do with the real world. Patients will be required to file their case in the State where they live, which is exactly where you would expect them to file. It is where they got their care, where they were hurt by the HMO. That is where their case would be filed.

So what we have done, ultimately, is set up a system whereby HMOs are treated the same as everybody else, as all the rest of us. That is its purpose. We want to take away the privileged status that HMOs have enjoyed for so long, while protecting employers, giving patients substantive rights, access to specialists, access to emergency rooms, access to clinical trials, and having those rights be enforceable. It is so important that these rights we create in this bill have teeth in them, and the only way they have teeth in them is if the force of law is behind them and those rights are enforceable.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, at 1 p.m., the Senate recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CLELAND).

The PRESIDING OFFICER. The Senator from Nevada.

STATUS OF SENATOR BRYAN

Mr. REID. Mr. President, while we are talking about patients and a Patients' Bill of Rights, I want to report to my colleagues on Senator Bryan, who has been quite ill.

I talked with Senator Bryan last Friday. He was in St. Mary's Hospital in Reno when I spoke to him. He had for a couple of days a bad sore throat, for lack of a better description. Friday morning, he was in Reno and his throat was really sore. He has a son in Reno who is a cardiologist. He went to the emergency room. He was admitted to the hospital.

They did a CT scan and found an abscess in his throat area. Friday and Saturday they administered antibiotics, hoping he would get better soon. He got worse, and Sunday morning they operated. He has been on a ventilator since then in intensive care.

I spoke with the nurses taking care of him—by the way, he was back here last week with some junior high school students—and they said he was doing just fine. She had told him I was calling, and he gave the thumbs up. They expect him to be off the ventilator today.

They do not know the cause of the infection. They are still working on that. It is an unusual thing. I have had a couple people ask me about Senator Bryan today. He is doing just fine.

BIPARTISAN PATIENT PROTECTION ACT—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. I thank the Chair.

Before I get into the substance of my remarks on the Patients' Bill of Rights, I wish to salute my colleagues, the Senator from Massachusetts, the Senator from North Carolina, and the Senator from Arizona, for working so long and hard on a bipartisan compromise provision, one that I am proud to support.

Mr. President, we hear a lot about this Patients' Bill of Rights, and there are many discussions about legal issues, medical issues, et cetera, but what hits home with most of us is when we travel our States and we hear stories about what has happened under present law.

When there is a conflict, which constantly arises in these days of HMOs, between what a doctor believes is best for the patient and what the insurer believes is best for the health plan, who makes the final call? That is what this bill is all about. It is about decisionmaking, and not decisionmaking on a Saturday afternoon whether you go to the beach or go to the ball park. It is about decisionmaking when all of us are at our most strained, when a loved one is in a health care problem or with a health care crisis. That is when the decisionmaking really matters.

When a child becomes sick or a parent becomes ill, when a spouse discovers a lump on her breast, and a judgment call needs to be made about care, who has the deciding vote? Is it your doctor or is it an actuary somewhere hundreds of miles away who has not had one jot of medical training? That is what this boils down to.

Those six of us supporting the McCain-Edwards-Kennedy bill believe the decision should be made by the doctor; the decision should be made by someone who is trained to make medical decisions, not a managed care bureaucrat whose primary interests—do not blame these individuals, but their primary interest, what they are instructed to do, is look at cost, not health. Health may be in the equation but cost comes first. That is why that actuary is getting paid, whereas for the doctor who has taken the Hippocratic oath, health care comes first.

We want to pass this Patients' Bill of Rights to restore the pendulum. I am not against HMOs. They were brought in with a purpose. Medical costs were climbing out of control. Something had to be brought in to help. But the pendulum has clearly swung too far, away from the decision based on health made by the doctor in the hospital, and the nurse, towards a decision made on cost, made by an actuary, an insurance company, an HMO.

So we believe we must pass a Patients' Bill of Rights to provide real protection for patients, one that allows for the doctor to decide; one that allows the insurance company, the actuaries' decision to be challenged on a health-related basis. We must end the practice of health plans putting the bottom line before the Hippocratic oath. We must restore balance when every one of us is faced with the awful choice of what medical decision to make for ourselves or for a loved one.

As this debate gets underway, I hope to bring up the cases of some families I come across as I travel the State of New York. These are not unique cases. These are not isolated cases. They happen, unfortunately, every day.

Let me talk about Tracey Shea, from Long Island, in my State. Tracey complained to her doctor about chronic headaches. The tests discovered a tumor in her brain. It was unclear what that tumor was and her doctors ordered further tests. But the HMO refused to pay for them, arguing that the tumor was not malignant and further tests were unnecessary. Four months later, Tracey died. She was 28. She was engaged to be married.

She is gone and her parents and her fiance ask every day: Why wasn't her doctor allowed to give Tracey what she needed? Even if it was 50–50, or 25–75, why didn't she get what she wanted?

For those who think McCain-Edwards-Kennedy is some kind of abstract debate, the difference this bill, this proposal would have made to Tracey Shea, under McCain-Edwards-Kennedy, is Tracey would have had a hearing and an answer in a few days. Under the Frist-Breaux-Jeffords proposal, Tracey may not have lived long enough to get an answer.

A case in Binghamton: Rene Muldoon-Murray's little boy Logan was born hydrocephalic, a condition that many of us have seen. It is when the spinal fluid builds up and puts pressure on the brain. It is terribly painful. The Muldoon-Murray's health plan contained no pediatric neurosurgeons, the very people who should have looked at little Logan. The one adult neurosurgeon, one who did not have experience with children—the brain of a child is quite different than the brain of an adult—the one adult neurosurgeon available in the plan could only work under supervision because his license was suspended.

Imagine, the only person you can go to when your child is in agony, the only one the HMO will let you go to, is someone whose license was suspended. That is the only one the HMO in Binghamton provided as 3-year-old Logan was in pain, pain, pain.

What did Miss Muldoon-Murray do? She was not a wealthy woman but she refused treatment. She wasn't going to let her son be operated on by someone whose license was suspended. When a medical crisis required an emergency room, a lifesaving spinal surgery, the place they found was New Jersey. It cost them $27,000. The HMO refused to pay the bill.

Again, the huge difference between the two pieces of legislation: Under McCain-Edwards-Kennedy, Rene would have had the right to take little Logan to a pediatric neurosurgeon, even though her plan did not include one, and the plan would be required to cover the treatment just as if it had been administered by a plan doctor.

Under Frist-Breaux-Jeffords, the health plan would decide whether or not to cover an out-of-plan specialist and Rene would have most likely ended up in the same place, in an emergency room hundreds of miles away, stuck with a $27,000 bill.

Again, the difference between these two bills is not simply paper and pencil. It is not some abstract idea, argued by lawyers. It is real. People would be alive, people would be not suffering if this bill had been in effect.

How about in Buffalo, at the other end of our State: Bailey Stanek. Bailey suffers from apnea. This is a sometimes fatal condition in which a little one stops breathing while sleeping. The HMO refused to pay for a heart monitor which would warn Bailey's parents if his breathing ceased. If you have a child with apnea, it is a heart monitor that can save you. His life depended on it. Who would not do this for their little 8-week-old boy? The Staneks, again not wealthy people, now pay $400 a month out of pocket for a heart monitor.

These cases go on and on. If McCain-Edwards-Kennedy were around, the Staneks could appeal the decision. They could go to an independent, objective review board—not someone sponsored by the HMO who is told by the HMO: if you approve bills of more than a certain amount all told, you are out. This would be an independent, objective review board. Then we would know if little Bailey needed this heart monitor, which most physicians think he would, and they would get a decision.

Under the Frist-Breaux-Jeffords plan, this would not have happened. Why? Listen to this, for everyone concerned about this issue. Who chooses the review board under the Frist-Breaux-Jeffords plan? The HMO. And the board cannot make independent decisions about medical necessity. So the choice is very clear.

These are just three cases in my State. Look at the case of little Logan Muldoon-Murray from Binghamton; the case of the late Tracey Shea, from Long Island; the case of little Bailey Stanek in Buffalo. In all three cases, because there was not a fair review, because we do not have protections so the doctors could make the decisions—not actuaries, not insurance companies—we have had untold suffering. Multiply that suffering, not just by the individual child or the young woman in Tracey's case, who suffered, but their parents and brothers and sisters, their friends and the community.

Mr. DORGAN. I wonder if my friend will yield.

Mr. SCHUMER. I am happy to yield.

Mr. DORGAN. The Senator from New York probably remembers the hearing we held about a year ago, when a constituent from New York came to the hearing. Her name was Mary Lewandowski. Mary is the mother of the late Donna Marie McIlwaine who died when she was only 22 years old. Mary came to tell us the story about her daughter and her experience with the HMO.

I will not soon forget Mary's testimony. Mary is not getting paid to come to Washington but she desperately wants the Congress to pass this patient protection legislation. Mary told us that her daughter passed away on February 8, 1997. Donna had been to the doctor four times in 5 days for an upper-respiratory infection. The doctors couldn't quite figure out what was happening, but her symptoms kept worsening.

On the evening of February 8, she was in a tremendous amount of pain, her mother said. She called the hospital. The hospital said: No, you can't bring your daughter to the hospital unless it is absolutely life or death, or unless you have a doctor's referral. She tried in vain to reach Donna's doctor, and an hour later her daughter, Donna, collapsed into a coma and died.

After she died, as my colleague from New York will remember, her mother told us that she discovered that Donna had a blood clot the size of a football in her lung.

Donna's doctor later told her mother that a $750 lung scan would likely have identified that blood clot and saved her daughter's life. But the lung scan was not ordered because it could not be justified by the HMO.

These are the kinds of problems that are raised related to the development of for-profit medicine. Too often the practice of managed care medicine becomes an enterprise of looking at a patient in terms of profit, rather than evaluating what doctors should provide in terms of needed medical services to patients.

The Patients' Bill of Rights, or Patient Protection Act, is a piece of legislation that says you ought not have to fight your illness or your disease and have to fight the insurance company as well. You ought not have to lose your life because someone said it wasn't worth $750 to do a lung scan on a 22-year-old girl who had a blood clot the size of a football in her lung. That ought not happen to people.

My colleague from Nevada, Senator REID, and I held a hearing in Las Vegas, NV, for one day. I will never forget that hearing. A mother named Susan gave riveting testimony. She stood and held up a picture of her son, Christopher Thomas for us to see. Christopher Thomas died on his 16th birthday of leukemia. His parents' health plan denied him the investigational chemotherapy drug he needed. At the end of her testimony Susan held up a large colored picture of her handsome 16-year-old son. She was crying. She said Christopher Thomas had looked up at her from his bed as he lay dying of cancer, and said, ''Mom, I don't understand how they can do this to a kid.''

Do what? This young man never got the treatment he needed to help fight the cancer that he had. This young boy and his family were put in a circumstance of having to fight cancer and fight the managed care organization at the same time. That was not fair.

That is what our patient protection legislation is about. This legislation is about empowering patients who expect to get the health care they are promised.

When I heard my colleague from New York speaking, I simply wanted to come to the floor and say that we have had plenty of hearings. Discussion has gone on for some while on the issue of a Patients' Protection Act, or Patients' Bill of Rights.

I will never forget the testimony offered at the hearing during which Mary, the mother from New York came and talked about her daughter Donna, and the hearing in Las Vegas when Susan came and talked about her son, Christopher Thomas Roe. I could stand here and cite examples from testimony after testimony of patients not getting the care they needed. I could discuss endless tragic stories and untimely deaths we have been told about. The sheer numbers of testimonies that reveal needless suffering make me so angry because none of it should have had to happen. People should have gotten the health care they deserved. They should have been able to get to an emergency room when they had an emergency, or been able to get the treatment they needed when they were suffering from cancer and trying to fight it. Yet in case after case, we discover that someone made a bad decision, and no one was held accountable for that decision. The patient wasn't given the medical treatment they deserved.

Let me quickly say, if I might, to my colleague, that there are some wonderful organizations around this country—yes, managed care organizations, some insurance companies, and health care organizations—that do great work. God bless them every day. But there are some who look at patients as profit centers and decide against providing treatment that a patient thinks they are going to get. Sometimes it is too late when they discover the consequence of that. It was too late for Donna and for Christopher.

We are trying, with a piece of legislation, to say it ought not be too late for any more Americans at any other time to not get the medical care they need. Let us pass this legislation, the Patients' Protection Act, so that people in this country can rely on getting the care that they deserve.

When I heard the Senator from New York, Senator SCHUMER speak, I wanted to speak and to mention Donna because I know he knows her mother, Mary Lewandowski. I know that all of us have the same passion to want to do the right thing. We can do this. This will take some time. There will be people coming to the floor saying they don't want to do it. They will have objections to our Patients' Bill of Rights.

Mark Twain was once asked if he would be involved in a debate. He replied: Yes; of course, as long as I can be on the opposing side.

They said: We never told you about the subject matter.

Mark Twain said: It doesn't matter. It doesn't take any preparation at all to take the opposing side and to argue it effectively.

We will have some people in Congress say we should not pass this patients' protection legislation. They are naysayers.

We know in our hearts that this is important legislation for the American people. We must do this now.

Mr. SCHUMER. Mr. President, I thank my colleague from North Dakota. Along with the story I told about three New Yorkers, he added Mary Lewandowski and her daughter, Donna.

I want to add something. Mary has been down here three or four times. Each time she comes into my office with her husband. They are not wealthy people. They are humble people. A trip from Rochester to Washington is not easy for them.

But the memory of Donna and what happened to her burns within them. They come and sit by my desk. They try and I try to talk about when this bill might come up and what is preventing it from coming up. I was happy to let them know that since we took over the majority, Senator DASCHLE decided to make this our highest priority. In fact, I have asked them if they want to come down and watch a little bit of this debate. It will never bring Donna back, but it will make them feel good that future Donnas will not die in vain.

Imagine what they are thinking now—that there is an attempted filibuster to prevent this bill from coming up. This is not legislative gamesmanship. It is not an exaggeration in this case to talk about life and death. Every one of us, as we traverse our States, hear these stories and share the embraces and the tears with the people who have been damaged more irreparably than any of us have. The only thing we can do is bring our passion, our knowledge, our work, and our sweat, blood, and tears to this floor and move this bill.

I was glad to hear our leader say that if we have to, we will stay here every day through the Fourth of July break or through the summer to get this bill finished. All of us have concerns and our families. We want to be with them. We want to be back in our States. But what could be more important than this?

We are so close to the precipice of passing a real bill—the kind of bill that has been put together by our colleagues from Massachusetts, Arizona, and North Carolina. We are right on the edge. How dare we give up. How dare we let ourselves be diverted by extraneous issues and political games.

I thank the Senator from North Dakota as well as so many others. The Senator from North Carolina spent the last year working out this compromise with the Senator from Massachusetts because this is so important.

There used to be a slogan in the 1970s. You don't need a weatherman to know which way the wind blows. Yes, you are right. We will hear a lot of arguments from the other side. But look at every group that is represented here—the Mary Lewandowskis, the Tracy Sheas, and all of the others. They are on our side. They are for this bill.

It is very simple. The only people who seem to be against us are the very people out there who have done these things, not by design but the way the system is set up—done these things that have left the gaping wounds in so many as they have needlessly lost people.

It is bad enough to lose somebody you love, but when you know you did not have to lose them, and somebody made a decision somewhere based on dollars, the hole in your heart never goes away. We have examples such as Mary Lewandowski from Rochester, NY, who has come down here and said: Please, please, please.

I would like to say to Mary—and I think I speak on behalf of the six of us in this Chamber—we are not going to give up. We are going to make this fight until we pass this bill, no matter what it takes.

With that, I thank my colleagues. I know my time has expired. And I thank my friend from Iowa for waiting.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, I wish to make a brief statement. And I ask unanimous consent that the Senator from Iowa be recognized for 15 minutes after my statement, and then, with the patience of my friends from North Carolina and Massachusetts, Senator CLINTON was planning to be here at 3 o'clock to speak for up to 15 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Thank you, Mr. President.

I say to my friend from North Dakota, and everyone within the sound of my voice, we were able to give specific examples of situations that developed in New York and Nevada, and other places, as a result of something very unusual that happened around here; and that is, Senator DORGAN, as chairman of the Democratic Policy Committee, held a series of hearings around the Nation. Why? That isn't the ordinary role of the Democratic Policy Committee. But because we were in the minority, we were unable to hold hearings in the committees that had jurisdiction over the Patients' Bill of Rights. So Senator DORGAN came up with the idea to hold these hearings around the country.

I am sure the hearings around the country went as well as the hearing in the State of Nevada. If that is the case, which I am certain it is, the Senator from North Dakota deserves all kinds of accolades because if he did nothing other than the hearing in Nevada, it said reams about what is going on in this country regarding the delivery of health care.

So I will never, ever forget the hearing we held at the University of Nevada at Las Vegas on the Patients' Bill of Rights. The men and women, the boys and girls, the doctors and nurses who testified there told us why we need this bill.

So I say to my friend from North Dakota, thank you very much for coming up with this unusual procedure so that the American people, and the people of Nevada, know how the rendition of health care is not going properly—not all the good things, but you were able to put, in a very direct perspective, what was going on in the country in regard to health care. So I personally appreciate very much you doing what you did because, but for this, we were stymied from explaining to people what was going on around the country with health care.

Mr. SCHUMER. Will the Senator from Nevada yield?

Mr. REID. I am happy to yield.

Mr. SCHUMER. I just want to add my thanks to my friend from North Dakota. Again, just as was the hearing in Nevada, the hearing in New York was moving, factual, and brought the case to real life as to why we need this proposal. And the Senator did. He went around the country, everywhere, like Paul Revere, letting people know they didn't have to just curse the darkness; that they could actually get something done with legislation that would really matter to people, knowing that this is not just a political game.

I add my voice to thank the Senator from North Dakota, as chair of the Policy Committee, for the great work he has done.

Mr. DORGAN. Mr. President, let me ask the Senator from Nevada to yield for a moment. Then I know the Senator from Iowa has a statement to make. Will the Senator from Nevada yield for a question?

Mr. REID. I am happy to yield.

Mr. DORGAN. I did want to take the time to show the picture of the young 16-year-old man mentioned earlier,

named Christopher Roe. The Senator from Nevada and I both told his mother, Susan, that her testimony would make a difference. This is the picture Susan held up at our hearing in Las Vegas, NV. As she held up this picture of her 16-year-old son, Susan described the difficulties obtaining treatment for Christopher through their managed care organization. Susan's family faced these difficulties in addition to the fight Christopher was trying to win in his battle against cancer. It was a battle this young boy lost, and it was a battle that had become an unfair fight because he had to fight cancer and he and his family had to fight the managed care organization at the same time.

This is the boy who died on his birthday. This is the boy who looked up from his bed and said to his mother: Mom, I don't understand how they can do this to a kid—''this'' meaning, how could they not have allowed him to get all of the treatment that was necessary to give him a shot at beating cancer? He died on his 16th birthday.

To his mother Susan, who also is a tireless fighter, and who believes also that there must be change, we say your son's memory, I hope, will give all of us in this Chamber the incentive and the initiative and the passion to do the right thing and to pass a Patients' Protection Act.

I mentioned yesterday that I, too, have lost a child. And I get so angry—so angry—sometimes when I hear these stories. I didn't lose a child because of a decision by a managed care organization, but I lost a child to a disease. And you never, ever get over it.

When I see mothers such as Susan, holding up a picture of her son, saying, ''this death should not have happened, I should not have lost my son, my son should have had a chance to live, my son should have been given the opportunity to fight this cancer that was invading his body'', then I say we ought to have enough passion and we ought to have enough determination and grit to stay here until we pass a piece of legislation that says no more Christopher Roes in this country will lie in bed dying of cancer having treatment withheld from them; it will never happen again because we will make sure it does not.

Patients in this country have basic protections and rights, and they have the right to the treatment they need at the time they need it. They have the right to see specialists, and they have the right to know all their options for medical treatment, not just the cheapest. They have the right to go to an emergency room when they have an emergency.

There are basic protections and rights that are in this legislation that every American deserves to have. We are going to see that we get Americans protected and their rights ensured by the time we finish the debate on this important legislation.

I thank my colleague from Nevada. And again I say to Susan, and all of the other mothers and fathers who have testified at the hearings I have held, your testimony was not in vain. We have put together a record that demonstrates the need to pass this legislation, and we intend to do just that.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I first say a big thank you to Senator KENNEDY for his many years of leadership on this issue, and also thank Senator EDWARDS for his leadership and sponsorship of this bill, along with Senator MCCAIN.

This is not a new issue in this Chamber. Senator KENNEDY led the battle on this, starting about 5 years ago, if I am not mistaken. We passed it last year, as you know. The House passed a good bill, but the Senate passed a rather bad bill. We went to conference, and we could not get anything out of conference. We used to meet periodically over here in a room, in Senator NICKLES' room, to try to hammer things out, but it became clear that the more we met, the less that was going to get done. So now we have a chance, this year, to catch up on all that and to pass this meaningful legislation.

I believe we are on the verge of a big victory for the American people. They have been waiting too long for this in the waiting rooms—about 5 years—where mothers, fathers, and children have been forced to spend countless hours negotiating the massive bureaucracy of their managed care plans, desperately trying to get the health care services they need and deserve.

Unfortunately, it is clear that the opponents of a Patients' Bill of Rights are not giving up their fight. They may succeed in convincing a few to delay it for a few more days, but they are not going to be successful in stopping the Senate from passing the protections that patients should have had years ago.

Right now, as I understand, we have an objection from the Republican side to proceed to the bill, an objection from the Republican side to not even take the bill up. That is unfortunate, but I think it indicates that we have to be resolute in our determination to answer the call of our patients all over America.

We do not have to look too hard to see that there are too many people being denied appropriate care. We have all heard the horror stories of individuals unable to see their doctor in a timely manner, of patients unable to access the specialists they need. We just heard a number of stories from the Senator from North Dakota and the Senator from New York. I am certain we will hear many more as we are here in this Chamber during this debate.

These are all individuals who have been denied the treatment their doctor has recommended or their health specialist has recommended because the HMO simply doesn't want to pay the bill.

I hope we will all remember, as we hear all these stories coming out, that those are the ones we know about. That is just the tip of the iceberg. Think about the many more Americans who have been denied the care but in their desperation they went elsewhere. Maybe they paid for it out of their pocket; they moved on with their lives. The stories we hear are the tip of the iceberg. There are many more about which we don't know. These are real stories and these are real people. These are real hurts they have.

It is very simple: Your HMO either fulfills its promises to pay for medically necessary services or it doesn't. We have heard enough to know that in too many cases it doesn't. As I said, I didn't have to look very far to find such situations in my own State of Iowa.

Let me relate the story of Eric from Cedar Falls who has had health insurance through his employer. Eric is 28 years old with a wife and two children. He suffered cardiac arrest while helping out at a wrestling clinic. He was rushed to the hospital where he was fortunately resuscitated. But tragically, while in cardiac arrest, Eric's brain was deprived of sufficient oxygen. He fell into a coma and was placed on life support. The neurosurgeon on call recommended that Eric's parents get him into rehabilitation.

It was then that the problems began. Although Eric's policy covered rehabilitation, his insurance company refused to cover his care at a facility that specialized in patients with brain injury. Well, thankfully, Eric's parents were able to find another rehabilitation facility in Iowa. Eric began to improve. His heart pump was removed, his respirator was removed, and his lungs are now working fine. But even with this progress, Eric's family received a call from his insurance company saying they would no longer cover the cost of his rehabilitation because he was not progressing fast enough.

Eric's mother wrote to me and said:

> This is when we found out we had absolutely no recourse. They can deny any treatment and even cause death, and they are not responsible.

In the coming weeks in this Chamber, we have a critical choice before us. We can choose for Eric and his family. We can choose between real or illusionary protections. We can choose between ensuring health care for millions of Americans or perpetuating the burgeoning profit margins of the managed care industry.

I have been working on this issue with my colleagues for over 5 years. Last year I was a conferee trying to work out this bill with the House. It came to naught. We have debated this issue for years. We have negotiated differences of opinion to find common ground. We have worked across party lines to develop the best bill possible. I am delighted to say that amendments I offered during the past debates, such as access to specialists and provider nondiscrimination, have been incorporated

into the underlying bill. S. 1052 truly represents the best of all of our collective ideas and, most importantly, meets the needs of the American people.

Our bill establishes a minimum level of patient protections by which managed care plans must abide. States can, and it is my hope that they will, provide even greater protections, as necessary for individuals in HMOs in their States. As a starting point, we need to pass a strong and substantive Patient Protection Act.

S. 1052, our Patients' Bill of Rights Act, delivers on what Americans want and what they need: Real protection against abuse; direct access to needed specialists, especially pediatrics specialists and OB/GYNs for women; the right for patients to see a doctor not on their HMO list, if the list does not include a provider qualified to treat their illness; access to the closest emergency room; the right for patients with ongoing serious or chronic conditions such as cancer or arthritis or heart disease to see their medical specialist without asking for permission from their HMO or primary care doctor every time they need to see their specialist; the right for patients to continue to see their doctor through a course of treatment or a pregnancy, even if the HMO drops their doctor from its list or their employer changes HMOs.

This is so important. Right now, so many people in managed care plans are seeing a doctor for a course of treatment. It could be a difficult pregnancy. The mother-to-be has every confidence in this specialist. Then her employer changes HMOs and this doctor is not on their approved list, not on their list for HMOs. Many HMOs will just drop that.

What this bill says is: If you started on a course of treatment, you can continue to see the doctor of your choice through that course of treatment even if the HMO has changed or if they have dropped the doctor from their list.

This bill has the right for patients to get the prescription drug their doctor says they need, not an inferior substitute that the HMO chooses because it is cheaper.

CONGRATULATING SENATOR CLELAND

Mr. DASCHLE. Mr. President, will the Senator yield for just a moment?

Mr. HARKIN. I am delighted to yield.

Mr. DASCHLE. I appreciate very much the senior Senator from Iowa yielding. The hour is almost over, and I do want to call attention to an important matter for me personally, for our caucus, and certainly for the Senate.

Our colleague from Georgia, Senator CLELAND, has never had the opportunity to preside before, in large measure because we have not been in the majority during the time he has been in the Senate. I want to call attention to the fact that MAX CLELAND, our colleague from Georgia, has been the Presiding Officer for this last hour. I congratulate him. I wish him well as he pursues his golden gavel of 100 hours of presiding. I compliment him on the way he has presided and thank him very much for his willingness to do so.

The PRESIDING OFFICER. The Chair thanks the majority leader.

Mr. DASCHLE. I thank the Senator for yielding.

Mr. HARKIN. I thank our leader for pointing that out. I, too, congratulate my friend and dear colleague from Georgia for being a good friend of mine and for being a great Senator.

A patient should have the right to appeal an HMO's decision to deny or delay care to an independent entity and to receive a binding and timely decision and, finally, the right to hold HMOs accountable when their decisions to deny or delay care lead to injury or death.

It was my friend from North Carolina, Senator EDWARDS, who said earlier that there are only two groups in the United States that can't be sued—diplomats and HMOs. It is time to end the HMO diplomatic immunity in this country and to allow them to be held accountable.

I know there is a lot of talk about the right to sue. Let's face it: Most of the situations will be resolved through the strong and binding appeals process that is in the bill. But the HMOs should not have special immunity when they harm patients. The reality is that unless HMOs are held accountable when they make inappropriate medical decisions that harm a patient, there is no guarantee that they will change their ways and stop putting profits before patients.

As this debate unfolds, I know that I and others will be coming to the floor to point out the tremendous profit margins some of these managed care industries have. When you think about it, that is hundreds of billions of dollars a year being sucked out of medical care that people need in this country and given to their shareholders or sometimes to a very small group who happen to own the HMO or the managed care system.

I don't mind HMOs making profits—that is fine—but they should not be able to make these unconscionably high profits by disallowing appropriate care for patients. That is what I mean. The HMOs cannot continue to put profits ahead of patients.

Mr. EDWARDS. I wonder if my colleague will yield for a question.

Mr. HARKIN. I am delighted to yield to my colleague and friend and a great leader on this issue.

Mr. EDWARDS. Mr. President, one of the reasons we are beginning this important discussion of an issue that will affect the lives of so many Americans is that for years now you have helped lead the fight on HMO reform, on a real Patients' Bill of Rights and on patient protection. I had the honor last year, during the Presidential campaign, of visiting in the Senator's State.

I say to my colleague, I heard over and over everywhere I went around the State the passionate feelings people in your State have for the fight that you have waged on behalf of real people and families and children to try to protect them against HMO abuses.

I wonder if the Senator would mind sharing with us what the people in his State have said to him in town hall meetings, visits on the street corner about how they feel about a clerk sitting behind a desk somewhere overruling experienced, well-trained doctors and nurses as to health care decisions that can literally affect the lives of their families.

Mr. HARKIN. First, I thank my friend from North Carolina for his kind words and for visiting my State. I invite him back soon and often. I thank the Senator from North Carolina for his great leadership on this issue, and I am delighted to be a soldier in his army to fight this battle and make sure our patients get decent care.

Mr. REID. Will my friend yield for a unanimous consent request?

Mr. HARKIN. Sure.

Mr. REID. Mr. President, I ask unanimous consent that following the statement of Senator CLINTON—she will speak for 15 minutes when she arrives—the Republicans be recognized for 1 hour following that time to make up for the time we have used.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, the one thing I ask of my friends on the minority side today, Senator ZELL MILLER has asked to come over. When he shows up, after a Republican speaker finishes his statement, perhaps Senator MILLER can speak, and you would wind up getting your full hour.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I was at a town hall meeting in Iowa, where I first heard this comment made by a gentleman who I think really brought it all home. He said to me: I don't want my doctor doing my taxes, and I don't want my accountant deciding my health care needs. To me, that sort of brought it all home and pointed out what we are trying to do: let the doctors and health care professionals make the decisions, and not the accountants, on what kind of health care we need.

As I said earlier, the stories we hear about the lack of medical care from people in HMOs in Iowa—again, this is the tip of the iceberg. We are going to hear a lot of stories. These are real people with real injuries and real hurt. We have to keep in mind that these are just the ones we know about. How many more that we don't know about are out there?

I retold a story here about Eric, a 28-year-old man who was working and had a wife with two kids. He was helping out at a wrestling clinic and he had cardiac arrest. They rushed him in and he was resuscitated. His brain had been denied sufficient oxygen, so he needed special rehabilitation. The neurosurgeon recommended to his family to

get him into rehabilitation. His insurance policy covered rehabilitation, but his insurance company refused to cover his care at a rehabilitation facility that specialized in brain-injured rehabilitation. So his family took him to another place in Iowa. He began his rehabilitation.

The good news is that he had progressed very well. The heart pump was removed, the respirator was removed, and his lungs are now working fine. But just at this point, the HMO calls his family and says they will no longer cover the cost of his rehabilitation because he is not making enough progress fast enough. I would never have known about this except that his mother wrote me a letter and said: This is when we found out we had absolutely no recourse. They can deny any treatment and even cause death and they are not responsible.

I hear stories such as this all over my State. That is why we need to move ahead aggressively and why we have to keep in mind, when this debate occurs and we hear all these amendments being proposed, that we are talking about real people, real consequences, and real hurt that is happening to these families. The need is clear.

This bill is not about doctors, nurses, or politicians; it is about patients, about our friends and our families when they get sick and they need to have the peace of mind that the health care they need and deserve—and that they have already paid for—will be available in a timely manner.

We have a chance to pass real and responsible legislation. The time is now. The American people have been in the waiting room for far too long. It is time to pass a meaningful Patients' Bill of Rights. Let's not delay any longer. We will have the debate. Let's have the amendments that are pertinent. Let's get it done once and for all.

Mr. KENNEDY. Will the Senator yield for a question?

Mr. HARKIN. I yield to the Senator.

Mr. KENNEDY. Mr. President, I thank the Senator for his strong leadership in this battle over a very long period of time. As the Senator was mentioning in the beginning of his remarks, this has been a 5-year pilgrimage, where those who have fought for this legislation have effectively been denied the opportunity to bring this measure up on its own in the Senate. The Senator can remember last year when we had actually a numerical majority in this body, bipartisan in nature, who would have voted for this. But we were denied that opportunity. Now, as the first order of business under the leadership of Senator DASCHLE—I think it was the first comment he made after assuming leadership, that this was going to be a first priority following completion of the education bill.

I have a couple of questions because I, too, have had the good opportunity, as the Senator from North Carolina has, to travel to Iowa. More importantly, I have had the good opportunity of working closely with the Senator in the development of this legislation. The Senator can agree with me that the protections we have in this bill are basically pretty mainstream kinds of protections that I think families could recognize right at the outset. I don't have the particular chart here. We will have an opportunity to get into those as the debate proceeds.

We are talking about emergency room coverage and about specialty care, and we are talking about clinical trials and OB/GYN; and we are talking about prohibiting gagging doctors and talking about continuity of care and about point of service, so we can make sure we can get the best treatment for families needing those kinds of protections. The list goes on: prescription drugs, the right kinds of prescription drugs, and then appeals, internal and external, and then accountability provisions.

Doesn't the Senator, at times, wonder with me what are the particular protections in there to which the opponents object? What are the protections to which they most object? They say: We can't do this; we oppose this; we won't let you bring this up.

These are basic kinds of protections which, as the Senator knows, are either protections that exist under Medicare or Medicaid or have been recommended by the insurance commissioners who are not known to be Democrats or necessarily Republicans—pretty bipartisan and nonpartisan in most States. The only provisions that we have taken in the Patients' Bill of Rights—additional protections—were those that were unanimously recommended by a bipartisan commission that was set up under President Clinton. They were unanimously recommended, without dissent effectively.

They recommended that the HMO association adopt them. We said, because they were so important, to protect them we would put them in as a floor to make sure they are accepted. Does the Senator not wonder with me what the principal objectives are?

Finally, let me ask, does the Senator not believe that every day we fail to pass this legislation people are being hurt?

I took the opportunity yesterday to mention briefly what the Kaiser Foundation has found and what the various studies show. They show that every day we fail to take action, families, real people—parents, mothers, fathers, sons, daughters—their injuries are being expanded and their hurt and suffering is increased and enhanced because we are failing to pass this legislation.

Doesn't the Senator agree that for all of these reasons, and others, the importance of passing this legislation in a timely way, the importance of passing it now, the importance of supporting our leader and saying let's finish before we consider other work, deserves the support of everyone in this body?

Mr. HARKIN. I thank my friend from Massachusetts for postulating this question because it is really important. Before I answer it, I again thank the Senator for his 5 years of leadership. The Senator from Massachusetts was the leader on this issue when it started 5 years ago. He was our leader last year, and he is our leader again this year trying to bring to the American people commonsense decency.

As the Senator said, there is nothing in the bill that would not meet the test of good old common sense.

Yes, I want to know if those on the other side who oppose this are going to offer an amendment that says, no; if a woman is seeing an OB/GYN, if she is having a difficult pregnancy—this may be a specialist in whatever the difficulty might be. But then the woman's employer changes HMOs and drops the doctor. Right now they can refuse to pay that specialist. She would have to go to someone else and start over.

Doesn't it make common sense that she should at least be able to see that specialist through the end of her pregnancy, the birth, and have that same specialist see her? That is common sense.

I question out loud, will someone on the other side offer an amendment to disallow that? Fine, if they want to do that, if that is their opinion. I want to see how many people vote against something such as that. That is just common sense.

Or a person with a disability who has to see a specialist on a continuing basis, I cannot tell the Senator—he knows this as well as I do; he has been very supportive.

Mr. KENNEDY. Madam President, has the time expired?

The PRESIDING OFFICER (Mrs. LINCOLN). The time has expired.

Mr. THOMAS. Madam President, the time is to change at 3:15 p.m. We ask that be done.

Mr. HARKIN. Madam President, I will finish with 1 more minute.

As I was saying to my friend from Massachusetts, many people with disabilities have to see a specialist, but so many times it is hard for a person with a physical disability to get out, get the bus, get special transportation. Now they have to see the gatekeeper every time.

The HMO says: No, you have to come in and qualify for each and every time you want to see that specialist. This bill does away with that.

Will someone offer an amendment that says to someone with a disability: I do not care; you have to go through that gatekeeper time after time to see the specialist you need to see.

I agree with the Senator from Massachusetts; the bipartisan commission worked this out. These are commonsense approaches. You can take this bill to any townhall meeting in Massachusetts, Iowa, or Arkansas and lay it out for average Americans, and they will say: Yes, this makes sense. This bill makes sense and that is why we have to do it.

Mr. KENNEDY. I thank the Senator.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from Nevada.

Mr. REID. Madam President, I have spoken with the manager of the bill, the Senator from New Hampshire. He made a very valuable suggestion. I ask to revise the unanimous consent agreement that is before us. I ask unanimous consent that the Republicans have control of the time speaking as in morning business until 4 o'clock, and thereafter, until direction of the majority leader, we will go on the half hour, from 4 to 4:30 p.m. will be Democrats, from 4:30 p.m. to 5 p.m. will be Republicans until we decide we have had enough for the night.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from New Hampshire.

Mr. GREGG. Madam President, I thank the assistant majority leader for helping organize the speeches this afternoon. There are a lot of Members who want to talk on this bill. That is reflective of the fact and one of the reasons why we cannot move immediately into the amendment process. It is not that we on this side are not interested in moving to the amendment process; we honestly are. There are many on our side champing at the bit to get into this bill and amend it and address fundamental issues.

We also on our side want to have the opportunity to bring forward substantive and thoughtful approaches on how to address this issue in an even more effective way than the bill before us that has been drafted by Senator MCCAIN and Senator KENNEDY.

The point, however, is that we just got this bill. It was one bill on Wednesday of last week. Then it was a different bill on Thursday. We have had 2 working days. We are talking about the bill, but it is a moving target for us. To get up to speed on it takes a little time, and there are a lot of people who want to talk about that, a lot of people who have had intimate knowledge with what has been going on with this issue for a long time but are not familiar with the specifics of the McCain-Kennedy bill and, therefore, believe they need some time to be brought up to speed before getting into the amendment process.

I note as an aside, and I think it is important to note, this is one of the most far-reaching and important pieces of legislation we will address as a Senate this year, certainly on the authorizing level. We just completed another major piece of legislation, the education bill, which is extremely important legislation. We spent 2 weeks—actually 2½ weeks—on the motion to proceed to the education bill. That was when the Republican Party held the majority in the Senate. At that time, I did not hear Senators from the other side saying we were moving too slowly as we are now hearing today from Senators on the other side, even though we have not spent more than 6 hours on the issue of whether we should proceed. It seems to me there are a few crocodile tears on that issue.

There is a legitimate reason for not immediately moving to the bill, and that is we do not know what the bill is, and we do not know the specifics of the bill. We should have a chance to read it before we proceed to it.

I use the very excellent example of the position of Members of the other side of the aisle when we were taking up the education bill when they suggested we do 2 weeks. We are not going to suggest 2 weeks, but we are going to suggest a reasonable amount of time to proceed on the issue of reviewing the bill before we address it.

This probably would not have been necessary if we had had hearings on this bill. One must remember, there has not been a hearing on this bill that is being brought before us even though it is extremely important legislation. In fact, in the Senate, there have been no hearings on the issue of patients' rights in 2 years—since March of 1999.

We have taken up the language of the Patients' Bill of Rights a couple of times, but we have not done any hearings in the committee that has jurisdiction or responsibility in the last 2 years.

That is important because at those hearings, we could have gotten constructive input. If we had had hearings on this bill, for example, we would have seen a number of people from communities across this country coming forward—small business people, people who are running mom-and-pop businesses with 9, 10, 15, 20, 30 employees saying: Listen, the hardest thing I have in my business is the cost of health insurance. I want to insure my employees. I want health insurance for them, but if the McCain bill passes, I will not be able to afford health insurance because I suddenly will not only be buying health insurance, I will be buying lawsuits. Instead of the present law which insulates the small employer especially from being sued for medical malpractice or medical malfeasance or medical events that their employees incur in the process of dealing with the health insurer with which the small business individual has contracted, instead of having that insulation, that goes down, the wall goes down.

Under this bill, those employers, those small mom-and-pop employers especially—all employers for that matter—will suddenly find themselves being sued for medical issues.

A person who runs a restaurant with 30 employees is probably saying: I don't mind being sued if I put out a bad meal and somebody gets sick. That is my responsibility. But if one of my employees to whom I have given health insurance, which I think is important to them, goes to the local doctor and the doctor doesn't treat them correctly or they get bad advice from their insurance company on the way they should have been treated or their options, why should I, as the owner of the little restaurant, end up being drawn into that lawsuit? But I will be under this law, under this proposal as it is structured.

I find it consistently ironic that the Senator from North Carolina, who has his name on this bill, continues to say employers are not subject to suits when the bill specifically says employers are subject to suits. It says it in two places that are very significant.

He suggested I read his bill. I did read his bill. I might suggest he also take a look at his bill because it does not appear he has, if he continues to conclude employers are not subject to liability. No. 1, the language is, as we mentioned earlier on page 144, very specific. Granted, the headlines for the language are ''exclusion of employers and other plan sponsors.'' But when it gets to part (B), it says, ''notwithstanding [anything] in subparagraph (A), a cause of action may arise against an employer or other plan sponsor. . . .''

That is the term, ''employer.'' I define ''employer'' as employer, not insurance company. I think anybody else would, too. So right there, at the base of it, employers are sued under this bill, and for a significant amount of responsibility here, because the definition of what an employer is going to be sued for goes on to say, ''where the employer participated—had direct participation by the employer or other sponsors in the decision of the plan.''

Direct participation has become an extremely broad term, as I mentioned earlier today. Basically, if the employer says, as you are heading off to the hospital—you are working for the restaurant; there are 30 people at the restaurant and you get burned in the kitchen and the employer says, you have to get down to the hospital, let me make sure you get to this hospital versus that hospital, the employer is libel. The employer is libel for how you are treated at that hospital under this bill.

Then there is this new cause of action, which is a massive new expansion of the ability of people to be sued, employers specifically, under this bill. This new cause of action is created by subsection 302, subsection (A)(ii), I think it is the right cite, on page 141 of Senator MCCAIN's bill:

> . . . otherwise fail to exercise ordinary care in the performance of a duty under the terms or conditions of a plan with respect to a participant or beneficiary.

Then, the agent or the plan sponsor is subject to be sued. Plan sponsors are, by definition of ERISA, employers. That is very clear, unequivocal in ERISA. So we are talking about the fact that there is now a new Federal cause of action for what amounts to the failure of a plan, the insurer, to give information which traditionally had been managed through regulatory activity—the failure of that plan to do a whole series of things.

I put up a list earlier of potentially 200 different places, between COBRA, HIPAA, and ERISA, that you would have a cause of action that could be

brought on an activity of the insurer or people who are involved in the plan in a ministerial way as employers. They would now be subject to lawsuits in a Federal action. There would now be a Federal action against them on that in over 200 different places—not quite 200, somewhere around 200 different places where employers could be sued.

I understand—I was not here but it was represented to me by people who were here—that, once again, the Senator from North Carolina said that is not true; that only counts if it is a medically reviewable event. Then that brings in the employer.

I don't know. I think I can read language. The language is abundantly clear, and I don't think you can reach that conclusion because the language is clear. The language the Senator quoted in support of that position, which actually is a 180 degree exact opposite conclusion of what the Senator from North Carolina said, the point he was making, if it was correctly represented to me.

Under clause (2), again of 302, it says:

IN GENERAL.—A cause of action is established under paragraph (1)(A) only if the decision referred to in clause (i) or the failure described in clause (ii) does not [''not''] include a medically reviewable decision.

Just the opposite. It is not because there is a medically reviewable decision that you get brought into this. It is because there was no medically reviewable decision, which means all these ministerial events, which have unlimited liability attached to them, can create the lawsuits against employers.

So employers are going to be hit with a plethora of new lawsuits from attorneys across this country. This is a whole new industry. We will have to probably build another 20 or 30 law schools across this country just to take care of all the new lawyers who are going to join the trade in order to make money suing people under this McCain-Kennedy bill. We are going to have to expand law schools radically, which may be good for law schools but I am not sure it is good for our society as a whole.

I want to go into a little more depth here, if I have a minute—I understand somebody else is coming to speak—on the specifics so I get it right, especially on this whole issue of the Federal tort claim, this new Federal action. This is a huge event which should not be underestimated. It is technical but it is huge and the implications are radical. We are going to get a chart put up just to make it a little easier for people to understand.

Basically what this bill does is it creates two new types of lawsuits in Federal court. Under the first type of action, participants can sue over a failure to exercise ordinary care in making nonmedically reviewable claims determinations. The second Federal cause of action broadly allows suits for failure to perform a duty under the terms and conditions of the plan. Remedies available under the two new claims, these two new ERISA claims, include unlimited economic and noneconomic damages and up to $5 million in what this new euphemism is, ''civil penalties,'' otherwise known as punitive damages. I guess that was too punitive a word to put into this bill so they used the words ''civil penalties.''

They have created these claims. They have taken the tops off the liability and basically said, OK, go find an employer and shoot him dead with unlimited economic damages, unlimited noneconomic damages, and $5 million in punitive damages.

The second new ERISA claim, the terms and conditions in the one I just talked about, is extremely broad, covering virtually any administrative action that does not involve a claim for benefits, including the S. 1052 McCain bill new patient protection requirements under COBRA and HIPAA.

The McCain bill establishes a complicated scheme which attempts to limit Federal and State suits against employers provided the employer does not directly participate in the decision in question. It is a very complicated scheme, but what is the effect of it? The effect of this direct participation at this time will mean that employer protections are essentially meaningless for suits alleging a failure under the terms and conditions of the plan.

Further, the McCain-Kennedy bill continues to allow unfettered class action suits—including suits against employers—where no limits on damages would apply under the current law provisions of ERISA or other Federal statutes, including the RICO statute.

So you have, first, a whole new set of Federal claims created against employers, unlimited economic damages, unlimited noneconomic damages and $5 million of punitive damages, which essentially have a figleaf entry level that any good lawyer is going to be able to punch through called directed participation. Then you have the continuation of class action suits giving lawyers another forum with things such as the RICO statute.

Because employers inherently carry out their duties under the ERISA's statutory scheme, the McCain-Kennedy bill will leave employers wide open to new Federal personal injury suits. Employers will be sued based on alleged errors in:

Offering continuation coverage and providing notices under COBRA;

Providing certification of prior credible coverage under HIPAA's portability rules;

Distributing summary plan descriptions; describing the plan's claim procedures under the plan; and describing the plan's medical necessity or experimental care benefit exclusions.

Here are some of the others:

Also, providing notices of material reduction in group health plan benefits as required by ERISA.

These are all areas where they can be sued.

Also, responding to requests for additional group health plan documents under ERISA; and, finally, group health plan reports under the Department of Labor.

In all of these areas they can be sued. The list goes on and on. Employers cannot be sued on this today. All of this is new. This is a brand new litigation area.

As I said, we will need to add many new law schools in order to absorb all the new lawyers we will need in order to bring all of these lawsuits.

The McCain-Kennedy bill proposes up to $5 million for punitive damages for COBRA, HIPAA reporting, and disclosure violations despite the fact that all of these requirements have their own specific ERISA enforcement provisions.

In other words, under present law, there are already enforcement provisions for this activity and the ones I just listed. But they don't run to the employer to benefit the patient. The patient doesn't have an individual cause of action in this area. Rather, these are strong administrative procedures which keep the employer from violating the purposes of ERISA. But now we have punitive damages up to $5 million, unlimited economic damages, and unlimited noneconomic damages.

Some of the things that occur today in order to enforce these laws but which do not involve private cause of action as created under the bill are as follows:

There is a $100 per day excise tax penalty under Code section 4980B(b) violations of the COBRA requirements—tax penalties are up to $500,000 for employers and $2 million for insurers. There is an additional $100 per day civil penalty under ERISA section 502(c) for failing to satisfy the COBRA notice requirements. Plan participants may sue employers and insurers—for benefits and injunctive relief under ERISA section 502.

There is a $100 per day excise tax penalty under Code section 4980D(b) and a $100 per day penalty under section 2722(b)(2) of the Public Health Service Act for violations of the HIPAA preexisting conditions limitations provisions. In addition, plan participants may sue for benefits and injunctive relief under ERISA section 502.

Willful violations of ERISA's reporting and disclosure rules, including the requirements relating to the provision of SPD and documents upon request, are subject to criminal fines and imprisonment under ERISA section 501.

Failure to provide documents upon request is subject to civil penalties under ERISA section 502(c).

So you already have a very extensive administrative and legal liability situation for employers and insurers that do not meet the conditions of COBRA, HIPAA, and ERISA. But what you are now layering on top of that is a brand new concept where you have a private right of action, where individuals can go out and allege these violations as

part of the injury they claim they received and have a whole new cause of action against the employer.

What small-time employer—what employer, period—is going to want to keep a health plan if they have that level of liability facing them?

McCain-Kennedy would impose potentially huge new compensatory and punitive damages remedies for violations of COBRA, HIPAA, and ERISA's disclosure requirements. Moreover, under the statute's own requirements, the employer is specifically required to carry out COBRA and disclosure requirements—the employer is almost always the administrator. Thus, McCain-Kennedy imposes a huge new liability on employers that employers cannot avoid; despite the fact that when Congress adopted COBRA and HIPAA with large bipartisan majorities no discussion was given to the need for punitive damages to enforce the new requirements.

Practically what you have here is a decision by the drafters of this bill to say we are not really so much interested in delivering better health care and in giving patients better health care; we are really interested in creating a massive new opportunity for lawsuits.

In doing that, I think they are accomplishing one of the goals—which I believe is a subliminal goal and maybe a more formal goal in truism—which is to create more people who are not ensured because that can be the only conclusion from their lawsuit structure. The only thing that can come from all of these lawsuits, from all of these new causes of action, and from all of the new pressures it will put on employers is that fewer employers will insure their employees, especially small employers.

Inevitably, there will be more uninsured. Why would anybody be for more uninsured? If you are around here and you want to pass a national health care plan, the biggest argument you have in your favor is that there are too many uninsured in our country, that the only way to handle the uninsured is to nationalize the system and put everybody into a national plan so everybody is covered.

We heard that argument interminably in 1993 when there were only 23 million uninsured. After 8 years of the Clinton administration, there are now something like 42 million uninsured. We have increased the number of uninsured people by 19 million over this approximately 8-year period when we were supposed to be improving our health care delivery system. And the call for a national plan will grow and grow as the number of uninsured grow.

If you pass this proposal, because of the costs it will create on employers and because of the increased cost in the insurance premiums, which the Congressional Budget Office scored at 4.2 for every 1 percent of increased cost, CBO estimates that 300,000 people will drop insurance. So 1.2 million people are going to drop their health care insurance.

Couple with that this huge, newly built, unintended consequence—intended consequence; it is not unintended at all—which will be that employers, and especially small employers, will simply say, I am not going to run the risk of being put out of business by these lawsuits which bring me personally into the fray.

Then you have the result that more and more people will become uninsured. Thus, more and more pressure is created in the marketplace of politics for a nationalized plan.

You have to remember, if you are a small businessperson and you are employing 20, 30, or 50, or even 100 people, and you are confronted with one of these law lawsuits—which you suddenly find you are confronted with because the Federal law has the ability of making you personally liable because you happen to be the employer or the health plan sponsor—what is your alternative? What are your alternatives as a small businessperson? You have to go out and hire an attorney. How much is that going to cost you? It will cost literally tens of thousands of dollars probably to defend yourself in court or you have to settle the suit. Even though you don't believe you owe anything, you have to settle the suit rather than pay the attorneys or you decide to pay the person who brought the suit. That is going to cost you a lot of money.

Either way, as a small employer, if you are running a mom-and-pop restaurant, it will probably wipe out your profit because you suddenly find that you are subject to lawsuits to which you were never subject before simply because you gave health insurance to your employees. It is absolutely the wrong result. We have heard a lot from the other side of the aisle about individuals who had serious problems with HMOs. We are all sympathetic to those individuals. Photographs that have been brought to this Chamber—and brought to this Chamber last time—by Members from different States are very moving photographs. But you have to remember, that is not the issue here because the proposal put forward by Senator NICKLES last time, the proposal put forward by Senators FRIST, BREAUX, and JEFFORDS, and the proposal from Senators KENNEDY and MCCAIN, all take care of those individuals' concerns. Those are straw men. None of those folks, I suspect—or the vast majority of them; I suspect none of them—would have the problems they had with their HMO if any one of those three bills passed because all those bills had a very aggressive procedure for redress for the person who believes they are not getting fair treatment from their HMO—very aggressive.

All of those bills had very extensive proposals for coverage of different types of services which people believe they have a right to, and should be able to get, and should not have to have their HMO telling them what it is they should have and what it is they should not have—whether it is their OB/GYN or specialists or a primary care provider. All of them have that language or rely on State law which has that language and which is equal to the language in the bill that is being proposed.

So those issues, as compelling as they are, truly are not relevant to the debate in this Chamber because under anything that passes this Chamber, you have a 100-percent vote to take care of those issues.

The question before this Chamber is whether or not we are going to drive up the costs of health care by creating new liability for employers, forcing employers to drop health care, and whether or not we are going to usurp the authority of States to set out their ideas as to how to address this issue, where many States have already done an extraordinarily good job and really do not need a Federal law in order to protect their citizenry because the protections have already occurred.

There are a lot of other issues in here, too—lesser issues. But those are the two big ones. That is what this debate is about. It is not about the folks who have not been treated well because those folks are going to be treated well under whatever bill passes. And it is not about people not being able to go to their health care provider and get the type of specialists or the type of treatment they want in a context which everyone would describe as reasonable because that is in every one of these bills.

It is about the cost of health care, the liability of employers, and the usurpation of States rights with States having the opportunity to legislate in the area of insurance which for years is something that has been a tradition in this country.

So as we go down the road—and hopefully we will get a final form of a bill to debate from—I believe that is the proper framing of this debate. I look forward to it.

I yield the remainder of our time to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Madam President, I thank our dear ranking member for yielding to me.

I wanted to come over today in the 15 minutes we have left to talk about this version of the Patients' Bill of Rights. Lest this stack of legislation on my desk fall over and kill me, let me make the point that it seeks to make. This stack on my desk demonstrates our big problem in trying to bring up one of the most important bills we are going to consider in this Congress; a bill that, by the definition used by its principal authors, will cause net pay of American workers to decline by $55 billion over the next 10 years. Senator KENNEDY talks about the bill costing a Big Mac. It really is 25 billion Big Macs. It is a lot of hamburgers and a lot of dollars.

Looking toward the debate on one of the most important bills that we will consider, after having spent several weeks trying to analyze and understand the old version of the bill, S. 872, we now have a new version, S. 1052, and we understand that there is yet another version which is coming.

Why is this important? It is important because if we are going to debate an issue that will have a profound effect on every working American and every user of health care—which is everybody alive—it is vitally important that we know what the proposal is that we are going to debate. A perfect example of why that is important is the Clinton health care debate that we had in 1993 and in 1994. We kept hearing a debate from the White House about their bill, and what it did; but in reality, as that debate was in the process of beginning, we had one, two, three, four, five, six, seven, eight, then nine different versions of the bill.

Why was it changing so much? It was changing so much because it was indefensible. The problem is—at least the problem I had—is that every time I studied a new version, by the time we got to the floor of the Senate to debate it, the version had changed dramatically. It was not an insurmountable problem because each and every one of these versions wanted the government to take over and run the health care system. When the American people knew what they were trying to do, they were not for it.

But I think we can expedite this debate if we simply know what is being proposed. So I would like to propose to our colleagues a solution to our problem; and that is, if there is about to be a new version, and if the authors of the bill would give us their final version, then I believe that we could, with a couple of days' study, be in a position to debate the bill. And we could get on with it.

Why is this issue so important? You are going to hear a lot of debate about what this could mean to health care in America, what it could mean to the availability of health insurance. Why is that so important? First of all, it is important because I think people need to realize that when we debated the Clinton health care bill in 1993 and in 1994, the argument that was made throughout that debate was: Don't worry about the right to have choices. Don't worry about a point-of-service option. Don't worry about the right to sue. Worry about access to health care because the figure that was used in that debate was the latest number we had, as a good number, which was that 33 million people did not have health insurance. Today, 42.6 million people do not have health insurance.

What was the solution to that problem that Senator KENNEDY proposed in presenting the Clinton health care bill? The solution was to have the Government, through health care purchasing collectives—which would be these giant HMOs run by the government that everybody would be forced to be a member of—that the government was going to set standards for health care, and they were going to give these 33 million people access to health insurance.

The price we were going to pay was that you did not have any choice about joining this government-run HMO. You are going to hear Senator KENNEDY and others talk about forcing these private HMOs to have a point-of-service option. But he is not going to point out that in the original Clinton bill, the point-of-service option was that if the health care purchasing collective in your area did not approve a treatment, and the doctor provided that treatment, he was fined $10,000. And if you paid him separately for the treatment, he was sent to prison for 5 years.

You are going to hear a lot of debate about the right to sue HMOs, but you are not going to hear that 7 years ago, Senator KENNEDY, on behalf of Bill Clinton, proposed a bill that severely limited the right of anybody to sue a doctor or any health care provider or any faceless bureaucrat running a health care purchasing collective.

The argument 7 years ago was, forget about freedom. Instead, worry about the fact that 33 million people don't have health insurance and give up your freedom and let the government run the system, and we will solve that problem. That was the argument 7 years ago.

When people understood it meant that when your mama got sick she was going to talk to a bureaucrat instead of a doctor, the American people killed that proposal. But notice the 180 that has occurred in those 7 years. Today 42.6 million people do not have health insurance, almost 40 percent more than in 1989. But now we have a proposal before us that simply assumes that every employer absorbs part of the cost of increased health care that will come from the bill before us, however, we know that the increased costs will guarantee at a minimum that 1.2 million people will lose their health insurance.

Why, if we were willing to let the government take over the health care system 7 years ago because people didn't have health insurance, do we now, in the name of giving them the very rights we would have taken away from everybody 7 years ago, make it so that 1.2 million people, at a minimum, don't have health insurance who have it today?

I will explain the answer. I am deeply worried about people losing health insurance and I want to preserve private medicine in America. But if 7 years ago you wanted the government to take over the health care system, then if you destroy the health care system we have today, if more people lose their health insurance 2 or 3 years from now, you can come back and say: let's allow the government take it over to solve a problem which, in fact, you have created with a bill like the bill before us that vastly expands lawsuits and expands cost.

Now, why is this such a big deal? Why is there so much passion about this? Let me explain why. This simple chart explains why. This simple chart tells us how unique America is in all the world, and how different we are than any other developed country in the world. We have all heard of the G–7 nations. Those are the seven richest countries in the world.

What I have done in this simple chart is to take the G–7 nations and ask a simple question: What percent of the population in the seven most developed countries in the world get their health care through the government and what percentage get it through private choice, private health insurance and decisions that they actually control that relate to their family and their children? If this chart does not scare you, then I think there is something wrong.

What does this chart show? It shows that of the seven most developed and richest countries in the world, the United States is profoundly different in health care. Sixty-seven percent of Americans buy health care as a private purchaser through private health insurance and through individual choice; 33 percent of Americans get their health care through a government program.

When you look at the next freest country in terms of private decision-making regarding health care in the developed world, next to America, which has 67 percent of its people buying health care through their choice, through private health insurance, and individual decision-making, the next freest country is Germany, where 92 percent of health care is purchased through government programs and government decision-making.

As we go into this debate, why am I so concerned about driving up health care costs and forcing people to give up their private health insurance and forcing companies to cancel insurance? I can tell you why I am concerned. I don't want, 10 years from now, the United States to be up to 92 percent of its health care run by government or 99 percent of its health care run by government or 100 percent of its health care run by government. If you want America to be at the top of this list, then you don't care if the bill before us produces a situation where companies cancel health insurance because you have the answer already. The answer is government.

This is a big issue. This is one I believe deserves thoughtful deliberation.

Finally, I will pick three issues. I will use the old bill because that is the one I know. I have checked out the new bill and, with one exception, there is not a change. There has been one word dropped. I will explain why it is so important that we have a copy of the final bill so we know what is in it. Let me take three issues that will make my point.

The first issue is the one that there was a lot of talk about on the weekend talk shows. In fact, one of our Democrat colleagues was asked about suing employers. He responded: under our bill, you can't sue employers. Sure enough, if you open their bill up to page 144, right in bold headlines, it says that you can't sue employers. In fact, in a super-bold headline it says: Exclusion of employers and other plan sponsors. And then a subhead line called paragraph (A), it says: Causes of action against employers and plan sponsors precluded. Gosh, it sure looks like it precludes suing employers.

Then it says: Subject to subparagraph (B), paragraph (A) does not authorize a cause of action against an employer. But guess what. When you get down to paragraph (B), it says: Certain causes of actions permitted. Notwithstanding subparagraph (A), a cause of action may arise against an employer or other plan sponsor or against an employee of such an employer or sponsor acting within the scope of employment.

Why are we so concerned about getting to see the final bill before we debate it? Because the bill is full of these bait-and-switch provisions. Here in one paragraph it says you can't sue an employer, and then in another paragraph it says you can.

Let me give two more examples. One is, can you force an insurance company to pay for a benefit that is specifically excluded in the policy? Let's say the policy says that the plan does not provide coverage for heart and lung transplants and, as a result, the plan is cheaper. And so my small little company I work for buys the plan, and I know in advance it does not cover that. So the question is, are you bound by the contract? If you look at the bill on page 35, it sure looks like you are. In fact it says no coverage for excluded benefits. And then it has a paragraph that tells you if they are specifically excluded, they are excluded. Until you turn over to the next page and it says: Except to the extent that the application or interpretation of the exclusion or limitation involves a determination under paragraph 2.

Then you turn back two pages and you see that anything that is medically reviewable or has to do with necessity or appropriateness can be mandated, even if the contract specifically excludes it. In other words, another bait and switch.

The PRESIDING OFFICER. Under the previous order, the time controlled by the minority has expired.

Mr. GRAMM. Let me say, we will have plenty of time to debate this and I will continue my examples later. However, the point I wanted to make now was that we need to see the final version of the bill so we can prepare to debate it.

Maybe if we can take some of these inconsistencies out, we could be closer to having an agreement than we think we are. I thank the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mrs. CLINTON. Mr. President, I only caught the tail end of the remarks by the Senator from Texas. But I will just point out that this bill, which we are hoping to consider today, has been in the works for years. It has gone through a number of drafts; it has been voted on in previous incarnations. It is not a new issue. It is ready for the full debate and disposition in the Senate. It is not like a budget bill that is presented without any debate and without any adequate preparation, as we experienced a few months ago. This is an issue that is more than ripe for the consideration of this body.

I thank Senator DASCHLE for making the McCain-Edwards-Kennedy Patients' Bill of Rights the first bill he has brought to the floor as our Senate majority leader.

I really rise today on behalf of the countless New Yorkers, and really millions of Americans across our country, who have been waiting for this day for a very long time. I heard some remarks by the Senator from Texas about the efforts that were made, I guess, 6, 7 years ago now, to try to provide health care coverage to every single American. I was deeply involved in those efforts, and although we were not successful, the goal was one that I think we should still keep at the forefront of our minds and hearts because when we began our work in 1993, there were approximately 33 million Americans without insurance; today we are up to 42 million. This is after the so-called managed care/HMO revolution occurred, where people have been finding it harder to afford coverage, afford the deductibles, afford the copayments, with the result that we have more people uninsured today than when many of us tried to address this problem some years ago.

There are many urgent health care issues before us as a nation such as sky high prescription drugs for our seniors, too many without adequate coverage, and once they have Medicare they can't afford the additional coverage that is required in order to give them the kind of health care they should have. There are gaps in our health safety net, a shortage of nurses in our hospitals and nursing homes, and the very difficult conditions under which so many of our nurses now labor. And, of course, there is the growing crisis of the uninsured. So we have our work cut out for us in order to deliver on the promise of quality, affordable, accessible health care for all Americans.

That is why I am urging we proceed without further delay or obfuscation and pass a Patients' Bill of Rights—the bipartisan Patients' Bill of Rights that Senators MCCAIN, EDWARDS, and KENNEDY have worked so hard to present, which has bipartisan support in the House.

We have to finish this job. We have been laboring over it since 1996, in earnest with the efforts within both Houses of Congress since 1997. We have now been waiting and waiting for the Congress to act. Now is the time.

I believe we should act not because it has been on the agenda for a long time, although it has, and not because it is one of those issues to which finally the stars seemed aligned and with the Democratic majority now in charge of the Senate we can actually get it to the floor but because of the patients and their families who are out there waiting and literally praying for us to act.

Each of the patients I have met and heard from, and each of the families whom all of us have heard from, tell a story that describes an urgent situation needing timely and responsive care. That is why this bill is so important.

It is about getting the care you need when you need it. It is about getting care in a timely manner from doctors you trust and choose. It is about having doctors and nurses in charge of your health care, not accountants and bookkeepers.

My colleague, TOM HARKIN from Iowa, had a memorable phrase today at the press conference. He said, ''The American people don't want their doctors doing their taxes and they don't want their accountants providing their health care.''

Each of us should be able to look to our doctors, our nurses, our health care professionals for the care that we trust and need. This is about access to an emergency room when we need it.

I recall being in Ithaca, NY, about 2 years ago and meeting a young woman who came to see me with a stack of medical records, literally a foot high, just desperate. She had been in a very dangerous, nearly fatal accident on one of those winding roads that go through that beautiful part of New York. Some of you may have traveled through Ithaca or may have gone to Cornell. You know what beautiful country it is, but it has also a lot of winding roads. She was in a devastating accident, lying unconscious on the side of the road. Luckily, someone came upon her and called for aid and they were able to medivac her out with a helicopter, save her life, and she was in hospital care and rehab for nearly a year. She gets out and what does she find? She gets a bill from her HMO for the helicopter medivac emergency service because—get this—she didn't call for permission first. She is unconscious on the side of the road and they want to charge her $10,000 because she didn't call for permission.

So this is about getting the emergency care you need when you need it. It is about seeing a specialist when you need it, when your doctor says: I have gone as far as I can go; you need to go see a specialist. It is about women being able to designate their OB/GYN as their specialist, and about mothers and fathers being able to designate their pediatrician as their child's general practitioner as well. It is about all

of these and more—the kinds of issues that are not just written somewhere in a headline but are lived with day in and day out, which are talked about around the kitchen table, around the water cooler—the life-and-death issues that really make a vital difference to families all over New York and America—families such as that of Susan Nealy, from the Bronx, whose husband had a serious heart condition but whose referral to a cardiologist was delayed a month. The day before the appointment was finally scheduled, Mr. Nealy died of a massive heart attack, leaving behind his widow and two young children, ages 5 and 3.

It is like the family of the 15-year-old boy from New York who developed complications from heart disease, but his health plan refused to allow him to see an out-of-network specialist familiar with the case and instead sent the teenager to a network provider who did not see him for 4 months, and then the boy's lungs were filling with blood, and 2 days later he collapsed in the street and died.

These are just two of the stories I could pick from my innumerable conversations and letters that I have received. There are so many more we could tell.

For every one of these stories, there are untold stories of families whose struggles for the care they needed were denied or delayed. According to patient reports, health plans delay needed care for 35,000 patients every day. In fact, delayed care and payment is a business practice that health plans have perfected.

I have heard from many doctors who tell me that each day a health plan withholds payments represents literally thousands of dollars in interest that a health plan could earn. The practice of delay is so widespread that there is a term for it. It is called ''living off the float.'' Unfortunately, not everyone who is subject to it actually ends up living.

Look, I don't blame the accountants and the bookkeepers. They are trying to maximize their shareholders' return, their profits. That is the business they are in. But this cannot go on. There have to be rules that say you must, regardless of your being in business and regardless of having to make quarterly returns, put patients, doctors, and nurses first.

The physicians and nurses I speak with are so frustrated about this. They are caught between the sharp conflict, between business practices that I personally think are unscrupulous, but nevertheless they are engaged in, and the principles of the oaths that they take to do no harm, to get the health care to the patient when the patient needs it when it can do some good. Life-or-death situations rarely wait for prior authorization.

Last summer, I met Dr. Thomas Lee, a neurosurgeon at the Northern Westchester Hospital Center, just up the road from where we live in Chappaqua. Dr. Lee was called to the emergency room one day about a year ago because a patient—not his patient; it was someone he had never seen before—a young woman in her early thirties collapsed at work. She was brought to the emergency room.

Dr. Lee did his neurosurgical analysis, did the tests that were necessary, and discovered this young woman had a very serious tumor that was pressing on vital parts of her brain and needed to be operated on.

They found her husband, thankfully, and they called the HMO that insured the family and asked for permission to perform the surgery right then. Dr. Lee said it was, if not a matter of life and death, a matter of paralysis and normal life, and they were denied. They were told that because Dr. Lee was not one of their network physicians, because the Northern Westchester Hospital Center was not the hospital center they preferred to use, he could not do the surgery.

For 3 hours, Dr. Lee, his nurse, and the hospital staff were engaged in an argument with the HMO instead of performing the lifesaving surgery. It breaks one's heart to think about this neurosurgeon who could be saving lives getting on the phone trying to get permission to do what he is trained to do.

Finally, he was so fed up, he said: Look, this young woman's life is at stake. I will perform the surgery free of charge so long as you will cover the hospitalization. With that deal struck, the HMO let him proceed.

I am very proud Dr. Lee is practicing medicine in my neck of the woods, but I do not expect doctors and neurosurgeons to perform lifesaving heroic surgery for free. That is not the way the system is supposed to work. These are people who go to school for decades to do this work, and they deserve the respect and compensation we should be putting into our health care system, not to satisfy HMOs but to pay for the services of trained physicians and health care professionals.

For the past 5 years patient advocates have worked on this bill, and we have seen every delaying tactic one can imagine. I had a front seat to this when I was down at the other end of Pennsylvania Avenue. We were working very hard to get this bill through the Congress. Every excuse one can come up with was thrown in the way. It became so frustrating to all of us who knew that lives were at stake, care was being denied and delayed; that passage of needed protections was being derailed.

We come to this day. Luckily for us, we are here not only because it is the right thing to do but because States and courts have realized they just cannot wait any longer. They have seen firsthand what is going on in our country.

New York passed a State managed care protection bill in 1996; they even passed a law in 1998 to strengthen the protections—all before the Congress chose to act. Many more States have passed such protections, including Texas, specifically aimed to permit injured patients to hold their health plans accountable for their injuries.

President Clinton signed an Executive order giving 85 million Americans with federally sponsored health care, such as Medicare and Medicaid, protections similar to what we are trying to give to all Americans through a 1998 act.

Even Federal courts, notably in the case of Andrews-Clarke v. Travelers Insurance, have urged the Congress to act. In that case, Judge William Young states:

> Although the alleged conduct of Travelers and Greenspring in this case is extraordinarily troubling, even more disturbing to the Court is the failure of Congress to amend a statute . . . that has come conspicuously awry from its original intent.

Yet because of our failure to enact such a statute, at least 43 percent of all Americans with employer-sponsored private coverage are still left out in the cold. These Americans cannot afford to wait any longer. Forty percent of Americans know that passing a law today is even more urgent than it was 2 years ago, and a majority of them thought it was urgent then.

Let's work in a bipartisan way. This bill is bipartisan. Senator MCCAIN, Senator EDWARDS, and Senator KENNEDY have all worked to get to this point. They have all made compromises. Their bill is the only bill before the Senate that applies to all 190 million Americans with private health coverage. It is the only bill before the Senate that has all the protections of Medicare and Medicaid. It is the only bill that has the support of over 500 consumer and provider advocates.

Anybody who knows anything about some of these provider groups, such as the American Medical Association, knows that Congress is not their preferred venue. They are not keen on having the Congress tell them to do or not do anything, but doctors are so frustrated that even the American Medical Association has come time and again asking that this bill be passed.

It is the only bill that guarantees coverage for the routine costs of FDA-approved clinical trials which are so important to patients with cancer and so important particularly to children with cancer.

This is the only bill that guarantees an internal and external review as soon as it is medically necessary.

In sum, this is the only bill before the Senate that protects patients, not HMOs.

Just as delaying tactics by managed care organizations have injured and even killed millions of Americans over time, delaying tactics by the opponents of this bill have taken their toll.

I want my colleagues to look at this patient survey that is behind me. Each day, 35,000 patients have a specialty referral delayed or denied; 18,000 every day are forced to change medications as a result of their health plan's determinations—not their doctors but their health plans.

When I say ''health plans,'' I mean somebody sitting in an office, usually hundreds of miles from where the patient or doctor is, second-guessing the doctor, saying; I am sorry, your doctor may have 30, 40 years of practice and experience, but I am going to sit in this office without ever having seen you and decide that I can second-guess what kind of prescription medication you should have.

Forty-one thousand patients a day experience a worsening of their condition because of actions by their HMOs.

One can go through this list and see what patients are saying. Then one can look at another list that comes from surveys of doctors, those who are on the front lines. They are saying they believe their patients are confronting serious declines in their health from plan abuse. This is the kind of information that concerns me because when I go to the doctor, I expect my doctor to take care of me. He or she has sworn an oath, they have been well trained, and I have checked them out. I feel like I am putting myself in someone's hands whom I can trust, and doctors are saying they are not being permitted to practice medicine. They are being told they have to subject their decisions to people they have never met nor seen.

It is because of the desire of HMOs to slow down payment, to deny payment, to keep that float I talked about going, basically to use the money they should be paying to doctors and hospitals for taking care of us for their own purposes, for their own profits, for their bottom lines.

In my office I keep a picture of a young, beautiful woman named Donna Munnings. This is Donna. This is a young woman who reminds me every single day when I look up at her picture in my office of what can happen when the system does not respond until it is too late. Donna's mother Mary is a school bus driver from Scottsville, NY. She has been lobbying and advocating for this bill for years. Her daughter Donna died February 8, 1997, after having visited her primary care physician repeatedly, only to be told that she had an upper respiratory infection and suffered from panic attacks and that no diagnostic tests were necessary. Had the doctors performed a $750 lung scan in time, they would have seen not an upper respiratory infection but a football-sized blood clot in her lung.

Her mother Mary said:

> In my subsequent research I found that HMOs can and do penalize doctors for ordering tests which HMOs feel are unnecessary. But all for the sake of money [all for the sake of a $750 test] we lost a vital, beautiful young lady who had only begun her life.

We are going to hear a lot of debate. In fact, we are debating whether we can even proceed with this bill: Yet more delaying tactics, yet more efforts to obstruct the kind of care that every one of us needs. I can guarantee the people out in that lobby and the people in the offices they represent, they would not stand for not getting the care their child needs. If they had a daughter who was suffering day after day after day, and the doctors could not tell her what was wrong and they kept sending her home, I can guarantee that those executives and those lobbyists would get some other source of care for their daughter.

But Mary is a school bus driver. She didn't know where else to turn. Having insurance was a pretty big deal. They didn't know what else to do, other than just keep going back, as Donna's condition got worse and worse and worse.

Patients buy health insurance in order to feel assured that when they seek care under the benefits for which they have paid, that care will be available and it will be available in time to be effective. Yet we know that that does not happen. In one State, the State of New York, according to Department of Insurance statistics, of the nearly 18,000 HMO decisions challenged on appeal, over 10,000 were reversed. This means that when patients can test their HMO's decision to deny needed care, over half the time the patients are right.

Yet, through a loophole in Federal law, there are too many consumers in New York—over 2.25 million—who still are not protected against these incorrect and dangerous decisions. They have no recourse. There is nothing they can do because we have not given them a Patients' Bill of Rights. They need a Federal law to give them the parity and protection their neighbors and coworkers have.

Mr. DURBIN. Will the Senator yield for a question?

Mrs. CLINTON. I am happy to yield.

Mr. DURBIN. I believe the Senator from New York was at a briefing this morning where we discussed the experience in the State of Texas. In 1997, a certain Governor of Texas, who has now moved to Washington, had a Patients' Bill of Rights established in Texas. Maybe the Senator from New York can help me with these numbers, but I believe in the 4-year period of time that the State Patients' Bill of Rights has been in effect in Texas, there have been 1,300 appeals of decisions by insurance companies and only 17 lawsuits filed in 4 years.

So the argument that giving the people the right to go to court will mean a flood of cases brought in court has been disproven in the home State of the President. Does the Senator from New York recall that?

Mrs. CLINTON. Indeed, the Senator from New York does recall that. I appreciate the Senator from Illinois raising that because that, of course, is one of the objections the opponents are trying to throw up, that this bill will open the floodgates for lawsuits. In Texas that has not happened. It has not happened anywhere in the country where these protections have been afforded under State law.

People are not rushing to the courthouse. They want the care that they need. They don't want a lawyer; they want a doctor; and they want the doctor to take care of them according to the doctor's best judgment. That is what doctors are telling us. They are not being permitted to do that.

I appreciate my friend from Illinois raising that point because, as this debate proceeds, you are going to hear a lot of arguments about why we just cannot do this. You know, we just cannot take care of Donna and her mother Mary and all the other Donnas and Marys in our country. There will be all sorts of red herrings and all kinds of arguments made that just do not hold water. There is no basis in fact for them, but they sound good. Maybe they will scare some people. But we are tired of being scared and intimidated. This is no longer just a political issue, this goes to the very heart of who we are as Americans.

Are we going to take care of each other? Are we going to let doctors and nurses practice their professions? Or are we going to turn our lives over to HMO accountants and bookkeepers and the like?

I am hoping we will not only proceed to this bill, which deserves a full hearing, deserves a full debate, and deserves a unanimous vote in this Chamber. I hope when we pass this, we will be sending a very clear message to all the mothers and fathers and family members that this will never happen again. This beautiful young woman whose life was cut short tragically would still be with us today if that HMO had just said: maybe we should let you go ahead and have that test.

I look forward to working with my colleagues. This has been 5 years in the making. Let's end the politics of delay and move forward with the motion to proceed.

The PRESIDING OFFICER. The Senator from Nevada.

(Disturbance in the visitors' gallery.)

The PRESIDING OFFICER. The galleries will cease making a display. Any expressions of approval or disapproval are not permitted in the Senate gallery. The Sergeant at Arms will enforce it.

Mr. REID. Mr. President, I propounded a unanimous consent request some time ago that the Senator from New York was to be recognized until 4:15, the Senator from New Jersey from 4:15 to 4:30. There is no one here on the other side. The Senator will proceed until Republicans show up.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. TORRICELLI. Mr. President, this debate is symbolic in many ways. It holds the prospect of ending a five-year effort to pass meaningful HMO reform.

A Patients' Bill of Rights that recognizes, that while the move to HMO based health care may have started with the best of intentions, the results have been less than spectacular.

Beyond the prospect of finally enacting HMO reform, this debate marks the

beginning of the tenure of TOM DASCHLE as majority leader. It is a testament to the priority that he and our caucus have given to this issue, that it is the first legislation we have brought to the floor. For too long this debate has been one-sided and bottled-up by partisanship.

I was hopeful that Majority Leader DASCHLE's earlier commitment to a full and fair debate on amendments would begin this debate on a positive note. However, I am disappointed that my colleagues on the other side have objected to the motion to proceed and that it potentially will be days before we can begin the debate on amendments.

The Senate HELP Committee has done a study and found that each day of delay on this issue has very real consequences. Every day 41,000 patients experience a worsening of their condition, 35,000 patients have needed care delayed, 10,000 patients are denied a diagnostic test or treatment, and 7,000 patients are denied a referral to specialist.

As important as the education debate over the past month has been, no issue will touch more families than what we do on HMO reform.

Today, more than 90 percent of working Americans receive insurance from their employer. Most do not have a choice about the type of coverage. This means that many working families are stuck with an HMO despite any concerns they may have with the quality of care they receive. There are over 160 million Americans with HMO insurance.

Mr. President, 33 percent of the residents of my state—2.3 million—are in an HMO. A vast majority of these Americans are in favor of and are demanding fundamental change in the way HMOs provide care.

A poll by the Kaiser Family Foundation conducted just 60 days ago found that 85 percent of Americans want comprehensive HMO reform. These Americans believe, as I do, that doctors, not HMO accountants should be in control of medical decisions.

The reality is that HMOs are a product of the runaway health care inflation of the 1970's and 1980's that drove the ranks of the uninsured.

It was hoped that by providing a predetermined list of doctors and medical coverage, the costs of medical care could be contained and coverage provided to more people. But after three decades of cutting costs and services to keep costs low, it is clear that HMOs have failed to strike the necessary balance.

Today, we are faced with a situation where medical decisionmaking is disproportionately in the hands of insurance company bureaucrats. That is why, from patients to doctors, there is unanimity in making some common sense reforms.

While Washington has been paralyzed by partisan gridlock, state legislatures have been debating and acting on this issue for years.

For example, my state of New Jersey became a national health care reform leader with the passage of the Health Care Quality Act in 1997.

The law now prohibits gag clauses, provides an independent health care appeals program and requires that insurers provide clear information on covered services and limitations. These reforms, long sought by Democrats and consumers, were passed by a Republican legislature and signed by a Republican governor.

But no matter how many individual states act, the reality is that an overwhelming number of Americans won't be protected because their state laws are exempt under ERISA.

Mr. President, 83 percent—124 million—of Americans who get their health care from their employer are not covered by state laws, and 50 percent of people enrolled in an HMO in New Jersey are exempt from State protections.

Originally designed to protect employees from losing pension benefits due to fraud, the Employee Retirement Security Act of 1974 has provided HMOs with immunity from state regulations for their negligent behavior. So despite the progress in states like New Jersey, complaints about the quality of care by HMOs continue to rise.

A survey by Rutgers University and the state Department of Health found overall that one in four New Jerseyans enrolled in an HMO was dissatisfied with their health plan. Last October a state report card found that patients in NJ were less satisfied with their HMO care than the previous year.

The bipartisan legislation being brought to the floor this week, is supported by more than 500 doctor and patient rights groups, and will finally extend patient protections to all Americans in an HMO.

This promises to be a long debate and while I look forward to dealing with many of the important details, I want to outline the fundamental principles we must address.

Under current practices, many HMOs force a patient with a chronic condition like heart disease to be treated by only the family doctor. The Kennedy-Edwards bill will guarantee access to a cardiologist or other needed specialist, even one outside his or her network.

Currently, if your sick or suffer an injury while traveling or on vacation you must get prior approval from your HMO before going to the emergency room. Our plan will ensure that a patient could go to the nearest emergency room without having to first get permission from the HMO.

Under current HMO policies, many women must obtain a referral from their primary care doctor before seeing an OB/GYN. This bill will guarantee access to an OB/GYN without a referral.

HMOs often force a child with a chronic, life threatening condition to seek approval from a primary care doctor before seeing a specialist. The Kennedy-Edwards plan would ensure a child with cancer, for example, would have the right to see a pediatric oncologist whenever the care is needed.

Today, many HMOs restrict physicians from discussing all treatment options with their patients and cut reimbursement rates for doctors who advocate with the HMO on behalf of their patients. This bill will prohibit HMOs from financially penalizing doctors who provide the best quality care for their patients.

HMOs typically have the last word when they decide to deny a needed test, procedure or treatment. We will guarantee medical decisions by HMO bureaucrats will be subject to a swift internal review and a fair external review process.

And when reckless medical decisions made by HMOs injure or kill, they are shielded from any responsibility. Now we will finally ensure that all Americans will have the right to hold HMOs accountable in court.

These protections will provide a new sense of health care security but undoubtedly over the next weeks we will hear arguments that the price for these protections will be higher cost and increases in the uninsured. But the CBO report on this legislation states that it would increase premiums by only 4.2 percent over 10 years, this will mean a little over $1 per month for the average employee.

There will be arguments that this is unnecessary because HMO's have responded to criticisms and already provide these protections. If this were truly the case, then costs should not rise at all.

They will also argue that with every one percent increase in premiums, approximately 300,000 Americans lose their health insurance coverage. But in 2000, when overall health insurance premiums increased 10 percent, the number of uninsured actually dropped.

Mr. President, we will debate many issues in this Congress but none with more impact on more people than this.

I want to thank our new majority leader, Senator DASCHLE, for bringing this to the floor so quickly and I look forward to its debate.

The PRESIDING OFFICER. Under the previous order, the time controlled by the majority has expired.

Mr. TORRICELLI. Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. Mr. President, I rise to address the issue of a Patients' Bill of Rights. As a physician, and as one who has participated very directly in this debate over the past several years, I am one who welcomes the opportunity to have discussion on this important issue over the coming hours and days and over, I assume, the next couple of weeks.

We do have a unique opportunity, I believe, to pass a strong bill of rights for patients, an enforceable bill of rights for patients, under the leadership of President George Bush as he

outlined in his principles last February.

As the American people listen to us discuss this legislation this afternoon, tonight, and over the coming days, I hope they will understand broadly that we, as a body, whether it is Democrat or Republican, will come together in this session and pass a bill that I am very hopeful will be signed by the President of the United States. I am confident that he will sign it if it is consistent with the principles that he outlined.

The bill that is going to be brought to the floor, the McCain-Edwards-Kennedy bill, is a starting place. We can't end there because, yes, it has the patients' protections and appeals process, external and internal, but at the same time it opens floodgates to a new, massive, repetitive wave of frivolous lawsuits which very quickly translate down into increased costs and increased charges.

Much of that money that is taken out of the health care system goes into the pockets of trial lawyers. Increased costs translate very directly down to loss of insurance, as we talked about the uninsured that are increasing 900,000 to 1 million every year.

We absolutely must, as we address gag clauses, access to specialists, admission to emergency rooms, and clinical trials, and as we look at patient protection, bring some sort of balance to the system to make sure that if there is harm or injury—after exhaustion of internal and external appeals processes—that compensation to that patient is full, if there has been injury or if there has been damage. But we can't allow exorbitant, out-of-control lawsuits because they drain money out of the system itself. It drives premiums up and punishes the working poor. They are the ones right now who are having a hard time struggling to even buy that insurance, even when it is in part covered by their employer. That is why when we drive these premiums up—whether it is 1, 2, 3 or 4 percent for every 1 percent—the increased cost drives those premiums up, and about 300,000 people lose their health insurance.

When we get into the business of mandating patient protection, those rights cost money. Somebody has to pay that money in some way. It is the people. It is distributed throughout the premiums. When those premiums go up, some people can't afford to buy them anymore, and they forego that insurance.

That is the sort of balance that we need to at least be aware of as we are on this floor debating.

I look forward very much to participating in that debate as we go forward on having this strong, enforcement patient bill of rights, which has strong access to emergency room, access to clinical trials, access to specialists, and elimination of gag rules. If there is any sort of concern about whether or not benefit is given when there is harm or injury—with strong internal and external appeals with an independent physician making that final decision, and then, yes, at the end of the day, if there has been harm or injury—the external review system of the physician says the plan made a mistake, sue the HMO, but do not sue the employer. Sue the HMO and not the employer.

I see my colleague from Wyoming is with us today. I am going to yield my time and look forward to participating either later tonight or tomorrow in this debate.

Just as an aside, I enjoyed very much working with the Senator from Wyoming over the last several years as we have addressed this issue. Everybody has been so entrenched. At the same time, we have been studying this issue and working hard. He is one of our colleagues who has invested a tremendous amount of time putting together a Patients' Bill of Rights that really meets the balance of getting health care to people when they need it rather than focusing on these frivolous lawsuits which might potentially hurt the patient.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Thank you, Mr. President. I thank the Senator from Tennessee for his comments. I thank him for the tremendous job he has done. He is the only doctor in the Senate. He has done a tremendous job of educating us in all of the areas of a Patients' Bill of Rights and medical care and has saved quite a few people along the way. We really appreciate that. I particularly thank him for the education he has given me.

Mr. President. I rise today to join all of my colleagues in calling for a Patients' Bill of Rights. The President has clearly stated his desire to sign a bill into law, but has also been very clear on what he won't sign. I support his goal of protecting Americans that have been mistreated by their HMO, and I also support his goal of only enacting a bill that will preserve access to insurance for those that already have it, and increase access for those Americans that are uninsured. The legislative and political history on this matter stretches back a ways. In fact, in three of the four-and-a-half years I have been in the Senate, we have passed a Patients' Bill of Rights. I hope to keep that streak going this year, only I hope what we pass finally gets signed into law to the benefit, not the detriment, of consumers.

While there is a lot of consensus between all parties on the need for a number of patient protections, a strong internal and external appeals process, a right to hold health plans accountable in certain instances, and an assurance that all Americans be afforded such protections, there remains some disagreement on key issues.

First, the appeals process should be meaningful and required because it gets people the right care, right away.

Second, limitless lawsuits help lawyers, not patients.

Third, turning state regulation of health care on its head is a losing prospect for consumers whose needs have historically been better served by their own state insurance commissioner. While I would like to spend my time today making a general statement about the need for a Patients' Bill of Rights, I plan to revisit in detail the issues I just mentioned as the debate moves ahead.

During both the Floor debate and earlier in the Health, Education, Labor, and Pensions Committee consideration of the Patients' Bill of Rights, I asserted strong positions on several key components of the managed care reform debate. I wish, once again, to reiterate my support for adoption of a bill that protects consumers, improves the system of health care delivery and shrinks the rolls of the uninsured. I will do everything I can to prevent increasing the number of uninsured.

I believe that as we consider a bill as important as the Patients' Bill of Rights, we must never lose sight of our shared goal of having a strong bill. The politics should be left at the door in our effort to emerge with the best policy for patients. That was the commitment the principals in the conference made to the public more than a year ago.

I really cannot go further without commenting on that conference. I have been told by my more senior colleagues that Members have never logged as many hours in trying to thoroughly understand and work a bill as we did last year. The effort was not in vain. We learned a tremendous amount about the value of enacting a good Patients' Bill of Rights. We also learned that preserving access to quality health care is the most important patient protection we can provide to consumers.

Together, Senators GREGG, FRIST, GRAMM, JEFFORDS, and HUTCHINSON, Chairman NICKLES, and I demonstrated every day our commitment to doing the right thing for patients. I offer a special thanks to Senator NICKLES for being a patient gentleman as he led us through this negotiation process.

I do think, as that process went on, some saw the possibility that we would complete it. Most of us thought it would be completed. Some thought it was better as an issue than a solution and jumped out of the processes and started bringing votes back here in this Chamber. We could have had this done last year.

All of the bills we have ever considered, including the bill before us today, have offered a series of patient protections to consumers—direct access to OB/GYN and pediatric providers, a ban on gag clauses, a prudent layperson standard for emergency services, a point-of-service option, continuity of care, and access to specialists—that would provide all consumers many of

the same protections already being offered to State-regulated health plan participants.

This is a bill for managed care. There are already State protections for State-regulated health plan participants.

Additionally, health plans would be required to disclose extensive comparative information about coverage of services and treatment options, networks of participating physicians and other providers, and any cost-sharing responsibilities of the consumer.

All of these new protections are crowned by the establishment of a new, binding, independent external appeals process, the linchpin of any successful consumer protection effort.

While I still do not believe that suing health plans is the biggest concern of consumers, holding health plans accountable for making medical decisions is a key component of a Patients' Bill of Rights.

For the record, I believe the biggest concern of patients is getting the best health care they can get, right when they need it most, not the ability to sue. Most people I know value their health over all else. Money does not buy happiness, but good health can make a nice downpayment.

Our success will absolutely be measured by whether we get patients the medical treatment they need right away. Everyone agrees that the essential mechanism is an independent, external appeals process. The last thing we should do is establish a system that would require patients to earn their care through a lawsuit. It is for this very reason that the bill I will support securely places the responsibility for medical decisions in the hands of independent medical reviewers whose standard of review is based on the best available medical evidence and consensus conclusions reached by medical experts. These decisions would be binding on health plans.

One of the specific concerns that will be directly addressed by the independent review process is that of the ''medical necessity or appropriateness'' of the care requested by the patient and their physician. Consumers and health care providers have repeatedly requested that there be a prohibition on health plans manipulating the definition of ''medical necessity'' to deny patient care. I think all of the bills have attempted to address this concern. I do have concerns, however, about how the bill before us goes beyond addressing this concern and obviates the health care contract altogether, eliminates the contract altogether. Imagine trying to price the contract if you do not know what the contract contains. That provision will have to be fixed in the final bill.

The issue of ensuring that patients receive medically necessary and appropriate care they have been promised in their contract has been addressed by a number of States already through the appeals processes they have established. Many employers and health plans already voluntarily refer disputed claims to an independent medical review. But when it comes to formal Federal action pertaining to the employer plans regulated solely by the Department of Labor, we are just now examining how to proceed. In other words, it works at the State level; it has not worked at the Federal level. Now we are considering a Federal solution.

Since its inception in 1974, this is the first major reform effort of ERISA, the Employee Retirement Income Security Act, as it pertains to the regulation of group health plans. The focus of the mission—regardless of politics—should be to protect patients. Protecting patients means not only improving the quality of care but expanding access to care and allowing consumers and purchasers the flexibility to acquire the care that best fits their needs.

This leads me to another concern I have with the bill before us. It requires States to forsake laws they have already passed dealing with patient protections included in the bill if they are not the same as the new Federal standards. The technical language in the bill reads ''substantially equivalent,'' ''does not prevent the application of,'' and under the process of certifying these facts with the Secretary of Health and Human Services, the State will have to prove that their laws are ''substantially equivalent and effective patient protections.''

The proponents of this language say it will not undo any existing State laws that are essentially comparable. But that is not what their bill requires. Instead, when I see the requirement of ''substantially equivalent,'' I read that if there is any difference, then they are obviously not equivalent and do not meet the test. What does ''substantial'' mean? And how does it modify ''equivalent'' at the end of the day? These questions are not being answered.

Is it that the proponents aren't overly concerned with the implementation of the law versus being able to say that their bill meets the political test of covering all Americans, regardless of existing meaningful protections that State legislatures have enacted? If the laws just have to be comparable, then why don't we use that phrase?

I am very leery of one-size-fits-all legislation. Every State has differences, geographical differences, differences in the mix of people, differences in distance, differences in climate, and, more particularly, differences that affect medical care.

In Wyoming we have few doctors, we have few people, and we have lots of miles. We do not have competing hospitals anywhere in the State. And we have a need for doctors—I love this—we have a need for doctors, including veterinarians, in every single county.

I will get into this issue in more detail as the debate proceeds. I do believe we can strike a compromise on the matter of scope, but I cannot state strongly enough my objection to wrenching from States their authority to regulate on these matters.

The only hard proof we have right now is that States are, by and large, good regulators, while the Federal Government has done a lousy job regulating on behalf of its health care consumers. The General Accounting Office has been reporting that to us since we passed the Health Insurance Portability and Accountability Act, HIPAA, in 1996. And that is the consumer enforcement protection mechanism around which the bill is written.

I know I am on the verge of sounding like a broken record, but I would like to sketch out the effect of the bill's scope, as it is currently drafted. It is done best with a story about Wyoming. Wyoming, as I mentioned, has its own unique set of health care needs and concerns. Every State does. For example, despite our elevation, we do not need the mandate regarding skin cancer that Florida has on the books.

My favorite illustration of just how crazy a nationalized system of health care mandates would be comes from my own time in the Wyoming Legislature. It is about a mandate for which I voted and still support today. You see, unlike in Massachusetts or California, in Wyoming we have few health care providers, and their numbers virtually dry up as you head out of town. We can see every single town by driving outside of it. They do not run together anywhere.

So we passed an ''any willing provider'' law that requires health plans to contract with any provider in Wyoming that is willing to do so. While that idea may sound strange to my ears in any other context, it was the right thing to do for Wyoming. I know it is not the right thing to do for Massachusetts or California. I wouldn't dream of asking them to shoulder that kind of a mandate for our sake, when we can simply responsibly apply it within our borders.

What is even more alarming to me is that Wyoming has opted not to enact health care laws that specifically relate to HMOs because there are no HMOs in the State, with one exception, which is very small and is operated by a group of doctors who live in town. They are not a nameless, faceless insurance company. Yet under the proposal the Democrats insist is best for everybody, the State of Wyoming would have to enact and actively enforce at least 15 new laws to regulate a style of health insurance that doesn't exist in the State.

What Wyoming does currently require is that plans provide information to patients about coverage, copays, and so on, much as we would in this bill; a ban on gag clauses between doctors and patients; and an internal appeals process to dispute denied claims. I am hopeful the State will soon enact an external appeals process, too.

This is a list of patient protections that a person in any kind of health

plan needs, which is why the State has acted. But requiring Wyoming to enact a series of additional laws that don't have any bearing on consumers in our State is an unbelievable waste of a citizen legislature's time and resources.

Let me explain a citizen legislature. In Wyoming, they meet for 20 days one year and 40 days the next year. They do no special sessions. If you are only employed as a legislator—and I use that term loosely on being employed because they hardly get paid anything—for 20 days one year and 40 days the next year, you have to have a bona fide job. You have to have real work in the real world. And they do. So they meet for 20 days one year—and incidentally, the 20 days is the year that they do the budget work, and they make it balance every time—20 days one year and 40 days the next. You have to live the rest of the year under the laws that you passed, which gives you a different perspective on laws than perhaps in States where the legislature meets for longer periods of time and definitely a different perspective than we have in this body. That is a citizen legislature.

Speaking of limited resources, I would be remiss if I didn't touch once more on our most important charge in the debate; that is, to preserve Americans' access to health insurance. If we make it too difficult for employers to voluntarily provide health care to their employees, then it should come as no surprise to any of us that they will simply stop volunteering to do so. Insurance for most businesses is a volunteer effort. I won't support a bill that denies people access to health care. If my colleagues don't believe me now, they can bet their constituents will come calling when they lose their insurance or have it priced forever beyond their reach.

Sometimes changes we make in the Senate drive up the cost, as the Senator from Tennessee was explaining earlier. For every 1 percent that costs go up, 300,000 people in this country lose their insurance.

I will make a promise to my own constituents right now that I will work hard to enact a Patients' Bill of Rights. I will fight any measure that threatens their access to health care. I will reserve further remarks until we delve into the process of considering the different provisions of the bill.

I, again, extend the hand of compromise and the offer to all of my colleagues that we rally around our common position on many of the patient protections and forge ahead on the rest of the bill towards an end that has an eye on what is best for the patients. This bill is about them. If someone else is benefiting from a provision, then I would suggest that our drafting is not quite done. There are some of those provisions.

I look forward to my continued role in the process. I thank the Chair and reserve the remainder of any time we have.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I see no others on the side of the minority so I will proceed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, Las Vegas has two daily newspapers. One is the Las Vegas Daily Journal; The other is the Las Vegas Sun. I was very impressed with the editorial in the Las Vegas Sun newspaper yesterday. The newspaper is a relatively new newspaper by American standards. It is 40, 50 years old. It was started by an entrepreneur by the name of Hank Greenspun who was a real pioneer in Las Vegas. He developed a newspaper that was feisty. It was a newspaper that took on Senator McCarthy before it was fashionable to do so. He took on the gaming interests when it was a very small newspaper and won an antitrust suit against them for their failing to advertise and they, in fact, boycotted his newspaper.

So I give this background to indicate it is a great newspaper. It was. It still is.

The editorial they wrote yesterday can be paraphrased but not very well. It is a short editorial. I will read the editorial into the RECORD. It is entitled ''Patient rights get some life.''

The subtitles say:

The Senate is expected to take up this week a patient's bill of rights.

They have under that:

Our take: It is unfortunate that so far President Bush opposes the Democratic plan, which also is favored by some Republicans, that finally would make HMOs accountable.

The editorial begins as follows:

[From the Las Vegas Daily Journal, June 18, 2001]

President Bush's campaign pledge to be ''a uniter, not a divider'' has been a bust in the early going of this administration. The White House's embracing of extraordinarily conservative views, which are far removed from the mainstream, have given the president some real problems in living up to his conciliatory vow, especially on environmental issues. Now Bush will soon face another test of his ability to bring warring sides together on another divisive matter: a patient's bill of rights.

The Senate, which recently came under Democratic control, plans this week to take up a patient's bill of rights, which for years has been stymied by Senate Republican leaders. It's not just Democrats supporting the plan, notable Republicans such as John McCain also back the bill. It also is important that last week Rep. Charlie Norwood, R–Ga., signed on to a similar Democratic measure in the House. Norwood for years had championed a patient's bill of rights, but he had held off his support this year in deference to the White House, which said it wanted to work out a compromise. But even Norwood's loyalty wore thin, finally causing him to break company with Bush on this issue. The president, who has threatened to veto a patient's bill of rights that allows lawsuits in state courts against HMOs, just wouldn't budget on this key provision.

The patient's bill of rights isn't that complicated: It's all about accountability. Currently, health insurance companies are the only businesses in the nation that are immune to lawsuits if they harm someone. No one else gets such special treatment. In light of how HMOs have wrongly denied care to patients in the past, this is an industry that needs some accountability. While the lawsuit provision is essential if a patient's bill of rights is to carry any weight, few patients would ever want to pursue this option. What they want is immediate care. The Democratic plan tries to ward off people from heading to court, requiring patients to first go to an independent review panel before seeking relief through the courts.

If there is a glimmer of hope it is that Bush has softened some of his earlier hardline positions on the environment after hearing quite a bit of criticism. In the same vein, the president should listen to reason and endorse a patient's bill of rights that requires HMOs to finally be held accountable for their actions.

Mr. President, that is an editorial from a Las Vegas newspaper. It is simple. It is direct. It is to the point. It is what this debate is all about. If, as I have heard today, the minority thinks the bill has some things that they don't like, don't understand, wish weren't there, let's debate this bill. Let's not hide behind some procedural gimmick that prevents us from bringing this matter to the fore for the American people.

The people of Minnesota, the State the Presiding Officer represents, the people of New Jersey, the junior Senator from New Jersey being on the floor, the people of the State of Nevada and the rest of the country need this legislation. This is about patient protection. It is about having a doctor take care of a patient, something we used to take for granted—that if a doctor thought a patient needed something, the doctor ordered it for the patient. They can't do that anymore. That is too bad.

Patient care has been hindered, harmed, and damaged. What we want to do with the Patients' Bill of Rights is reestablish the ability of a doctor and a nurse to take care of my daughter, my sons, my wife, my children, my neighbors. Anyone who needs a doctor's care should be able to have the doctor's care. I don't want a doctor doing my taxes. I also don't want an accountant doing my medical care. That is what we have in America, in many instances, and it is wrong. This legislation that we are trying to bring up—and we will get to it; it is just a question of when—is supported by many organizations. I will soon read into the RECORD the entities that support this legislation. Virtually every health care entity in America, every consumer group, every doctor group, including the American Medical Association and, surprisingly, because I have never known them to agree on anything, the AMA and the American Trial Lawyers agree this legislation is necessary.

Who opposes it? The people providing the care, the managed care entities do not support this legislation. They are the ones paying for the millions of dollars worth of ads on television trying to confuse and frighten the American people—just as they did with the health care plan in 1993. They spent

$100 million or more in advertising to frighten and confuse the American people. I have to hand it to them; they did a great job. They did frighten the American people. We are not going to let them do that.

We are going to complete this legislation. We are going to complete this legislation very soon. What is very soon? By next Thursday, a week from this Thursday, and then if we finish it by that date, we are going to do our Fourth of July recess. If we do not complete our legislation by a week from Thursday, we are going to work here, according to the majority leader, TOM DASCHLE, until we finish it. We are going to work Friday, Saturday, and we are going to work Sunday; the only day we are going to take off is July 4.

Mr. President, this legislation is overdue. It is important, and we are going to pass this legislation before we go back to be in parades for the Fourth of July.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CORZINE). Without objection, it is so ordered.

Mr. REID. Mr. President, we have heard utterances in this Chamber today about the Patients' Bill of Rights by Senator JOHN MCCAIN that we have a lot of groups that support this legislation. I don't have a total because it is growing every day. I am going to read into the RECORD a partial list of those entities and organizations that support the Patients' Bill of Rights, the legislation before this body:

Abbott House of Irvington, NY; Abbott House, Inc. in SD; AIDS Action; Alliance for Children and Families; Alliance for Families & Children; Alpha 1 Association; Alternative Services, Inc.; American Academy of Child and Adolescent Psychiatry; American Academy of Dermatology; American Academy of Emergency Medicine; American Academy of Facial Plastic and Reconstructive Surgery; American Academy of Family Physicians.

American Academy of Neurology; American Academy of Ophthalmology; American Academy of Otolaryngology; American Academy of Pain Medicine; American Academy of Pediatrics; American Academy of Physical Medicine and Rehabilitation; American Association for Geriatric Psychiatry; American Association for Marriage and Family Therapy; American Association for Psychosocial Rehabilitation; American Association for the Study of Liver Diseases; American Association of Children's Residential Centers; American Association of Neurological Surgeons.

American Association of Nurse Anesthetists; American Association of Pastoral Counselors; American Association of People with Disabilities; American Association of Private Practice Psychiatrists; American Association of University Affiliated Programs for Person with Developmental Disabilities; American Association of University Women; American Association on Health and Disability; American Association on Mental Retardation; American Board of Examiners in Clinical Social Work; American Board of Examiners in Social Work; American Cancer Society; American Children's Home in Lexington, NC.

American Chiropractic Association; American College of Cardiology; American College of Gastroenterology; American College of Legal medicine; American College of Nurse Midwives; American College of Obstetricians and Gynecologists; American College of Osteopathic Emergency Physicians; American College of Osteopathic Family Physicians; American College of Osteopathic Pediatricians; American College of Osteopathic Surgeons; American of Physicians—American Society of Internal Medicine; American College of Surgeons.

American Congress of Community Supports and Employment Services; American Council on the Blind; American Counseling Association; American Dental Association; American Family Foundation; American Federation of Teachers; American Foundation for the Blind; American Gastroenterological Association; American Group Psychotherapy Association; American Headache Society; American Health Quality Association; American Heart Association.

American Lung Association; American Medical Association; American Medical Rehabilitation Providers Association; American Medical Student Association; American Medical Women's Association, Inc.; American Mental Health Counselors Association; American Music Therapy Association; American Network of Community Options and Resources; American Nurses Association; American Occupational Therapy Association; American Optometric Association; American Orthopsychiatric Association.

American Osteopathic Association; American Pain Society; American Pharmaceutical Association; American Physical Therapy Association; American Podiatric Medical Association; American Psychiatric Association; American Psychiatric Nurses Association; American Psychoanalytic Association; American Psychological Association; American Public Health Association; American Small Business Association; American Society of Cataract & Refractory Surgery.

American Society of Clinical Pathologists; American Society of Gastrointestinal Endoscopy; American Society of General Surgeons; American Society of Internal Medicine; American Society of Nuclear Cardiology; American Speech-Language-Hearing Association; American Therapeutic Recreation Association; American Urogynecologic Association; American Urological Association; American Urological Society; Americans for Democratic Action; Anxiety Disorders Association of America.

Association for Ambulatory Behavioral Healthcare; Association for Education and Rehabilitation of the Blind and Visually Impaired; Association for the Advancement of Psychology; Association of Academic Psychiatrists; Association of Academy Physiatrists; Association of Community Cancer Centers; Association of Persons in Supported Employment; Association of Women's Health, Obstetric and Neonatal Nurses; Assurance Home in Roswell, NM; and Auberle of McKeesport, PA.

Those are the A's. I have completed the groups beginning with the letter A. I will come back later and start with the B's and go through the hundreds of groups that support this legislation. The overwhelming number of American people support this legislation, as referenced by those organizations that begin with the letter A.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CORZINE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. REID). Without objection, it is so ordered.

Mr. CORZINE. Mr. President, I am honored to rise today, particularly with the Presiding Officer who is in the Chair, to support a motion to proceed to S. 1052, the Bipartisan Patients' Bill of Rights.

I commend Senators MCCAIN, EDWARDS, and KENNEDY for the tremendous effort they put in to develop a strong, enforceable, and bipartisan bill with the support of over 500 consumer provider and health care groups, as the Presiding Officer just demonstrated to us with the A's.

More importantly, I commend the American people because the American people know what makes common sense with regard to the need to provide everyone quality health care that puts the relationship between the doctor, the nurse, and the patient first.

Over the last 30 years, managed care organizations have come to dominate our health care system. These organizations both pay for and make decisions about medical care, often preempting the fundamental relationship in the health care equation between doctor and patient.

However, unlike doctors, nurses, or almost anybody in our society, HMOs, managed care institutions, are not held accountable for their medical decisions and treatment decisions.

We just spent 8 weeks in the Senate talking about education and accountability. We need to talk about accountability within the context of the patient-doctor relationship, and that is what this debate will be all about if we can ever get to the bill.

Unfortunately, in the case of some HMOs, they have sometimes skimped on care that undermines the health of our patients, the health of the American people for the preemption and benefit of the bottom line, and, in fact, it is all about protecting the bottom line.

That is why this legislation is absolutely critical. The McCain-Edwards-Kennedy bill will ensure at long last that managed care companies are held accountable for their actions. Just as in all of industry—every doctor and, frankly, every individual in America—everyone is held accountable.

We cannot afford to wait any longer before passing legislation to curb insurance company, managed care abuses. According to physician reports, every single day we delay passage of

this legislation, 14,000 doctors see patients whose health has seriously declined because an insurance plan refused to provide coverage for a prescription drug; 10,000 physicians see patients whose health has seriously declined because an insurance plan did not approve a diagnostic test or procedure; 7,000 physicians see patients whose health has seriously declined because an insurance plan did not approve a referral to a medical specialist; 6,000 physicians see patients whose health has seriously declined because an insurance plan did not approve an overnight hospital stay. Think about that. That is 35,000 folks a day who are left with diminished and substandard care because we do not have the right relationship between doctors and patients in place with the interference of bureaucrats at insurance companies and HMOs.

This legislation has all the key components that Americans have demanded to respond to these problems. It contains strong, comprehensive patient protections.

It creates a uniform floor of protections for all Americans with private health insurance, regardless of whether something has been done in the States.

It provides a right to a speedy and genuinely independent external review process when care is denied. It is not guaranteeing a lawsuit, it is guaranteeing a speedy independent external review.

Finally, it provides consumers with the ability to hold managed care plans accountable when plan decisions to withhold or limit care result in injury or death, harm and pain to the patient.

I wish to speak briefly about a few of the most important provisions in this bill, but this is all about common sense.

First, this bill protects all Americans in all health plans. If we are serious about providing consumers with protections, we must be serious about covering all Americans. The McCain-Edwards-Kennedy bill does just that. No person is left without rights because they live in a State with weaker protections.

Second, the legislation ensures a swift, internal review process is followed and a fair and independent external appeals process if it is necessary. This will guarantee that health care providers, not health plans, will control basic medical decisions. It does not guarantee a lawsuit; it provides a process for a legitimate review of a patient's claims.

Third, the legislation guarantees access to necessary care. Patients should not have to fight their health plan at the same time they are fighting an illness. That is why the legislation guarantees access to necessary specialists, even if it means going out of a plan's provider network. It seems pretty simple we ought to get to the right doctor for the disease that is diagnosed.

Chronically ill patients will receive the speciality care they need with this bill.

Patients will have access to an emergency room, any emergency room, when and where they need it.

Women will have easy access to OB/GYN services without unnecessary barriers.

Children will have direct access to pediatricians and, most importantly, pediatric specialists.

Patients can participate in potentially lifesaving clinical trials. This is a critical protection for patients with Alzheimer's, cancers, or other diseases for which there are no sure cures.

Fourth, the legislation protects the crucial provider-patient relationship—doctor-patient, nurse-patient.

It contains antigag rule protections ensuring health plans cannot prevent doctors and nurses from discussing all treatment options with their patients. It sounds like common sense, and it limits improper incentive arrangements by the insurance industry.

Finally, this legislation makes sure that the rights we seek to guarantee are enforceable. Yes, this legislation allows individuals harmed by an HMO to sue their HMO. This is a critical provision because, let's face it, a right without a remedy is no right at all.

Again, that fundamental accountability issue we have been talking about, whether it is with regard to education, we also ought to be talking about it with health care.

No matter what health care treatment protections are passed into law, unless patients can enforce their rights, the HMO is free to ignore those requests. Health insurers must understand that unless they deliver high-quality health care that protects the rights of patients, they can and will be held accountable.

I wish to address for a moment the argument that this legislation will lead to more uninsured Americans.

There is perhaps no issue about which I am more passionate than the uninsured, about 44 million in America. I believe health care is a basic right, and neither the Government nor the private sector is doing enough to secure that right for everyone. I hope one day we will have that debate. But let me be clear; if I believed this bill would increase the number of uninsured—I believe a number of Senators believe the same—we would not support this.

Let me also point out the hundreds of health care and consumer groups that support this legislation are also the very groups that are working the hardest to expand coverage for the uninsured. They also would not support this legislation if they believed it would result in more uninsured. That issue is nothing but a diversion, a red herring, a scare tactic, because the CBO itself has said this legislation would only increase premiums by 4.2 percent over a 10-year period.

This legislation will not result in higher numbers of uninsured. It will result in better quality for patients. I heard Senator KENNEDY today saying, whether it was about family medical leave or minimum wage or a whole series of things, people are just trying to scare folks into believing that taking action that is going to help the people of America is somehow going to result in very negative results that ought to keep us from doing this and moving forward. It is just a bad argument. They are scare tactics at their worst.

In sum, I believe health decisions should be made based on what is best for the patient. We need to assure the American people that the practice of medicine is in the hands of the doctors. We trust them with our lives. We should trust them to decide what care we need. I urge my colleagues to agree to take up the bipartisan McCain-Edwards-Kennedy Patients' Bill of Rights. I see one of the authors now. I congratulate him and the other sponsors for moving an important part of what needs to be done to make America's health care more secure for everyone.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EDWARDS. Mr. President, let me first thank my colleague from New Jersey for his passionate support for this important piece of legislation, the Patients' Bill of Rights. I want to talk about several subjects briefly, if I may.

First, some people have argued, in the press, the media, and on the floor of the Senate during this debate today, that the only difference between the McCain-Edwards-Kennedy Patients' Bill of Rights, the Patients Protection Act, and the bill that has been proposed by Senator FRIST and others, is on the issue of accountability, taking HMOs to court.

There are multiple differences between these bills. There are differences in how you determine whether a State can opt out of the protections covered by the Patient Protection Act, i.e., how much coverage there is, how many people are covered by the bill.

There are differences in access to specialists outside the plan. Our bill specifically provides you can have access to a specialist. If a child needs to see a pediatric oncologist, a child with cancer, the child has a right to do that. Under their bill, the HMO is in charge of that decision. Under our bill, there is a true independent review by the independent review panel. If a claim has been denied by an HMO, that question has been appealed within the HMO, and then if that was unsatisfactory, the next appeal is to an independent review panel. Our bill specifically provides that panel must in fact be independent. The HMO can't have anything to do with choosing them. Neither can the patient or the physician involved in the care.

Unfortunately, the Frist bill does not provide the HMO cannot have control over that panel, which means the HMO essentially can have control. It is like picking their own judge and jury in a case involving somebody's health, health care that could affect the family.

The bottom line is, from start to finish, whether it is coverage, access to specialists, access to a true independent review, if, as a matter of last resort a case has to go to court, having that resolved quickly and efficiently or having it dragged out over years and years and years in a Federal court—on every single issue of difference, there is a simple thing. Our bill protects patients. Our bill is on the side of families and doctors. Their bill is slanted to the HMOs.

So it is not an accident that the American Medical Association and over 300 health care groups—virtually every health care group in America—support our bill. It is not an accident that the majority of the Senate supports our bill. It is not an accident that the majority of the House of Representatives supports our bill. All these organizations that deal with these issues every day—I am not talking about Members of the Senate, I am talking about doctors who practice medicine every day, who deal with problems with HMOs, I am talking about patients groups who hear these horror stories regularly about HMOs, who have analyzed this legislation, looked at it word by word by word from start to finish and have come to a simple conclusion: Our bill is a true patient protection act. Their bill is an HMO protection act. Our bill protects patients, doctors and families. Their bill, instead of being a Patients' Bill of Rights, is a patient's bill of suggestions because the rights contained therein are not enforceable.

To the extent there is an argument made during the course of this debate that there are no differences, there are differences. There are important differences. From the beginning to the end of this bill, there are important differences. The best evidence of those differences is the fact that the American Medical Association and doctors and health care providers and nurses groups all over America support our bill. They know what the problems are. They want to be able, along with families, to make health care decisions. They want these decisions made by health care providers and families and not by some bureaucrat or clerk with no training and experience, sitting behind a desk somewhere, who has never seen the patient. That is the difference between these two pieces of legislation.

As to the issue of accountability, that means what happens if you have gone through the internal appeal at the HMO. The HMO denies care to a family. You go to the HMO and you attempt to appeal that. They deny it again. Then you go to a truly external independent appeal, under our bill, and that is not successful. As a matter of last resort, if, after all of that, the patient has been injured, the patient can go to court.

The whole purpose of that is to treat HMOs as every other health care provider, as every small business, as every large business in America, as every individual who is listening to this debate. All the rest of us are responsible for what we do. We are held accountable, and we are responsible. The HMOs are virtually the only entity in America that can deny care to a child and the family can do nothing about it. They cannot question it; they cannot challenge it; they cannot appeal it; and they cannot take the HMO to court because the HMOs are privileged citizens in this country.

I have to ask, if you were to send out a questionnaire to the American people and say: Here are 10 groups of Americans—physicians, doctors, patients—and on that list were HMOs, and you said, on this list, whom would you want to protect from any accountability, from ever being able to be taken to court, to be treated as privileged citizens, I suggest the likelihood that the HMOs would end up at the top of that list is almost nonexistent.

What we have is an anachronism. We have a law that was passed in 1974, before the advent of managed care, before HMOs were making health care decisions. Then after the passage of this law, with the passage of these protections that gave managed care companies privileged status, they started making health care decisions.

We have a situation that needs to be corrected. All this is about is treating HMOs as every other entity and individual in America. We want them to be like all the rest of us. It is just that simple. They are not entitled to be treated better than the rest of us. But, surprise, surprise; they don't like it. They are being dragged, kicking and screaming every step of the way, and they are spending millions and millions of dollars on television ads, on public relations campaigns to defeat our bill. Why? They like being privileged. They like being treated like nobody else in America is treated. They like the fact that they can decide something and nobody can do anything about it. Why wouldn't they like it? Why wouldn't they want to keep things exactly as they are?

That is what this debate is about. Ultimately, we are going to have to decide on the floor of the Senate and at the end of Pennsylvania Avenue, hopefully, if we can get this bill through the Senate and the House, whether we are on the side of the big HMOs or whether we are on the side of patients and doctors.

Earlier today I made reference to a story of a man in North Carolina named Steven Grissom. He was a young man who developed leukemia. He became sicker and sicker. He got to the point where his specialist at Duke University Medical Center had to put him on 24-hour-a-day oxygen.

This is Steve Grissom, the man I referred to earlier.

His wife's employer HMO covered Steve Grissom. Unfortunately, his wife's employer changed HMOs. Some clerk sitting behind a desk somewhere who had never seen Steven and had never met him and with no medical expertise said: We are not paying for this. We don't think he needs it. They literally cut off his oxygen.

What was Steve Grissom going to do? He was like every family, every child, and every patient in America with an HMO that makes a decision. He couldn't do anything about it. He couldn't challenge it. He couldn't appeal it. He couldn't take them to court. He was absolutely helpless.

That is what this legislation is about. It is about giving Steve Grissom—when the HMO says we are not giving you your oxygen that your specialist says you need—the ability to do something about it. It is about allowing him to go to an appeal, and most importantly to a truly independent review panel of doctors who, in every single case such as Steve's, will reverse the decision.

When his heart specialist at Duke University Medical Center says you need this oxygen 24 hours a day, and you put that question to a panel of three doctors, what do you think the result is going to be? They are going to order that the HMO pay for the oxygen that Steve needs.

That is what this debate is about.

There are real differences between our bill and the Frist bill.

For example, when Steve's care was denied, we go to a panel that the HMO can have no control over; that a truly independent patient can't have anything to do with; that Steve couldn't have any connection with; and that the HMO can't have any connection with. It is objective and fair.

Unfortunately, under the Frist bill the HMO could choose the people on the review panel. There is absolutely nothing to prohibit that. Steve will be making his case to a judge and jury picked by the HMO.

That is an important difference between our bill and this bill.

The bottom line is that what we are about is trying to empower patients and empower doctors to make health care decisions; have people who are trained and experienced to make those decisions and the people who are impacted by them. That is what this legislation is about.

To the extent that people suggest this is going to result, No. 1, in employers being sued, we will debate this issue going forward. But it is very clear in our legislation that we protect employers. It is equally clear that we abide completely by the President's principle on this issue. The President said only employers who retain responsibility for and make final medical decisions should be subject to suit.

That is exactly what our bill does. Our bill does exactly what the President's principle provides. On this issue of employers being protected from lawsuits, we are in complete agreement with the White House.

As to the cost issue, the difference in cost between our bill and Senator FRIST's bill—the bill that the White

House has endorsed—is 37 cents per employee per month. This is what they contend is going to result in a massive loss of insurance coverage, 37 cents a month. The difference between the bills on taking the HMO to court—the accountability provision—is 12 cents a month. Between 12 and 37 cents a month is not going to cause people not to be insured.

More importantly, we will give people a better price. We give them real quality health care. The reason that it is 37 cents a month more for employees is because they get better care. They get better access to clinical trials, better access to specialists, and better access to emergency rooms. When the HMO does something wrong, they can get that decision reversed by the independent review panel.

That is what this debate is about.

We have a decision to make over the course of the next few weeks. I hope for the sake of the Steve Grissoms all over this country—many of whose stories have been told today and will continue to be told on behalf of these families—that we will do what is necessary to make sure that HMOs and insurance companies in this country are treated just as everybody else, and that families and doctors can make health care decisions that affect their lives.

I yield the floor.

Mr. NICKLES. Mr. President I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CORZINE). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. NICKLES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NICKLES. Mr. President, I rise to speak on the issue of the Patients' Bill of Rights. I love the title. It is a great title. I hope we can pass a positive and good Patients' Bill of Rights—one that really provides patient protections but doesn't increase costs and doesn't scare employers away.

Unfortunately, I don't think that is the case with the bill we are considering today, S. 1052.

I haven't quite figured it out. Last week, we were on the McCain-Edwards-Kennedy bill, S. 871. That was last Wednesday. I was reviewing it and trying to become more familiar with the sections and what that bill meant to employers, to people providing health care, to Federal employees, and so on. Now we are considering a different bill, S. 1052. It is important for us to know as Senators because we are going to be voting on the legislation. This is one of a few bills. Every once in a while we consider legislation that will have a significant impact on everybody's lives. We did that when we passed the tax cut package recently. That will change everybody's taxes. People are going to see tax refunds coming in the mail in the next couple of months. I think that is very positive. People are going to see their rates reduced effective July 1. I think that is positive. That is a positive impact bill. This is a bill that will have a significant impact on everybody who has health care.

A lot of people have health insurance. Then some people have health care. There is a difference. A lot of people are uninsured.

When we wrestle with the problem of health care, we need to address the number of people who are uninsured, and we need to reduce that number. By all means, we shouldn't pass any legislation that is going to increase the number of uninsured.

Everybody realizes when we have 42,500,000 uninsured people, that is too many. I think Democrats and Republicans, conservatives and liberals, agree with that. We ought to be working to reduce the number of uninsured as much as we possibly can. We probably will never get it down to zero, but we ought to make some improvement. But for crying out loud, let's not pass legislation that will increase the number of uninsured.

Unfortunately, I believe that is what would happen if we passed this so-called McCain-Edwards-Kennedy bill.

I believe if we pass this bill in its present form, we are going to increase the number of uninsured, probably in the millions. I wish that were not the case. I hope by the time we finish the debate and amendment procedure in this Senate Chamber that will not be the case. I very much hope President Bush can join with us and sign a bill and we can be shaking hands. I have mentioned this to Senator KENNEDY—we have been adversaries on this issue for a couple years now—I hope we can be shaking hands and saying we have done a good job; we have protected patients, and we did it in a way that did not really increase costs very much, and maybe we did some things that would increase the number of insured in the process, so that we did not do any damage.

We should do no harm. Congress would be much better off not to pass any bill than to pass a bill that greatly increased the cost to people buying health care and/or increasing the number of uninsured.

Let's say we want to pass a Patients' Bill of Rights. Great. But let's do no harm. Let's not increase costs dramatically. Let's not increase the number of uninsured, especially if we are talking about millions. And that is what we are talking about in the bill before us today. I wish that were not the case.

Let's go through the bill. And I think we will have some time. We need some time since we have not had any hearings on this bill. This bill has never been through a Senate markup.

In the last Congress, we did mark up the Norwood-Dingell bill. We did not pass Norwood-Dingell in the Senate. We passed a substitute bill on which many of us worked. I thought it was a positive piece of legislation. I thought it had a lot of good things. It would have addressed the problem our friend, the Senator from North Carolina, just addressed.

He said an individual, Steve Grissom, was denied health care. That was unfortunate. The bill we passed last year had internal-external appeals. That external appeal would have been quick. That person would have had health care and would not have had to go to court and would not have had to choose between State court and Federal court, seen trial attorneys—would not have had to do any of that. They would have had health care. They would have had an appeals process, and that appeals process would have been binding.

Somebody said: We need accountability. We need enforceability.

We had it binding where, if the plan did not comply with the external appeal, they would be fined $10,000 a day.

So I think in that case—and that is a terrible case, where maybe somebody, unfortunately, was denied care—they would have gotten the care; and they would have gotten it quickly; and they would not have gone to court. They would not have received the care in the courtroom but would have received it by doctors. I agree. Let's solve that problem.

We were very close to an agreement on internal-external appeals to resolve 99 percent of these cases. That is not the case with the bill we have before us. In the bill we have before us, I would say, for the 128 million private-sector Americans who are in private health care, who receive their health care from their employer, look out, because there is legislation coming, with a very good name, that makes the employer liable in almost all cases, not just the HMOs, and it makes them liable to the extent that a lot of employers are going to be scared to offer their employees health care. Some may opt out.

In addition, it will increase costs so significantly that a whole lot of people are going to say: Wait a minute, these costs are so high, I can't afford it. My employees didn't appreciate how much money we were spending on health care. So I asked them, instead of me spending $5,000 or $6,000 a year per family on health care—up to $7,000 now—would you prefer the money and you can buy health care on your own? A lot of employees will say: Yes, count me; I would like to have that money. Maybe they will buy health care on their own, and maybe they won't.

Unfortunately, a lot of employees would not, so the number of uninsured would rise, and I believe rise dramatically. So employers would be scared from the cost standpoint, and they would also be frightened because there would be unlimited liability.

There has been some misrepresentation by some, saying: This bill has caps on liability. It does not have any caps on noneconomic damages. There are all kinds of damages. And this bill has new causes of action for Federal lawsuits. It has new causes of action for State lawsuits. It allows people to be able to

jury shop: Let's find a good jury in a good county. With one good jury, you can become a billionaire nowadays. Wow. A lot of employees would say: Thank you very much, but I can't afford that exposure; I can't afford that liability, the fact that one jury case, for something I had nothing to do with whatsoever, could put me into bankruptcy. So they might say: We are just going to opt out. We don't have to provide this benefit.

Some people would like to mandate that employers provide health care, but that is not going to pass, and they know that is not going to pass.

So the net effect is, a lot of employers will say: I don't have to provide this benefit. I want to, but I can't afford the exposure.

I just met somebody today who owns a restaurant. Actually, today, I met with two people who own a restaurant each. I heard people say: Hey, you are going to choose between the HMOs and the people. I met with two people today who each owns and operates a restaurant. One owns a small restaurant in Maryland. They said, if this bill passes, because of the liability provisions, they probably won't provide health care for their employees. They just started providing health care for their employees. Restaurants are the type of business where not everybody provides health care for their employees.

All the major automobile manufacturers provide health care for their employees. They will probably continue to do so because of collective bargaining agreements. Interestingly, there is a little section that exempts collective bargaining agreements. Whoops. I thought we were providing all these protections for everybody. But there is a protection for organized labor here that kind of exempts the organized labor contracts for the duration of their contracts. So they might be exempt for years.

We will get into some of the loopholes left in this provision. But this small restaurant owner said: I don't think I can afford the liability. I am afraid of doing that. And this person—female—operates her own business, which is family operated, I believe second generation, and they have had the business for 30-some-odd years, I believe. It is not all that large. About half her employees now have health care. She said today, she does not think she can continue providing health care if this bill passes.

I met with a restaurant owner who has a larger restaurant not too far from here in Northern Virginia. This person started providing health care for their employees and said: No way, not with this liability. You would make it impossible.

Wait a minute; employers are exempt. I heard that today. Oh, employers are exempt? Yes, there is a section in this bill exempting employers, on page 144: ''Causes of Action Against Employers and Plan Sponsors Precluded.'' Great. That will make DON NICKLES happy, and others happy. That sounds pretty good. That is paragraph (A).

Paragraph (B): ''Certain Causes of Action Permitted. Notwithstanding subparagraph (A), a cause of action may arise against an employer or other plan sponsor. . . .''

Look out, employers. You had better read paragraph (B). You are liable. Oh, there are a few little exemptions. If they do this, this, and this, they will not be liable. But it does not cover everybody. I promise you, as an employer, if they complete their fiduciary responsibilities, they are liable. And when employers find out they are liable, they are going to be scared of this bill and the results of this bill, and a lot of them will quit providing health care for their employees. In other words, if we take legislative action, maybe with very good intentions, there may be very adverse results.

They did that in the State of California on energy. They passed a bill that had a great title calling it a deregulation bill, but it had all kinds of regulations, and it had a lot of adverse results. This bill, I am afraid, if we passed it today, and it became law, would have a lot of adverse results.

President Bush has said he would veto this bill. And he is right in doing so. And we have the votes to sustain that veto.

Some people said: Why not pass this bill as it is, let the President veto it, you sustain his veto, and, hey, you have covered the subject? I do not think that is responsible legislating. Maybe it would be the easy way out. That way, we can just raise a few objections, vote no, and let him veto the bill. I do not think that is responsible.

I think we need to review this bill. I think every Senator should know what is in this bill. I will tell you, from the public comments I have heard, in some cases the sponsors of this bill may not know what is in this legislation.

So we need to consider what is in this bill. We need to talk about it. We need to see if we can improve it. Hopefully, we can improve it to the degree that we will have bipartisan support for a solution with perhaps 80 sponsors of the bill and have overwhelming support. I would love to see that happen. I will work to see that happen. I have invested a lot of time on this issue. I want to pass a good bill. This bill does not meet that definition.

I heard a couple people say this bill is consistent with the principles the President outlined. That is factually inaccurate. That is a gross misinterpretation of the President's principles. They were not written that fuzzily. I will outline in another speech what are the President's principles and where this bill falls fatally short—not short in a gray area but fatally short.

I am just concerned that maybe some people are a little loose in their statements, saying this is consistent with what the President wants, and so on, this is consistent with the Texas plan, and so on. I do not think that is factually correct. So I wanted to mention that.

I want to do a good bill. This does not fit the pattern.

What about a couple of other things? Should the Federal Government take over what the States are doing in the regulation of health care? Some people obviously think we should. As a matter of fact, I look at the scope sections of the bill, and I am almost amused. We are going to have a preemption: State flexibility. It says, on page 122, ''[nothing shall] be construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health [insurers]. . . .''

Boy, that sounds good. I like that section. I don't know if there is a bait-and-switch section in here or what, but that sounds so good. That sounds like something I would put in there. But it doesn't stop there. It goes on.

Then it says, on the next couple pages: If the State law provides for at least substantially equivalent and effective patient protections to the patient protection requirements which the law relates. In other words, we are not going to mess with the States unless the States, of course, have to provide at least substantially equivalent and effective patient protections as this bill does.

Well, what does substantially equivalent and effective mean? It means, States, you need to do exactly what we tell you to do. We are going to preempt everything you have. If you have an ER provision, it has to match our ER provision, our emergency room provision. If you have access to OB/GYN, you have to match our access provision to OB/GYN. And there is a lot of difference.

If you have clinical trials in your State, you have to match these clinical trials, which are enormously expensive clinical trials, which are covered by anything that NIH would offer or anything by FDA or anything by DOD or anything by the VA. There are a lot of clinical trials. You have to pay for them. It may be the State of New Jersey did pay for them or did not.

Under this bill, there is not one State in the Union that meets the clinical trial provisions of this bill. Why? Because they are very expensive provisions; because they are unknown provisions; because no one knows how much they would cost. And so the States have been kind of cautious on putting in clinical trial provisions. They have done it rather cautiously. The State of Delaware is considering clinical trials today, legislation on a patients' bill of rights. They have a clinical trial provision, and it is not nearly as expensive as the one that is mandated in this bill.

The essence of this bill is, State, we don't care what you have negotiated. We don't care how many hearings you had. We don't care if the legislature worked on this for months and negotiated it with the Governors and the

providers in your State. We don't care because we know what is best. One size fits all. I guess two or three Senators decided they know what is best. They know better than every single State insurance commission. They know better than every State legislature. They know better than every Governor, every person who is in the buying business. We are going to mandate that these have to be in your contract, in your coverage.

I accidently said the word ''contract.'' Most of this is done by contract. There is a provision in here that says you don't have to abide by the contract. That is a heck of a deal. So when people try to have a contract, here is what we will cover, here is what we don't cover, so you can have some kind of limitation on cost.

There is a little provision in the bill that says the reviewer shall consider but ''not be bound by the definition used by the plan or issuer of medically necessary and appropriate.'' Not be bound—in other words, they can provide anything they want to provide. It doesn't make any difference what is in the contract. That is in this little bill.

How do you get a cost estimate of how much this bill is going to cost? Because no one knows. The contracts aren't binding. Wow. There are a lot of things in here.

Then I have heard people say: We are going to make sure the States have provisions that are substantially equivalent and as effective. Who is going to determine if something is as effective? We are going to have the Federal Government. HCFA is going to review the State standards. HCFA will determine whether or not you are substantially equivalent and as effective. The only way you are going to get there with any certainty is to have identical language. And then who is going to know whether or not it is as effective? That is as subjective as it could possibly be.

You have a standard that is higher than HCFA. You have a standard higher than anybody has ever imposed. It says: Here is everything we mandate. If you want Federal, nationally dictated health care, it is in this bill. Wow. I didn't know we were taking over for the State. I didn't know we had the people to do it.

Guess what. We don't. There is no way in the world the Federal Government has the resources in HCFA, the Health Care Finance Administration—which now has a new name which I can't remember and won't for the time being—there is no way in the world they could do this. Every State has insurance commissioners or regulators that are in charge of making sure the insurance companies in their State are adequately financed, meet their fiduciary responsibilities, that they meet their insurance responsibilities, that they uphold what they say they are going to do in the contracts, every State. I would imagine in New Jersey, it is hundreds of people—hundreds. I am sure it is in the hundreds. My State of Oklahoma is in the hundreds.

HCFA, the Health Care Finance Administration, couldn't enforce that. There is no way in the world. There is a list of patient protections that every State has done. In my State, it is 40 some; in most States it is 30, 40, 50 different State protections. We are going to say: We don't care what you have done. Those aren't good enough. We are going to basically say these protections are preeminent. These will supersede what your State has done. You must do as we tell you to do. If you don't, the Federal Government will take over enforceability of those provisions.

Then you will have the awkward situation of having the Federal Government enforce some provisions in your health care contract but not all the provisions. That is really going to make a lot of sense. Then there is going to be this little period of time where the State has been enforcing these State regulations. Now we have a new Federal regulation, and it is supposed to be prevailing. But the State regulation, we are used to enforcing it. Which one do we abide by? They are not familiar with the Federal enforceability. No one has ever enforced this one before. So should the State enforce the Federal regulation? They can't do it. The HCFA person hasn't signed off. Therefore, HCFA is going to take over, and they don't have anybody to enforce it.

Now what you have is language saying you have these protections, but you don't have anybody to enforce it because HCFA can't do it. They absolutely can't do it.

Somebody should ask the Secretary of Health and Human Services, do you have the capability to regulate State insurance to enforce these provisions that the McCain-Kennedy-Edwards bill would do? The answer is no. No, they couldn't do it. So we are going to have a long list of protections that we supposedly are telling everybody they have: look what we have done for you, but there is no enforceability because the Federal Government doesn't have the wherewithal to do it.

And we shouldn't do it. That is not our responsibility. Yet we are going to have that kind of takeover. I think that would be a serious mistake as well.

Then what about this comment: Under this bill, we insure all Americans. Wow, sounds really good. We are really going to provide protections for all Americans.

First, I should ask: Are we disabusing Federal employees? Are we disabusing our families, Senators' families who are under the Federal employees health care plans? Do they have such a crummy deal that we need to change their plans? The truth is, we don't change Federal employees. We change State employees. I hope everybody knows that we are going to go out and tell every Governor, every State insurance commissioner: we are going to change your public employees' health care plans. We are going to mandate you do all these things. We exempted Federal employees. Whoops.

You mean we are going to mandate all State employees, all teacher plans. We are going to mandate that all of those have to have what we have decided big government knows best. Yet for Federal employees, whoops, we exempted them. Organized labor, if they have a contract, we exempted them. Medicare, for we exempted them. Medicaid, low-income individuals, whoops, these don't apply to Medicaid. They don't apply to Medicare. They don't apply to Federal employees. They don't apply to union members, until their contract is renewed, maybe 5 years or so before that happens, if they have a long-term contract.

There are a lot of little gaps. If this is so good for the private sector, why don't we put it on the public sector? Why don't we put it on the Senate? A Senator or their family members, can they sue the Government? If they are aggrieved, can you sue the Government? The answer is no. You still can't. Even if this bill passes, you can't sue the Government. Everybody else can sue their employer. You can't sue yours.

I wonder if cost has anything to do with it. There are some things that just don't fit. It is fine for us to do this on all private sector plans, act as if that will only cost 37 cents a day. Maybe they said a week. The cost of health care right now for a family is about $7,000. At 4.2 percent of $7,000, figuring this up, you are talking about $300 a year. Some people say: That is just cents; that is a dollar a week or something. It is not a dollar a week. It is $300 a year. Maybe that is about a dollar a day. That is about the equivalent of the tax cut that a lot of Americans are going to receive this year. We are just going to take it away. So we give a tax cut with one hand and we take it away with higher health care costs in the next by this bill? We can sure do that.

Somebody said: I broke even for the year. What if you are one of the 1 or 2 million people who lost your health care because your employer dropped it? You came out on the real bad end of the deal.

This didn't cost you a dollar a day. This didn't cost you a Big Mac. This cost you your health care—probably to a person who needs health care the most. A lot of people who are in that low-income bracket, maybe working for a small restaurant in Montana, or someplace, and maybe their employer just started to provide health care, or wants to provide it, and they could not do it because they could not afford it, or because they are afraid of the liability.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. NICKLES. I ask unanimous consent for an additional 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NICKLES. My point is, let's be very careful not to do damage to the system, not to do damage to a quality health care system that is far from perfect. Let's do some things to make sure that we increase the number of people who have insurance. Let's not do anything that would increase the number of uninsured. That is doing a very serious harm. If anybody says, hey, this bill has so much momentum, so let's pass it regardless of what it costs or what the consequences are, I beg to differ. It is worth spending a little bit of time to try to be at least responsible in this area. Let's not do damage. Let's not supersede the States. Let's not act as if the Federal Government knows best: Sorry States, we are going to take over the regulation of your health care system because we know better.

Every person here who works in this system for very long knows that we do not know better. We do a crummy job. HCFA does a crummy job in administering Medicare. They are way behind even in enforcement and compliance with the Health Insurance Portability Act. Some States still aren't in compliance. HCFA is supposed to take over regulation of that act. If they haven't done that, how in the world can they do it for private care? They could not do it.

Let's pass a positive bill. I stand ready to work with my colleagues on both sides of the aisle to do that. I am willing to spend a lot of time to work out a real bipartisan bill, one that has support by a majority of the Members on both sides. To say that this is a bipartisan bill when you have 3 Republicans sponsoring it and 40-some odd vigorously opposed to it is stretching it. That is not bipartisan. Let's have a bipartisan bill where you have a majority of both Democrats and Republicans supporting the bill. That is real bipartisan bill. Let's get a bill that President Bush will sign and become law, not just have campaign rhetoric. Let's make something happen that we can say we have passed a positive bill. I hope we can do so. It remains to be seen.

There is going to have to be some willingness to compromise. Some people say we have compromised enough. This bill is not a compromise. This bill is to the left of the Norwood-Dingell bill that we had last year. It is more expensive than that bill. The liability provisions are more intrusive and expensive than the bill Congressmen NORWOOD and DINGELL and Senator KENNEDY were pushing last year. It is not a compromise. It is a move in the wrong direction.

Let's move toward the center. I have shown a willingness—maybe more than I should have—to compromise and try to come up with a positive bill. Let's work together as both Democrats and Republicans to come up with a bill that we can all be proud of, that President Bush can sign, and one that can become law.

I yield the floor.

The PRESIDING OFFICER (Ms. STABENOW). The Senator from Massachusetts is recognized.

Mr. KENNEDY. Madam President, I see my friend from Nevada on the floor. I wanted to make a few comments at the end of our first day of discussion.

Madam President, I just hope those who are watching this debate have some understanding about the history of this legislation and what it really is all about. This legislation was first introduced 5 years ago. So that is why we hear on the Senate floor that our colleagues are glad to consider the legislation. We should be eager to consider this legislation because every day that we let go by there are more than 50,000 people who are experiencing increased suffering and injury.

There are 35,000 people today who didn't get the specialist they need in order to help them mend and get better. There are 12,000 patients who, tonight, will be taking prescription drugs that were not what the doctor ordered, but what the HMO is giving them.

There are countless illustrations where the HMOs' decisions are being made by bureaucrats and bean counters in cities many miles away from the highly trained professional medical personnel who are trying to provide care. These health care professionals are making decisions that are being countered by accountants and bean counters who aim to enhance the bottom line of the HMOs.

The real issue, when it is all said and done, is whether we are going to put into law some rather minimum standards that are already effective in Medicare and Medicaid. These fundamental standards have been recommended by the insurance commissioners, and unanimously by a bipartisan panel.

I have listened carefully to a number of the statements that have been made out here recently. I did not detect any statements directly before the Senate that are critical of the proposal that has been advanced here. Yet there has been an objection made. I haven't heard them say: let us not have that protection for the people, or let's not give them the emergency care protection, let's not give them the specialty protection, let's not give them the clinical trials in there. Did anybody hear that during the course of the afternoon? I did not hear that.

That is what this is about. That is what this is about. As we all know, people try to make the best case they can in opposition. And at the end of this first day, I find I am very much encouraged by the range of speakers who have spoken in favor of this legislation. I think there is increasing understanding by the American people, as in the debate here in the Senate, about the importance of this legislation.

We know the HMOs are spending millions of dollars on distortion and misrepresentation. They ought to be spending that on patients' care, but they are not. We welcome the opportunity to get to the bill before us and then have a full debate on these matters. There are some who wonder whether this is a bipartisan bill. I was listening to my friend and colleague from Oklahoma say he really wonders whether this is a bipartisan bill. Well, Congressman NORWOOD, Congressman GANSKE, and 63 Republican Members of the House of Representatives certainly believe that it is a bipartisan bill. We are certainly proud of the Republicans who have supported this measure in the Senate. I think that gives us hope.

I see the Senator from Nevada.

Mr. REID. I want to ask the Senator a question when he has a minute.

Mr. KENNEDY. At the end of this discussion today, we ought to realize that virtually every single medical organization—the American Medical Association, children's health, women's health, disability organizations, senior health organizations, and patient organizations—is supporting this bipartisan proposal. There are but a handful of organizations that support our opponents' proposal, and virtually all of these organizations have also endorsed our bill. I put that out as a challenge. I hope those who are opposed to this bipartisan proposal are going to at least give us the credit for the very breadth of support that comes to this proposal. This comes from people who have studied this issue, worked this issue, and whose livelihood is affected by this issue in terms of the type of care they can provide for families all across this country.

So, Madam President, I look forward to the debate.

Mr. REID. Will the Senator yield for a question?

Mr. KENNEDY. Yes.

Mr. REID. I have been interested in the debate from the other side. Isn't it interesting that they are so concerned about the uninsured now with the Patients' Bill of Rights? As the Senator from Massachusetts will recall, we tried to do something about the uninsured, and no one was too interested then.

Mr. KENNEDY. That is right.

Mr. REID. In fact, it has gone up since then.

I also ask the Senator if he recognizes that one of the things they are saying is HCFA is understaffed and would not be able to handle the new duties given to them by this legislation. Who has been cutting back their budget all these years, strangling these organizations so they cannot render appropriate care to the constituency they are delegated to serve?

Has the Senator heard them complaining about understaffing?

Mr. KENNEDY. The answer is yes, not only have I heard it, but I remember debating with my good friend from Oklahoma on the increase for HCFA, which was recommended by the General Accounting Office—that there would be an $11 million increase for HCFA to administer. He opposed that. He fought it tooth and nail. So they did not get the additional support. And

then they complain when they are inadequately staffed to do the job.

Thankfully, $2 million came out of the committee, even though we were unable to get anything on the floor. I said this to my friend, Senator NICKLES, so I do not mind mentioning it here in his absence because—he is here now. He remembers his battle against giving additional funding to HCFA to implement the Kassebaum-Kennedy bill, and he took great relish in that opposition. The Senator from Nevada has pointed that out.

I agree HCFA is a challenge because we have given them a great deal of additional responsibility in recent times. We have given them the CHIP program which is working in the States. They are doing a good job. They have Kassebaum-Kennedy, which is the portability legislation to help those who are disabled move around through jobs and not be discriminated against.

I am reminded by my staff that the latest GAO report shows HCFA is doing a good job, and virtually every State is effectively administering the Mothers and Infants Protection Act and the Women's Cancer Act, which have been additional responsibilities for HCFA. They are doing a good job with that as well.

I know it is easy to have whipping boys around here. HCFA is out there. We all can probably find instances in our own States where we wish they had made other decisions. That certainly should not be used as an excuse in opposition to this legislation.

Mr. NICKLES. Will the Senator yield for a question?

Mr. KENNEDY. Yes.

Mr. NICKLES. Did I understand my friend and colleague to say the State of Massachusetts now complies with the Health Insurance Portability Act?

Mr. KENNEDY. Not completely. What the State of Massachusetts complies with is the CHIP program. Massachusetts is the No. 1 State in the Union with the lowest number of uninsured children. We have done an outstanding job with that. We still have work to do in other areas, such as HIPAA. Rather than take the spirit of the legislation that Senator Kassebaum believed to be the case—I had serious doubts about it—which was that there would not be a significant increase in premiums—we find a number of States, with the support of the insurance industry, have raised rates so high as to undermine the effectiveness of the program.

Mr. NICKLES. So the State of Massachusetts still does not comply with the Health Insurance Portability Act we passed several years ago?

Mr. KENNEDY. Parts of it they do; not all of it, I say to the Senator.

Mr. NICKLES. I was just wondering.

Mr. KENNEDY. That is fine. I am not going to get into whether the Republican Governors in my State were in opposition to enforcing it. That is not relevant here tonight.

The point is, Mr. President, this legislation we have before us tonight protects children, women, and families. It is about doctors, nurses, and families making decisions that will not be overridden by bureaucrats and HMOs. That is what this legislation is about.

We welcome the chance finally, finally, finally, to have it before the Senate. We look forward to the amendments to begin.

I suggest the absence of a quorum.

Mr. REID. Will the Senator withhold for a minute? While the Senator is here, I want to ask him another question. We talked about the uninsured, and we heard the other side talk about the shortage of staff. We have heard now a new one that has been going on all afternoon on the other side about States rights—how are the Governors going to put up with this terrible bill?

I say to my friend from Massachusetts, isn't it interesting that no matter what happens, there are always excuses that we cannot pass a Patients' Bill of Rights? This has been going on for 5 years. We now have a bipartisan piece of legislation. I acknowledge the first legislation that came out was partisan, just the Democrats authored it, even though some Republicans supported it. Now we have bipartisan legislation. Senators MCCAIN, KENNEDY, and EDWARDS have written this legislation. They are the chief sponsors of it. But now it is still not good enough.

Have we not heard in the 5 years we have already spent on this legislation about States rights? I ask the Senator from Massachusetts, do you not think we resolve these States rights problems with this legislation?

Mr. KENNEDY. The Senator is exactly correct. Under the proposal before us, if there is substantial compliance, then the State provisions will rule the responsibility and liability provisions. That is why I was so interested in what the Senator from Oklahoma said about not being able to decide this in Washington, DC, because it is one size does not fit all; we have all learned that.

That is not, of course, what this legislation does. It lets the States make the judgments about liability.

I am very interested in the fact there are a number of Senators on the other side who do not want to permit their States to make the judgments with regard to liability issues. That is where the liability and negligence issues have been decided for over 200 years. The States have the knowledge about these issues, and transferring responsibility into the Federal system does not make a lot of sense. There are long delays, more distance, and it is more costly to the patients.

We will have a full opportunity to debate those issues. I look forward to that debate.

The Senator is quite correct, we have in this legislation, in the liability provisions, shown very special deference, as has been stated during the course of the day. Effectively 90 percent of these cases will be tried in State courts. Only 10 percent will actually be tried in Federal courts, and those will be limited to contract cases.

The Senator is quite correct that we are relying upon the State system of justice, and that is the way it ought to be in this case. Senator MCCAIN, Senator EDWARDS, and others involved in the development of that proposal found a good solution to it.

Mr. REID. Our majority leader is in the Chamber now, and I want to make a brief statement and see if the Senator will agree with me.

We heard this harangue that this is legislation that deals with lawyers. The fact is, as to the two States where there is a Patients' Bill of Rights, in 1 State there has been no litigation whatsoever; in the State of Texas, where the President is from, in 4 years there have been 17 lawsuits filed. That is about four a year. That does not sound outrageous to me. Does it to the Senator from Massachusetts?

Mr. KENNEDY. The Senator is correct, and I will end with this note. We can speculate and theorize, but under these circumstances we ought to look at the record. We have 50 million Americans who have protections like what we are trying to provide for 170 million additional Americans in the liability provisions. Those who have protections are State and local employees and individuals who purchase insurance. They have the right to sue. There is absolutely no evidence that there has been a proliferation of lawsuits. There has not been any kind of abuse of the system, although those who are opposed to our legislation have alleged that.

Secondly, there is absolutely no evidence that the costs for these various policies are in any way more costly than those without the liability provisions.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Madam President, as I indicated earlier today, Senator LOTT and I and others have been discussing the manner under which we might be able to proceed to the bill. Earlier today, the unanimous consent request to proceed to the bill was not agreed to. We have been discussing the matter throughout the day. I think I am now prepared to propound a unanimous consent agreement that reflects an understanding about the way we might proceed later this week.

I ask unanimous consent that at 9:30 on Thursday, June 21, the Senate vote on a motion to proceed to S. 1052, the Patients' Bill of Rights, and that the time between the completion of that vote and 12 noon be equally divided between the two leaders or their designees for debate only, and that at 12 noon the Republican manager or his designee be recognized to offer an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. Madam President, it is my intention, then, to stay on the

motion to proceed until the 9:30 time that we have now just agreed to on Thursday. Should there be any interest in accelerating that, we would certainly entertain it. However, at least now we know we will have a vote at 9:30, and that our Republican colleagues will be recognized to offer their first amendment at noon on Thursday.

I appreciate very much the willingness of Senator NICKLES and certainly the Republican leader and others who have been discussing this matter with me for the last couple of hours.

Mr. REID. Could I ask the majority leader a question?

Mr. DASCHLE. Yes.

Mr. REID. In that we will start this debate this coming Thursday, is it still the intention of the leader to finish this bill before we take the Fourth of July recess.

Mr. DASCHLE. There are two matters I think it is imperative we finish. This is the first of the two, I answer my colleague, the assistant Democratic leader; and the other is the supplemental. I think 2 good weeks of debate on this issue is certainly warranted.

We have had a debate on this matter in previous Congresses. I think we should be prepared to work late into the night Thursday night. We will be here on Friday. We will be in session on Friday, with amendments and votes. We will stay on the bill throughout next week. As I say, we will hopefully set at least a desirable time for final consideration Thursday of next week. Should we need Friday, we can certainly accommodate that particular schedule, and if we need to go longer into the weekend to do it, my intention is to stay here until we complete our work.

So, yes, I emphasize, as I have the last couple of days, that the Senate will complete this work, and hopefully the supplemental prior to the time we leave for the July recess.

Mr. REID. We will work this Friday with votes, no votes on Monday, but we will work on Monday.

Mr. DASCHLE. Correct.

Mr. NICKLES. I heard the leader say we would be working on the legislation, considering amendments on Friday. Did the leader clarify whether or not there will be votes on Friday?

Mr. DASCHLE. There will probably be votes on Friday but no votes on Monday.

Mr. NICKLES. I thought I understood the majority leader to say we would hold votes ordered on Friday to Tuesday.

Mr. DASCHLE. If I misspoke, I apologize. I intended to say, if I didn't say, we would have votes and amendments offered on Friday but that there wouldn't be any votes on Monday, but there would be amendments considered and hopefully we can make some arrangement to consider these votes as early on Tuesday morning as possible.

Mr. NICKLES. Does the leader have any indication how late we will vote on Friday?

Mr. DASCHLE. We certainly wouldn't have any votes scheduled after around 1 o'clock on Friday.

Mr. NICKLES. To further clarify, I heard the intention that you would like to have this completed by the Fourth of July, but correct me if I am wrong. We spent a little over 2 weeks on the education bill just on the motion to proceed. I believe on the education bill in total we spent 6 or 7 weeks, and the education bill is a very important bill. Likewise, this is a very important bill. And this bill, like the education bill, in my opinion, needs to be amply reviewed.

I don't know the period of time, but at least it is this Senator's intention we thoroughly consider what is in the language and how it can be improved. Some Members want to have significant changes so the bill can be signed. I am not sure if that can be done or completed in the time anticipated or hoped for. I appreciate the dilemma the majority leader is in and his desire to conclude it a week from Thursday or Friday, but I am not sure that is obtainable. We will see where we are next week.

Mr. DASCHLE. I agree. I don't know whether it is attainable or not. But I do know this: We will continue to have votes into the recess period to accommodate the completion of this bill.

My concern is, very frankly, we will come back after the Fourth of July recess—and I have talked to Senator LOTT about this—with the realization we have 13 appropriations bills to do and a recognition that we have a very short period of time within which to do them. I know the administration wants to finish these appropriations bills and Senator LOTT has indicated he, too, is concerned about the degree to which we will be able to adequately address all of the many complexities of these bills as they are presented to the Senate.

I want to leave as much time as possible during that July block for the appropriations process to work its will, and it is for that reason, in particular, that I want to complete our work on this bill so we can accommodate that schedule.

Again, I appreciate the desire of the Senator from Oklahoma to vet this and to debate it. I hope we can find a way to resolve it prior to the time we reach the end of next week.

There will, therefore, be no votes today.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRESIDENT BUSH RECOGNIZES LT. COL. BILL HOLMBERG AS AN AMERICAN HERO

Mr. DASCHLE. Mr. President, I want to call my colleagues' attention to a specific passage in President Bush's commencement address at the U.S. Naval Academy last month that was particularly meaningful to me. In that reference, the President paid tribute to the heroism of a longtime friend of mine, retired Marine Corps Lt. Colonel William C. Holmberg, class of '51.

I would like to quote from the President's speech:

> But there are many others from the Class of '51 whose stories are lesser known, such as retired Lieutenant Colonel William C. Holmberg. One year and a handful of days after graduation, Second Lieutenant Holmberg found himself on the Korean peninsula, faced with a daunting task: to infiltrate his platoon deep behind enemy lines in an area swarming with patrol; to rout a tenacious enemy; to seize and hold their position. And that's what he did. And that's what his platoon did.
>
> Along the way, they came under heavy fire and engaged in fierce hand-to-hand combat. Despite severe wounds, Lieutenant Holmberg refused to be evacuated, and continued to deliver orders and direct the offensive until the mission was accomplished.
>
> And that's why he wears the Navy Cross. And today, his deeds, and the deeds of other heros from that class, echo down through the ages to you. You can't dictate the values that make you a hero. You can't buy them, but you can foster them.

I commend the President for his recognition of this very special American. I have known Bill Holmberg ever since I came to Washington as a freshman Congressman more than 20 years ago. I know Bill not as a war hero, but as an indefatigable champion of the environment and as a visionary who understood the potential of renewable fuels for improving air quality and reducing our dependence on imported oil long before they were accepted as a viable alternative to fossil fuels.

Bill is a true American hero who stands as a model for us all. His selfless commitment to making the world a better place to live has been demonstrated not only on distant battlefields, but also by his daily pursuit of a more secure, environmentally sustainable and just society.

I join with President Bush in saluting Lt. Colonel William C. Holmberg, a sustainable American hero.

THE EXECUTION OF JUAN RAUL GARZA

Mr. FEINGOLD. Mr. President, I rise to speak on the Federal Government's execution today of Juan Raul Garza.

This is a sad day for our Federal criminal justice system. The principle of equal justice under law was dealt a severe blow. The American people's reason for confidence in our Federal criminal justice system was diminished. And the credibility and integrity of the U.S. Department of Justice was depreciated.

President Bush and Attorney General Ashcroft failed to heed the calls for