making an estimated 425 million visits to complementary and alternative practitioners of these therapies—surpassing those made to conventional primary care practitioners!

And with good reason. Last November, a consensus conference of the National Institutes of Health approved the use of acupuncture in standard U.S. medical care. It was the first time that the NIH had endorsed as effective a major alternative therapy, and it was just the type of medical breakthrough that I had hoped for and envisioned when I worked to establish the Office of Alternative Medicine at NIH.

The NIH experts cited data showing that acupuncture can effectively relieve certain conditions, such as nausea, vomiting and pain, and shows promise in treating chronic conditions such as lower back pain, substance addictions, osteoarthritis and asthma.

In 1993, the FDA reported that Americans spent $500 million for up to 12 million acupuncture visits. In 1996, after reviewing the science, the FDA removed acupuncture needles from the category of ''experimental medical devices'' and now regulates them just as it does other devices, such as surgical scalpels and hypodermic syringes. Acupuncture is effectively used by practitioners around the world. The World Health Organization has approved its use to treat a variety of medical conditions, including pulmonary problems and rehabilitation from neurological damage.

It has been reported that more than 1 million Americans currently receive acupuncture each year. Access to qualified acupuncture professionals for appropriate conditions should be ensured. Including this important therapy under Medicare and FEHBP coverage will promote a progressive health system that integrates treatment from both acupuncturists and physicians. and in many cases we see more and more where physicians are acupuncturists. It will expand patient care options. I also believe it will reduce health care costs because of the relatively low cost of acupuncture compared to conventional pain management therapies.

Research is still needed to demonstrate the effectiveness of other alternative therapies. This research is vitally important, but we must act now to help the millions of Americans who can benefit from the knowledge we have already gained.

The 21st century is just around the corner. Less than 50 years ago, treatments that are now considered conventional—organ transplants, nitroglycerin for heart patients, immunology, and x-ray and laser technology—were decried as quackery by the medical establishment. Everyday we face new biological and emotional challenges for which modern Western medicine has no remedy. Now science is revealing the effectiveness of many complementary and alternative treatments, including acupuncture, which I might point out is not a new treatment but, indeed, has been practiced in China for the last 2,000 to 3,000 years, and, increasingly, more Americans are choosing these alternative therapies to manage their health and to treat the illness.

Let us listen to the science, and heed the urgent need for progress. Mr. President, the nation's leading scientists have demonstrated the safety and effectiveness of acupuncture as a treatment for a wide range of pain and illness. It makes common sense that Medicare and FEHBP cover this legitimate course of therapy.

I invite other Senators as cosponsors. Hopefully, we can get the bill passed during this session.

Mr. President, I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

PATIENTS' BILL OF RIGHTS

Mr. KENNEDY. Mr. President, on February 25, 1997, a number of us introduced the Patients' Bill of Rights. Since that time, the Republican leadership has sought to delay and deny action. The leadership and Senator GRAMM have made it very clear that they are not yet willing to allow a free and fair debate.

Mr. LOTT. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield without losing my right to the floor.

Mr. LOTT. I would like to say to the Senator that we would be glad to agree to have this debate and go forward with the Patients' Bill of Rights issue. I would like to begin thinking in terms of what we could work out as a unanimous consent agreement. Going back to June 18, originally it was suggested that Senator KENNEDY's bill be up and we have an alternative, and that we have a good debate and vote. That is fine. Let's do that. Then I suggested, well, if we could get some time agreements on when we could complete it, with some limited amount of amendments, we could do that. I don't think 40 would be considered reasonable.

But I am saying to the Senator that I would like to work something out. I am hoping that next week, Wednesday or Thursday, we are going to get to this and get it done before we go home for the August recess period.

I just want to say that we are ready. We would like to do this. Beginning next week, I am going to start asking unanimous consent requests to actually get it done, because we are ready to go to a vote. But we also have other things. And Senator KENNEDY has been cooperative. We have been working to get issues done. We need to try to do that and allow time for a full and fair debate on this issue. We would be glad to do that.

I just wanted to make sure he was aware that we are willing to do that.

Mr. KENNEDY. Mr. President, I have heard that same explanation, with all respect, by the majority leader for some period of time.

I want to just review, since the majority leader is on the floor at the present time—we had the budget resolution. We had 7 days of debate. We had 105 amendments. Defense authorization, we had 6 days of debate, 150 amendments; Internal Revenue Service restructuring, 8 days of debate, 13 amendments. We had tobacco, 17 days and scores of amendments; agriculture, 5 days of debate and 55 amendments. The Senator now is saying, Well, we will bring it up next week, just before we get out, and have a vote on your amendment or the Daschle bill and/or the Republican proposal.

Mr. President, I just wonder why we can't have a full debate on the comparison between the emergency room provisions of the Republican guarantees and those in the Patients' Bill of Rights.

I intend to talk about those—now I have the floor. I have the floor. I am glad to yield—but when I inquired of the leader on other occasions, he gave us that other little answer about, ''We are going to come to this sometime when we are ready to come to it, some other time, next week, and maybe Wednesday, or Thursday, just before we go out we will have some proposal.'' We are just spelling out now what has been included in these different bills and why it is important to have a full and fair debate on them.

We have seen and we know what the leadership's position has been until the very recent days, and that has been to refuse to permit us to have a markup in our committee, refused us to be able to even have scheduling. I have seen the list of the Republican leadership, and it never was on the list of the Republican leadership in terms of priorities.

Now we are glad that last Friday there was the publication of the ''Republican Bill of Rights.'' That was last Friday. But I want to just review, since the leader mentioned the proposal that was put forward by the leader. This was, I believe, the June proposal that was put forward by the majority leader.

I ask unanimous consent that prior to the August recess [June 18, that was 4 weeks before, June 18] prior to the August recess, the majority leader, after notification to the minority leader, shall turn to the consideration of a bill to be introduced by the majority leader [no information about what that is] or his designee, regarding health care [and further] I ask the Senate to proceed to its immediate consideration; and that, following the reporting . . . by the clerk, Senator DASCHLE, or his designee, be recognized to offer a substitute to the text of S. 1891 as introduced on March 31.

That isn't our bill.

Now, it goes on. It does not include the right to hold the plans accountable. It does not include protecting people who buy their own insurance policy.

Let me just go on.

I further ask that during the consideration of the health care issue it be in order for Members to offer health care amendments in

the first and second degree. I further ask unanimous consent that the Chair not entertain a motion to adjourn or recess for the August recess prior to a vote on or in relation to the majority leader's bill and the minority leader's amendment, and that following those votes it be in order for the majority leader to return the legislation to the calendar.

Even if we win the vote, the majority leader has the ability to send it to the calendar—not send it over to the House of Representatives, send it to the calendar, even if we win that proposal.

Now, it continues.

Finally, I ask unanimous consent that it not be in order to offer any legislation, motion or amendment relative to health care prior to the initiation of the agreement and following the execution of the agreement.

Not be in order to offer any legislation, motion or amendment to health care.

Well, there it is, Mr. President. We are scared in the Senate. After we have some vote, even if we survive, the majority leader can put it back on the calendar, and under the consent agreement we can't even talk about health care for the rest of the session; for the rest of the session. That is what it says here, the rest of the session.

Now, that is the consent agreement that is referred to. ''I want to remind the Senator from Massachusetts we keep asking the Democrats for proposals on it.''

I don't know how long it took to reject that particular proposal, but there it is. In all the time I have been in the Senate, this is really the most preposterous proposal, consent agreement I have ever heard, that if you are going to be successful and win, instead of sending the bill over to the House, you put it right back on the calendar, and you cannot have a vote on the legislation. And then after that, you can't bring up any issue relating to health for the rest of the session—nothing on privacy, nothing on expanding the whole Medicare system in terms of purchasing, the possibility for elderly citizens to buy into the Medicare system, no way. Nothing dealing with any of the issues dealing with health care. That is the proposal and that is what we are supposed to say, ''Oh, what a fair proposal this is.''

And so we have the Republican proposal that was introduced last Friday. Now, we have no interest in delay of the legislation. We have been asking for action for 18 months. We insist on a fair debate on accountability. That is what we are asking, fair debate on accountability. We have had scores of amendments and days of debate on other legislation, and we are entitled to fair debate on accountability on these measures.

There are dramatic differences on these measures. I will take a few moments to get into some of those.

Senator DASCHLE made a series of formal offers on July 16th, asking for a debate beginning on July 21 with 20 amendments on a side. It is almost a week later and all we have is that maybe sometime Wednesday or Thursday next week we may have time to have a debate on an issue which is of paramount importance for the parents and families of the people of this country.

So this is not an unreasonable request given the importance of this bill and the large number of loopholes in the Republican proposal which will be the bill in the Chamber.

We had, as I mentioned, days of debate on the budget resolution, 6 days of debate on defense authorization, 150 amendments. We had 8 days of debate on the Internal Revenue bill, just concluded 5 days of debate and 55 amendments on the agricultural appropriations bill.

This is the most important health care bill that this Congress will consider, and we are now told by the majority leader that maybe sometime next week he will make a request that we deal with this in 2 days. We had 8 days, as I mentioned, on the Internal Revenue bill, and 5 days of debate, as I mentioned, on agriculture. Now, the majority leader and Senator GRAMM are insisting the only way they will debate the issue is up or down on their bill and one vote and that is it.

The American people deserve to know where their Members stand on a number of critical issues that are essential to patient protection. The Senate deserves an opportunity to amend and improve the Republican bill. It is not unreasonable to ask Members where they stand on whether protections should apply to all 161 million privately ensured Americans or leave 100 million out. The Republican proposal leaves out more than 100 million Americans. Now, maybe they have good reason to do so. Their answer is the States are doing it. Well, we ought to have an opportunity to find out and discuss what the States are doing and how much they are doing and how effective it is, given the kinds of concerns that patients have. Let's have a debate on that. But, oh, no. No, no, we don't have time to get into the fact of whether their measure will just cover 48 million and exclude 110 million, or cover all of them. It is a pretty important issue, it seems to me, Mr. President.

Is it unreasonable to ask Members where they stand on allowing a sick child with rare cancer access to a specialist to treat that particular disease?

We had very powerful testimony this morning from a very outstanding oncologist, a specialist who has been operating primarily on women with breast cancer, and she was, with tears in her eyes, talking about the various patients she is treating now who come to her with these various tumors in their breasts. And she looks at the first part of the chart and finds out what the size of that particular tumor was when it was first diagnosed and then what it is on the day that she is there called upon to operate.

She says the time that lapses between the first discovery of those biopsies, which demonstrate that the tumors are cancerous, to the time she gets to see them is often the difference between life and death and more often than not, as she looks over the various files that she gets of various women, the ones with the largest gaps are the ones who are part of HMOs and the procedures that have been denied.

Or listen to the doctor who was talking today about a particular procedure that was going to be necessary for a child who was having constant headaches, and the doctor said, ''What we need is an MRI,'' and the HMO turned that down. Under the Republican bill, since the cost of that MRI was $750, that decision would not be able to be appealed. It was less than $1,000. This was a family of five, income of $30,000. The difficulty of that family was having the $750.

And do you know what the family did? They went down to the county hospital—the county hospital. After a period of time, they were able to get that MRI in the county hospital to find out about the needs of that particular child. You know something. The taxpayers picked up the tab for that. And the bottom line of that HMO looked better and better because they didn't have to pay for that important service which the subscriber had effectively paid for when they signed on for the health care coverage.

Mr. President, we ought to be able to talk and debate about what is going to happen, what kind of protections are we going to give doctors when they speak out for their patients in the HMO system. Are they going to be under the Republican program which still permits doctors to be fired if they object to prescribing certain procedures to patients that are not desired or approved by an HMO? Shouldn't we provide protections for doctors that are looking out for their patients? It is not in the Republican bill. Shouldn't we have a time to debate that issue out here to find out about it?

What about the independent and timely third party review? Do the Members know that on the independent review, under the Republican program, those who are going to be paid to review the various procedures which are being reviewed and appealed are going to be paid for by the HMO, the same HMO? Do they know the restrictions in the Republican proposal in terms of the limitations for the types of procedures that can be appealed? We don't want to debate that?

I can understand why the Republican leadership doesn't want to debate it. Because it is indefensible. It is indefensible. We ought to debate it.

And access to clinical trials, an enormously important issue, particularly for individuals who have some of the most serious illnesses in our society, we are going to say or give assurance to those who may have breast cancer—are we going to exclude them from participation in those clinical trials? It is an important distinction between the

Republican proposal and our Patients' Bill of Rights.

We have the continuity of care. When a family has a doctor they are seeing and that doctor is dropped from a particular program, under our proposal we provide that there is going to be a continuity of care. Perhaps it is an expectant mother who is going to deliver and, for one reason or another, that doctor is dropped from the particular plan. We give assurances.

So does the Republican program. Listen to this. If the employer, however, makes a judgment to change the plans in the middle of the year, and that doctor is treating this same patient, under the Republican program there is no longer continuity of care. Both programs show continuity of care. You have to read the small print; you have to understand what the small print says. Shouldn't we have an opportunity to debate that issue?

The whole question of accountability is something that demands an opportunity to debate that issue. We are talking about the protection that is given to 23 million Americans, county and State employees; 11 million Americans who have private insurance companies. There is no indication there is any escalation of their costs in their program, nothing showing that has been introduced here in the Senate. Some have tried to represent these as extraordinary escalations of cost, but there is no indication, nothing has been put in the RECORD. What has been put in the RECORD is these 23 million Americans. In CalPERS, in California, they have this system with accountability and liability built in so they can hold the HMOs accountable, and there is no apparent increase in the cost of those programs.

Basically, what we are saying is very simple, a very simple concept at the heart of our proposals and which I believe the Republicans have to be able to defend, because it is lacking in their proposal and it is worthy of debate. That issue alone is worth hours of debate here in the U.S. Senate, with the American people watching, because we believe that ultimately the judgment and decision on medical decisions ought to be made by the doctors and the patients, and not by accountants of insurance companies for the profits of those particular insurance companies. That is a basic and fundamental core difference. We ensure that is going to be the case with a number of different protections in our bill. That kind of assurance is lacking in the Republican bill.

There will be those who say, ''No, it is not lacking.'' We ought to have a chance to debate, so the American people can make up their own minds and find out whether it is lacking. We can get the legislation out and show where it is lacking. But that is something basic and fundamental.

We also believe we ought to be able to leave it up to the States to make those judgments and decisions on calling the tune on the issues of accountability and liability. We hear a great deal around this body about ''one size does not fit all,'' that all knowledge is not in Washington, DC, or on the floor of the U.S. Senate; that the States have some awareness and understanding about these issues and problems. How many times have we heard that speech? You have heard the speech, but you will not hear it when we are debating the Patients' Bill of Rights. You will not hear it because our proposal leaves it up to the States to be able to enforce the issues of accountability. We leave it up to the States to be able to do so. Not the Republican leadership program. They effectively preclude the States from having any voice—shut them out, shut out the States.

I hope we don't hear that argument about the importance of all knowledge failing to be in the U.S. Congress and Senate, so let the States decide. That is not going to be an argument you will hear, because under the Republican proposal they will not let the States decide.

What is the issue we are talking about? We are talking about a medical decision that is made by the doctor and the patient, which is overruled by the HMO and causes grievous injury to that individual—maybe life or serious illness; maybe a mother or father, trying to make sure those children and the members of the family are not just going to be left homeless, without any kind of compensation for the decision that is being made for the profits of that particular industry overriding the clear medical decisions. There has to be accountability. There has to be accountability.

We have seen effective programs which we have built into programs on appeals, internal appeals and external appeals, that also have accountability. It works. We improve and strengthen the quality of those programs. We have 11 million Americans—11 million Americans—who have independent insurance programs that have this kind of accountability. It works for them.

So we have 34 million Americans who have this kind of protection, but we are asked to exclude it, to deny the States from even letting those citizens who live in that State who want it from having it. That is part of the Republican program. Don't we think that is worthy of a debate? Do you want to muzzle us from having some kind of debate and discussion on that particular issue? That just does not make sense.

Mr. President, when the leadership wants to go ahead on these appropriations, I am glad to yield the floor so the Senate can move ahead on Senate business. But I want to just make a final few comments.

Mr. President, I believe the Republicans have abandoned their 16-month-long pattern of stonewalling our Patients' Bill of Rights. Now they have produced a plan that borrows the name of our legislation and nothing else. The Senate Republican plan is not a bill of rights, it is a bill of wrongs. The Senate Republican plan is even weaker than the House Republican plan. It is a ''Gingrich lite.'' It protects industry profits instead of protecting patients, and it is so riddled with loopholes, it is a license for continued abuse. It allows insurance company accountants to continue to make medical decisions, and not doctors and patients.

It is very interesting that 170 organizations that represent doctors, patients, and nurses support our program. And who supports the Republican program? The insurance industry and the HMOs. Does that tell you something? Does that tell you something? Mr. President, on this issue it tells us a great deal. This is not a question where we have some ideas, and half the doctors in the country and half the patients' organizations say this is a better idea, and our colleagues on the other side have half of them, and people can say, ''Why don't you get together?''

They don't have them. They don't have them. They don't have the principal organizations. I will be glad to hear any organizations representing health professionals or patients groups that they have.

We still haven't heard. I can't believe if you didn't have them, they wouldn't have them out there. We have them. They support our program. They support the real Patients' Bill of Rights.

But they do have the health insurance industry and they have the HMO organizations, the trade organizations that represent HMOs—they support their program.

Mr. President, we believe that patients with cancer and heart disease and other serious illnesses will not have timely access to specialists and the treatment they need. It immunizes managed care plans from liability for abuses that injure or even kill a patient. No other industry in America has this immunity from any liability which the health insurance industry has and which is protected in the Republican program, and the managed care industry doesn't deserve it either.

Most of the minimal protections in the Republican leadership plan do not even apply, as I mentioned, to the majority of Americans. Two-thirds of the people with private insurance, more than 100 million Americans, will not benefit from the Senate Republican plan. The HMOs are effectively exempt from regulation under their plan because most of their standards apply only to employer-based, self-funded plans. Let me repeat that. Most of the standards in the legislation do not even apply to the HMOs, only to employer-based, self-funded plans covering about a third of privately insured Americans.

Even if the Senate Republican leadership plan was passed, 100 million Americans would be left out. This is unacceptable to the American people and should be unacceptable to the Senate.

The Senate leadership introduced their legislation on Friday. I reviewed

the print over the weekend, and the sum total of what is not in their plan at all is staggering. The fact that these minimal protections only apply to a third of the people who need help is shocking. But the disinformation campaign does not end there. Even the protections they claim to have provided turn out, in most cases, to be less than half a loaf.

In my time, I have seen special interest protection programs masquerading as consumer protection programs many times, but I have never seen anything as indefensible as this. The Republican plan does not include many key protections.

There is no provision to prevent health plans from arbitrarily interfering with the decisions of the doctors.

There is no provision to guarantee access to necessary speciality care.

There is no provision to allow individuals killed or injured by plan abuse to hold the plans liable.

There is no provision to allow participation in clinical trials.

There is no provision to allow access to prescription drugs not on a plan formulary.

There is no provision for continuity of care when an employer switches plans.

There is no effective ban on plan practices which gag physicians; no limits on improper incentive arrangements.

We were looking to address this issue of gagging the physician. They say, ''Oh, yes, we have that; we have a provision that says we will not gag physicians.'' The problem is, unless you address the firing clauses of the HMOs that permit the heads of the HMOs to fire doctors whenever they want, then the gag provisions are meaningless, because they can say, ''OK, you can go out and talk all you like, but you're not coming in to work tomorrow.'' Let's get real on this, Mr. President. That is effectively what the Republican program does.

It has no prohibitions against these financial incentives for doctors. It won't publish financial incentives for doctors so that the public, in reviewing a plan, can find out if a doctor has financial incentives for providing certain kinds of treatment and not providing others, which is happening today. We have given examples of those types of procedures. There are no protections for that.

It does not include a requirement for comparative plan quality information. You cannot find out about the consumers', the patients', satisfaction. You can't find that out. If you ask to find that out, they say, ''Well, that's going to be too bureaucratic; that is going to require too much paperwork; that is going to be a rule or regulation, it is going to be a Federal Government rule or regulation, that is going to raise costs for these particular programs.''

What we are talking about is patient satisfaction, patients staying in these programs: Are they satisfied with these programs? Good ones provide that, Mr. President. These are the elements that are left out of the Republican plan entirely, but even those essentially included are full of loopholes.

The Republicans say they protect you if you need emergency room care, but they have included less than half of the protections provided by the Democratic plan or even the protections that are already included in Medicare. I wonder how many of our colleagues know that the protection that they have indicated on the prudent layperson, prudent layman standard is an entirely different one from the one that is in Medicare. Who would have known that?

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

Mr. KENNEDY. I will be glad to yield.

Mr. BIDEN. I know the Senator knows a great deal about this, but I watched the press conference our Republican colleagues held hailing their Patients' Bill of Rights. You just went through and will continue to go through all the things they left out. I find it very curious the things they say are in their bill, which, in fact, are not in their bill.

One, they say that a woman can pick as a primary care physician an ob/gyn. Second, they advertise that this means you have access to the emergency room. Third, they talk about continuity of doctors so they say you can choose your doctor. And fourth, they say no gag rule. This is the party of gag rule, and now they say no gag rule. I kind of respected them when they were just flat out saying they were just against any of this.

Does the Senator have an explanation as to why they would pick the four most often stated complaints of the American public and suggest that their bill covers those things? It just seems strange to me that the party of the gag rule says they want an antigag rule, and yet there still is no antigag rule; that the party that said when they were going after Clinton's health plan, you should be able to choose your own doctor, will not allow you to choose a specialist or choose the doctor you need; that the party that suggested the costs of the Clinton plan were too high and everyone could just go to the emergency room are not, in fact, providing access to emergency room care the way in which the American public is looking at it. Why did they pick these four things to say they were for and not any of the rest? Is there some strategy here I am missing?

Mr. KENNEDY. Those happen to be the ones that have shown the highest in the polls. I am not saying that is the reason they selected them necessarily. As the Senator was going over them, I was writing them down. Those are the ones that are the top in terms of the polls.

I say to the Senator, what I would like to ask him is, here the Republicans talk about the market forces, that we ought to let people, consumers, make judgments on the basis of information. Under our proposal, we have tried to have information so that people can make the judgment and decisions with regard to their health care plan. Patient satisfaction, for example. Patient satisfaction—not very difficult. Most of the good ones show that in any event.

Absolutely not, they point out, and say: We are not going to provide or support any of that additional information because that is a bureaucratic ruling; it is going to cost the HMO more to require that; therefore, we cannot support even that particular proposal.

But the Senator is quite right. They use these words, ''speciality care,'' ''emergency room,'' and the ''gag rule.''

The spokesperson for the College of Emergency Physicians visited with us today. I think the Senator was there at the time. She reviewed instance after instance after instance where just the words, ''the protections of access to the emergency room,'' were vacant and empty and without the protections that are included in the Patients' Bill of Rights and resulted, in one instance, in the loss of a leg of a young child, the horrific condition of a young girl who had a serious dislocation and her vital signs dropped dramatically and was in real danger of death, and other instances that were taking place in the emergency room.

Mr. BIDEN. Well, let me say to the Senator that I, quite frankly, admired—disagreed, but admired—my Republican colleagues when they made no bones about the fact that they did not want any interference in any way by the Government to do anything about HMOs. At least theirs was a principled stand. They said, ''Look, the insurance companies, in driving down costs, are more important than all these other factors. We're not going to do anything.''

What bothers me—and this is me; you are not saying this, I know it, but I am saying it—what bothers me is the apparent cynicism of picking four items which most often my constituency speaks to, to say they are covered, and nothing else. And even when you look into those four items, they are not really covered.

They are going to be going around—and the insurance companies are spending tens of millions of dollars in ads—saying, ''We want you to have the right to choose a doctor.''

Wait a minute. That is what they said before. But under the Republican bill, the American people can't choose their doctor, if the doctor they happen to need is a specialist, if the doctor they happen to need is in an emergency room and they don't meet the standard that the HMO sets.

I have not been nearly as involved in this debate as my friend from Massachusetts. And as the old joke goes: He has forgotten more about health care than I am going to learn. But I would

feel better about what is going on here if the Republicans said what they truly believe, ''Hey, look, we're not changing our position. We don't think you should be able to choose your own doctor. We don't think there should be an antigag rule. We don't think you should change the requirements to get emergency room access. We don't think that a woman should be able to choose her gynecologist as her primary physician.''

Let me tell you what I think they figured out. I know of no wrath like that of the wrath of a woman who says, ''I can't go to the doctor that I need and trust the most.'' And so they seem to be yielding only in places—and only in part—where the loudest cries are coming from. But, there are so many, many, many, many loopholes in what they say they are doing, and so much they leave out.

I kind of yearn for the day when they just stood up on the floor like they do on guns and say, ''Hey, look, guns are not bad. You know, guns don't kill people. People kill people.'' I kind of like that. I admire it. But this, I don't know.

There will be a multimillion-dollar campaign we are all going to endure, and you do not have to be a rocket scientist to figure out where this is going before this is all over. And I expect I am going to hear your name mentioned a couple hundred thousand times before this is over, too. But at any rate, I thank you for answering my question.

Mr. KENNEDY. I thank the Senator for his interest and also his strong advocacy in terms of the people in his State on this issue. We want you to know that we are still committed to trying to get something worked out. This matter is too important for the reasons that the Senator has outlined. We still want to try and get something worked out. We had been taking a long time before we could get even the recognition of a bill on the other side. Now we ought to go about what is in the best interest of the patients in this country.

I just mention, finally, to the Senator, what I was just talking about: Every doctors organization, every nurses organization, every health professional and patients organization supports our proposal. We have not got a single one on the other side except the health insurance companies and the HMO plans on it. So we want to try and work this out. We are going to do the best that we can. But we are not going to yield in terms of protecting the interests of the consumers.

I thank the Senator.

Mr. BIDEN. I thank the Senator.

Mr. KENNEDY. I want to take just a few moments to review this very moving testimony in terms of the emergency rooms. These are comments made by Dr. Charlotte Yeh, who is the Chair of the Federal Government Affairs Committee for the American College of Emergency Physicians. And these are comments that she made.

In Boston, a boy's leg was seriously injured in an auto accident. At a nearby hospital, emergency doctors told the parents he would need vascular surgery to save his leg and a surgeon was ready and available in the hospital.

Unfortunately, for this young man, his insurer insisted he be transferred to an ''in-network'' hospital for the surgery. His parents were told if they allowed the operation to be done anywhere else, they would be responsible for the bill. They agreed to the move. Surgery was performed three hours after the accident. But by then, it was too late to save his leg.

These are not episodes from the TV program, ''ER.'' These are not anecdotes. They are real people with real lives.

A bipartisan majority in the Congress has called for enactment of standards that will put an end to episodes like the ones I just described. Last year, the Congress adopted the prudent layperson standard and other protections for Medicare and Medicaid patients seeking emergency care. We thought there was a consensus on this issue!

There was consensus on this issue, Mr. President.

Just a few weeks ago, we were delighted to see that Republican Task Forces in both the House and Senate had decided to include the ''prudent layperson'' standard in their respective protection measures.

But we are very disturbed about the way in which the emergency services protections were drafted in the Republican ''Patient Protection Act.'' As a physician, it seems that a little unnecessary surgery was performed on the ''prudent layperson'' standard to the point where it is barely recognizable as the consumer protection we envisioned.

What is the difference between the real ''prudent layperson'' standard included in the ''Balanced Budget Act'' and the Democratic ''Patients' Bill of Rights'' and the ''imposture'' that has been included in the GOP ''Patient Protection Act''?

The GOP Patient Protection Act would establish a weaker coverage standard for privately insured patients than what exists for Medicare and Medicaid patients.

It gets back to what they are talking about. The name of the legislation—Senator DASCHLE—they take the various code words going down the line. They took the ''prudent layperson'' definition, and then they altered and changed it. These are the emergency physicians that I am reading from.

The GOP Patient Protection Act establishes a weaker coverage standard for privately insured patients than for the Medicare and Medicaid patients. The Democratic bill will provide the same protections for all patients.

The GOP Patient Protection Act establishes a two-tiered test for coverage of emergency services and guarantees coverage only for a ''screening examination.''

The Democratic bill would require that health plans cover all services necessary to evaluate and stabilize the patient to anyone who meets the prudent layperson standard—no questions asked!

The GOP Patient Protection Act sets no limits on the amount of cost-sharing the managed care plans would be allowed to charge patients who seek emergency services from a non-network provider.

You get it? They have a prudent layperson. They further define it to mean less in terms of health care protections. And then they include copays. So if they go there, they are going to have to pay up through the nose for it.

Don't you think we ought to be able to discuss that on the floor of the U.S. Senate, to see which way this body wants to go on that particular protection for emergency rooms, for consumers of this country? No. We can't—evidently, no. No. We haven't got time. We haven't got time to be able to ask our Republican friends, Why did you do it this way? Why did you change it? Why did you change it?

Well, I think it is quite clear why they changed it, because the insurance industry wanted them to change it. The GOP Patient Protection Act sets no limits on the cost-sharing.

The Democratic bill would protect patients who reasonably seek emergency services to protect their health from being charged unreasonable copays and deductibles.

We protect the consumer.

The GOP Patient Protection Act sets no guidelines for the coordination of poststabilization care, making it possible for emergency physicians to coordinate and obtain authorization for necessary follow-up care with the managed care plans.

The Democratic bill would require the health plans to adhere to new Federal guidelines that require managed care plans to be available to coordinate poststabilization care, instead of just permitting the managed plan to turn off the phone at 5 o'clock.

Obviously—

And I continue now with her statement:

we are very troubled by the changes to the ''prudent layperson'' standard in the ''Patient Protection Act.''

Our assessment is that this legislation—

Now, these are the emergency room physicians. There isn't a family in this country that does not have some concern—they have children or parents; loved ones—about the importance of having an emergency room that is going to look after an emergency, that is going to affect the family. And there isn't a person that is listening to this program, watching it, that has not had to spend time in an emergency room themselves or their loved ones in a family.

It is very important. And what is happening out there with regard to HMOs, in too many instances, is that they are putting the interests of the insurance industry ahead of the emergency needs of the patient. That isn't what I am saying, although it is what the emergency room doctors are saying.

This is their final assessment:

Our assessment is that this legislation—

[1.] Will provide less protection for privately insured patients than for Medicare and Medicaid patients.

[2.] Will lead to more coverage disputes, not less. [Do we hear that—will lead to more coverage disputes, not less.]

[3.] Will create even more barriers, not fewer.

[4.] Will create new loopholes for managed care plans to deny coverage of emergency services.

These are the doctors who are dedicated and committed to providing

emergency services to the people. That is their assessment, and we are not going to be permitted to debate and discuss the impact of the Republican bill on the patients of this country as compared to our Patients' Bill of Rights. We are going to be denied that opportunity, Mr. President?

In four years, we have come so far, but we cannot support these provisions in their current form. We will do everything in our power to ensure the ''prudent layperson'' standard that is enacted will be consistent with the meaningful protections that Congress enacted for Medicare and Medicaid beneficiaries. Hard-working Americans who pay their premiums deserve no less.

Now, Mr. President, I will conclude in just a moment. I want to sum up where I think we are in this whole experience. During recent years, we have seen a very dramatic shift from the indemnity health care provisions to the HMOs. We have seen the ERISA provisions that were developed in the early 1970s which exclude liability protections for American consumers. Those particular provisions were developed to protect pensions—it wasn't really thought about in terms of the application of these provisions of the law in terms of health care plans. If you go back and read the discussion and the debate, it wasn't really considered. It was there to protect pensions, and it has worked reasonably well to protect pensions.

It hasn't worked to protect the patients in these programs. Nonetheless, we have seen the growth of the HMOs. And we have some outstanding health maintenance organizations. We have some of the best in my own State of Massachusetts. The basic concept behind the HMOs was to try to create the financial incentive for keeping people healthier so that the various health organizations would encourage the preventive health care measures, and by keeping people healthier, on what we call a ''capitation'' program—that is, that the HMO gets a certain payment for an individual; if they keep them healthier, then the HMO's financial situation improves. That made a good deal of sense.

In the better HMOs it works, and it works effectively. The problem is you have many at the lower end that are reflecting the kinds of abuses we have talked about here today. They have to be corrected. They should be corrected.

Legislation has been introduced, and we have been excluded from the opportunity of having it scheduled. Now we have, finally, the Republican leadership's provisions, which were introduced in the Senate last Friday, and we still have no time that has been set aside.

When you look over the range of different provisions in this legislation and the importance of this, we need to have a reasonable opportunity to debate and discuss these measures. The best we were able to get out of the Republican leadership initially was that, ''We are not going to schedule what we don't want to schedule.'' That is what I heard on the floor of the U.S. Senate about 2 weeks ago. Then we heard that, ''We are developing a program and will schedule this when we want to schedule it.'' Then we see the legislation that has been introduced. Now we are told, ''We may or may not get to that in the day or two before the designated recess.''

There is not a measure that affects families in this country that is more important than the Patients' Bill of Rights. It deserves full debate and discussion and thoughtful consideration. It deserves the best judgment of all of the Members, and it deserves a bipartisan resolution at the end to try to see that we do something that is meaningful to provide protections for families. What will be unacceptable is some kind of a toothless piece of legislation that picks up the buzzwords but fails to provide the protections for the American people.

I hope we can get about the business of having this debate and having this result. Every day we delay, we fail to protect our fellow citizens. This issue is not one that is getting better; it is one which cries out for action. It cries out for action now. The earlier, the better.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. NICKLES. Will the Senator yield?

Mr. SHELBY. I yield to the distinguished Senator from Oklahoma.

HEALTH CARE LEGISLATION

Mr. NICKLES. I appreciate my colleague yielding for a moment. I sat here and waited for awhile for my colleague from Massachusetts to speak, and then the Senator from Delaware decided to speak. I wanted to make a couple of comments concerning the health care legislation.

One, I regret maybe some of the tone of some of the debate that has been made. I am very interested in trying to come up with a reasonable time agreement to take up this legislation. We have offered to do that. We have offered to give a vote on both the Democrat and the Republican proposals. I understand my colleague wants more time. He probably would like to spend a month on it. I heard him say it is the most important legislation we have before the Senate. I think I heard him say the same thing about the tobacco legislation. We spent 4 weeks on tobacco legislation, and we are not going to spend 4 weeks on this. The Senate is scheduled to be in session about 5 additional weeks, so we don't have the luxury of time that maybe we have had in the past.

My colleague from Massachusetts made the comment and said we tried to bring this up 18 months ago. That is not correct. His bill was introduced on March 31. Three days later, he was trying to pass a sense-of-the-Senate resolution, saying we will pass it this year. We have agreed to bring it up this year. We have agreed to give it adequate time for debate. We have not agreed to spend an unlimited amount of time on this.

I want to respond to a couple of the statements that were made concerning the Republican proposal. Much to my chagrin, I had hoped my colleague, and colleagues on the other side, would try to find out what is good and maybe see where we can move forward, but instead he has trashed our proposal. I resent that, or I regret it—I guess regret would be the more proper terminology.

We have 49 cosponsors of this legislation. We had a task force that met for months, 7 months, to formulate positive, constructive health care legislation, legislation that would help alleviate some of the problems in the health care industry, legislation that would help protect those people who don't have protections in health care.

I heard my colleague say their plan only affects 48 million Americans and exempts two-thirds. That is absolutely not correct. The facts are, every single ERISA-covered plan, every single employer-sponsored health plan in America would have an appeal process. It is a different process than our colleagues on the Democrat side have followed, but for a good reason. We don't want to drive up health care costs.

What we want to do is make sure people who are denied health care will have an appeal to where they can get health care—not that they have to go to court to get a health care decision—so they can have an appeal through an outsider who has nothing whatever to do with their case and have it be reviewed immediately or expeditiously if there is a serious health care problem. They can even have an outside appeal. We put in ''binding decision'' on the outside appeal. The decisions would be binding. The plan would have to pay if someone said, ''Wait a minute. We thought we were waiting for coverage and we didn't get it.'' They would have an internal appeal and an external appeal and that applies to every single employer-sponsored plan in America. We have heard different numbers. It is about 125 million Americans who would be covered under those plans—every single one—unlike my colleagues' plan; I looked at his. I just want to say that it is the right to sue for more. Under the Democrat bill, their idea is that we are going to get more health care by having more suits. We are going to sue people. You can already sue a health care plan to get a covered service. They want to sue for more.

In the Democrat proposal, they have 56 new causes of action where you can sue. It would be an invitation for litigation, to not only sue the health care plan but to sue the employer as well. I have been in the private sector, I have been an employer, a small employer—maybe a little larger; I went from a few employees to 100 employees. If you make employers liable for suits on health care plans, they will drop health