the funding for our Government agencies is being held up, and not the least of which, of course, is the Department of Agriculture bill. But under rule XXII, these votes will occur in a stacked sequence on Monday, unless changed by consent. And I ask unanimous consent that these cloture votes occur beginning at 5:30 on Monday, and that in each case the mandatory quorum under rule XXII be waived.

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

Mr. LOTT. So those four cloture votes will occur in sequence beginning at 5:30 on Monday.

MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

Mr. KENNEDY. Mr. President, did the leader ask consent?

Mr. LOTT. That we go to morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Democratic leader.

FINDING A SOLUTION

Mr. DASCHLE. Mr. President, I just want to reiterate our desire to see if we can find a way with which to address this issue.

I will reiterate that, if we have the opportunity to present 20 amendments up or down, I will be prepared to go to my colleagues and say: Look, we can live with that. I want you to cooperate and find a way in which we can have a good debate with 20 amendments free-standing with up-or-down votes. We can live with that. We could even live with a time certain so long as we have a good debate on those amendments with a vote on those amendments prior to the time we reach the end date. But that is a simple request. It is a simple desire to find some resolution.

Our colleagues have been more than willing to cooperate in that regard. I hope we can do it. Our door is still open. We will work to see if we can't find a way to accomplish that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thought we would be going back to the amendment of the Senator from California. I hope those Americans who have been watching the Senate for the last few minutes—and also for the past few days—have no doubt in their minds what this is all about. This hasn't got anything to do with the Senate rules at all or Senate procedure. It is about a very fundamental and basic issue; it's about whether the Senate of the United States is willing to take up the Patients' Bill of Rights, the core of which states that decisions affecting the medical treatment of an individual are going to be decided by the doctors and trained medical professionals and not by gatekeepers or insurance adjusters or insurance accountants. That is the basic issue.

We can talk about 2-hour amendments, 4 days, a week, we can talk about four cloture motions, but the bottom line is that the Republican majority is refusing to permit the Senate to go about the people's business and schedule a Patients' Bill of Rights and permit the kind of orderly procedure that has been a part of this body for almost 200 years. That is what is going on here. Then they have the effrontery to talk about how they are going to change the rules in order to try and deny any opportunity to have a measure of this kind brought before the Senate.

Let's be very clear what this is about. This is about something which is basic and fundamental to the families in this country. For 2 days, the Senator from California has been trying to bring up her amendment and get action on it. She has been precluded from doing so. The last action this evening—morning business at 5:10 on Thursday evening—has again precluded a debate and vote on her amendment. She was here yesterday at 9:30 in the morning. It doesn't take a Member of the Senate to understand what is going on. She is being denied a vote on the key issue of this whole debate, and that is whether insurance companies which cover American families are going to have to use a definition of what is ''medically necessary'' that will reflect the best medical training, judgment, and skill in the United States. That is what her amendment is.

I have seen a lot of actions taken in order to preclude a Member of the Senate from getting a vote, but to go through the process of having four cloture votes next Monday, all in an attempt to deny the Senator from California an opportunity to get an up-or-down vote on her amendment, is a very clear indication of what is going on.

This isn't about process. This is about substance. What kind of quality health care programs are we going to have in the United States of America?

We are being denied the opportunity to make that decision. We were denied it last year and we are denied it again this year. We can listen to all the other bills left to do this year, and the Patients' Bill of Rights should be one of them. We tried to get it up last year, but we couldn't get it up under regular order. We have tried to get it up this year, but, again, we can't get it up under regular order.

Earlier today, we heard reference to the process and procedure that was followed during Kassebaum-Kennedy. Let me remind my colleagues that the consent agreement to consider the Kassebaum-Kennedy legislation was reached on February 6 of that year. It said the bill must be brought up no earlier than April 15 and no later than May 3, with no time agreements or limitations on amendments. And we passed it, unanimously, under those terms.

It seems to me that the last two days provide a very clear example of the majority effectively, I believe, abusing the process and procedures of the Senate, to deny the debate, discussion and the vote on an important issue in order to protect themselves on the issue of health care. We should be protecting the American people. They are going to understand it. There can be no other interpretation of what is happening on the floor of the Senate.

I yield the floor.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I hate to see my colleague and friend from Massachusetts get so exercised—and he happens to be incorrect.

He has to know the rules of the Senate very well. The proposal the majority leader was propounding is very fair. The Senator from California wants a vote on her amendment. I will be very frank. The way she can get a vote on her amendment is to move forward and accept the offer already made. She could offer her amendment, for example, as a second-degree amendment. The Senator can get a vote on her amendment.

The way to do this is not on an appropriations bill. The Senator from Idaho is correct. We shouldn't be doing this on an appropriations bill. Everyone in the Senate knows it. This is not the way to legislate.

We ought to be able to manage the Nation's business in an appropriate manner, not coming up with the Patients' Bill of Rights saying: We will do this piece by piece; we have 40 pieces and we will do it on various bills, bills that are going to go to conferees.

Conferees know absolutely nothing about this issue. They have never had a hearing on this issue, never dealt with this issue. Asking them to legislate on it is wrong. It is not going to happen. It will not pass; it will not become law. We are wasting our time.

It is not anybody's intention on this side to filibuster, to deny the opportunity to offer amendments. The Senator can have the opportunity. Yes, it is quite likely there will be amendments offered in the second-degree, but a lot of amendments wouldn't be offered in the second-degree. Likewise, second-degree amendments are available to Members on both sides. That should be very apparent.

The point is I am a little frustrated by people saying we are not being treated fairly. The Senator has been offered a most generous proposal where Senators could offer lots and lots of amendments and get votes on those amendments. It doesn't take a legislative genius to make that happen.

I encourage our colleagues to see if we can't work together and make this happen instead of offering this piece by

piece on an agriculture appropriations bill, even though we know it will not become law.

I think there is a right way to legislate. This is not the right way to legislate. I hope we will work together to come up with something acceptable. I think there has been put off a more than generous proposal from on our side. We have been amending it for the last 2 days, trying to accommodate legitimate concerns. Somebody said originally it was 3 hours on each amendment. Some people say we shouldn't have any debate limit on amendments. I happen to think that is probably closer to correct when considering the magnitude and the scope of some of these amendments.

I urge our colleagues to step back and lower the rhetoric, not get so exercised, and see if we can't come up with an appropriate legislative way to solve this problem, see if we can't come up with a legitimate, positive, legislative approach that will help solve some of the problems that have been acknowledged, without dramatic increases in consumer costs and increases in the number of people who are uninsured. That is what I prefer. The hotter the rhetoric gets, the less likely that is to happen.

We need to work together in order to make positive legislation happen. The Democrats alone will not pass legislation; the Republicans alone will not pass legislation. Nothing will become law if it is strictly partisan.

I urge my colleagues to step back a little bit and look at some of these unanimous consent requests and see if we can find an appropriate vehicle and manner to legislate on this important issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I will take this opportunity to respond to the distinguished—I was going to say the difficult Senator, but I mean the distinguished Senator from Oklahoma.

I feel caught on the horns of a dilemma. On one hand, what I am seeing is this is never going to happen on an agriculture appropriations bill. On the other hand, what I am hearing is, you have an offer to offer your amendment; it will be second-degreed; it will be defeated; there won't be a real opportunity to have an up-or-down vote on the amendment.

Our leader, I believe, is willing to come to a reasonable agreement whereby the main points of the Patients' Bill of Rights can be debated on the floor with an agreement that amendments be voted up or down within a certain period of time. But he is very astute. I do not think he wants us to find out that someone comes on the floor, takes up all the time, there is no opportunity for an up-or-down vote on the amendments, there is one vote en bloc, and then the majority leader can come on the floor and undo it all after it is over.

What we are asking for, and maybe now is as good a time as any—I have learned there are times when you go to the wall and there are times when you do not go to the wall, and it is important to know the difference in the timing.

Let me share with the Senator one story that happened at UCLA, which is why I feel so strongly about this Senate passing legislation that prevents arbitrary interference with the physician's treatment and the setting of that treatment, in other words, the hospital length of stay. If the Senator wants, I can give him the doctor's name and he can verify it.

This is about a neurosurgeon who performed surgery at the UCLA Medical Center to remove a brain tumor. The patient's managed care plan covered 1 day in the intensive care unit. After that day, the patient had uneven breathing and fluctuating blood pressure and heart rate. The doctor wanted her to stay in the hospital another day for monitoring. The HMO utilization reviewer consulted the guidebook that said only 1 day was allowed in the ICU, so she was denied the extra day. The doctor thought it would be medically unethical to move the patient out of the ICU, so he kept her there. The next day, the HMO called again and said the cost of the second day would be deducted from the surgeon's fee.

That is the kind of thing that is happening. We have to put an end to it because the result is going to be terrible for the practice of medicine. There are now doctors voting to unionize, to collectively bargain. I know some people have said with some disdain: Oh well, that's just over their wages. I am here to say it is not.

My own doctor at Great Mount Zion Medical Center, now part of the University of California, after 30 years of practice, says he has never been so disillusioned, never been so disappointed. He said the morale of doctors is so low from being countermanded all the time by medical plans and having to hassle to get a drug approved. Using this kind of disincentive of, if you believe a patient belongs in ICU after brain surgery for an additional day, we are going to deduct it from your fee—what kind of a practice of medicine is that?

These are big issues, I say to the Senator from Oklahoma, because, in my view, they are life-or-death issues. We have a chance to address it. I do not want to legislate on an agriculture appropriations bill, but, on the other hand, I believe to the depth and breadth and height of me in this amendment. Other colleagues have other amendments.

The time has come to have a debate on the issue. Our leader will negotiate a fair agreement. I really think it is in your hands. We want an up-or-down vote on these amendments.

This is not an amendment that has been just quickly put together for what someone might say is a political purpose. This amendment has been worked on, it has been vetted, and it is supported by 200 organizations and supported by every single medical organization in this country—nurses, the American Cancer Society, the American Heart Association, the American Lung Association—across the board.

No one should be afraid to keep a patient, following brain surgery, in intensive care for an extra day. The gall of the health insurance plan to say, OK, we are deducting it from the doctor's fee. I hope the Senator will have some reaction to this, because I know that is not the way he wants to see medicine practiced in this country.

I can go on and on. Perhaps because my State is such a big managed care State, there are so many examples. They need to be stopped, and there is no better time than right now. All we need is an agreement that will allow some amendments—leave it up to our leaders—up-or-down vote, and prevent the opportunity from sidetracking that up-or-down vote. At the end of this, we will have something.

Senator KENNEDY was absolutely right. I remember all the wrangling over the Kennedy–Kassebaum bill, and then finally, bingo, it just got done. That is what we are asking for now. That is what the people of America are asking for now as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I appreciate the comments of my colleague from California. She mentioned timing. I do not think the time is now. I do not think it should be on the appropriations bill. We have been pretty straightforward in saying we will give you a few days after the Fourth of July break. Basically, that means next week we will be working on other appropriations bills, and that means the following week we will be working on the Patients' Bill of Rights.

I will tell my colleague—I can easily tell her, and anybody else—the Senator can orchestrate a way to get a vote on her amendment. It can be done. Her amendment can be a second-degree amendment, I tell my colleague. I have already stated we can limit the agreement to one second-degree amendment instead of two. There are many of us willing to do that. The way not to do it, in my opinion, is piecemeal on 20 different legislative items—some on this appropriations bill, some on that appropriations bill—knowing those appropriators are going to conference and will say: What in the world are we going to do with medical necessity? We don't know what that is.

I appreciate the fact she mentioned a brain surgeon who said a patient should stay in a day longer and some managed care idiot, or bureaucrat, said no. I do not happen to think the legislative solution proposed in the Senator's legislation is the right fix. I happen to think the better idea is to give an internal appeal that can be done immediately. It can be appealed. If it is

not overturned—the example the Senator cited I think would be overturned immediately, and, if not done immediately, it could be done by an external appeal done by outside peer review experts. They do not have to go to court, they do not have to sue, and they have immediate change. That is the better process.

My point is, as far as process is concerned now, we should not be debating this on an appropriations bill. Offering a few days beginning on July 12 is more than generous. I will try to be flexible in further negotiations, but the give is just about given when, if the Senator looks, we have just about 8 weeks to legislate before the end of the fiscal year.

I think the majority leader has been very, very generous. I will work with my colleague to see if we cannot come to a constructive conclusion. I appreciate her willingness to do so.

Mr. President, I yield the floor.

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

Mr. NICKLES. I will be happy to yield.

Mr. SCHUMER. I thank the Senator and appreciate everything he said and the graciousness with which he said it.

I will make two points in terms of my question. I am a freshman Senator. I am well familiar with the process of the House. That is something I wished to escape. It is one of the reasons I ran for the Senate. The reason was that we could not debate at any time appropriations bills or authorization bills without really the consent of the Rules Committee, which was controlled by the Speaker 11 to 5. We could not get anything done.

From what I understand in listening to my colleagues and being here myself, this has been like a pressure cooker. On bill after bill, bills that we have done, instead of being given the chance to offer amendments—we did some authorizing bills, but then on a good number of them—Y2K, for instance—the tree was filled. In other words, the majority leader offered an amendment and then put on a second-degree amendment, and then another amendment and put on a second-degree amendment. We were not permitted to, say, add a Feinstein amendment or an amendment that I hoped to offer about scope or other amendments as well.

The frustration on our side—I began to hear my colleagues, who have been here many years longer than I have been, start saying that this is just like the House, that in the past the right of the majority was to sort of set the agenda—chair the committees, call the hearings—but in the Senate, in its grand traditions, the minority always had the right to offer some amendments.

As we moved through the process this year, through a bunch of legislative maneuvers—all within the rules but maybe not within the previous traditions of the Senate—we were not allowed to do that.

So we came to the conclusion that, on something as important to so many of us as the Patients' Bill of Rights, we would not have the opportunity, under any circumstance, to offer those amendments.

My guess is that the kind of offer that was made, which our minority leader has outlined why we think it is inadequate, we never would have gotten to that point if there had been an open process and we had been allowed to offer amendments as we went through that process.

I just ask the majority whip, who is a Senator I have a great deal of respect for—and I understand we have different views on the Patients' Bill of Rights, but he is coming at this and trying to be very fair—what can be done to avoid the kinds of frustration that my colleagues on this side of the aisle are genuinely feeling on the Patients' Bill of Rights or on so many other issues, that we will not have any opportunity, any time, to offer amendments on issues important to us, unless we sort of force the issue, as we have done this week?

I yield. That is my question to the majority whip.

Mr. NICKLES. I tell my friend, and colleagues, there is a lot of work to be done. I think it is in the interest of all Senators to work together. I do not think that necessarily it is really constructive to say we are going to shut down the Senate for a week, as has actually happened the last couple days, unless we get our will. I would like us to work maybe a little more off the floor and a little more behind the scenes and say: What can we do?

That will take cooperation. It will take saying, We are willing to take up this bill and finish it by tomorrow. Then you do not have to get into a whole lot of extended discussion and maybe a lack of trust. Because I heard some people say, well, wait a minute. Under this agreement that we proposed, somebody could filibuster the bill, and you could only have one or two amendments.

That was not our intention. I can tell my colleagues that was not my intention. Do we want to have 25 really tough votes? No. But votes go both ways.

But my point being, there is no one I know of who was saying we are going to have somebody come in and filibuster this bill. Nobody was talking about doing that. Maybe we need to have a little more faith and a little more collegiality and willingness to work together.

This is an item of interest to a lot of people. There are a lot of people on this side who would like us to pass a positive bill.

I have also stated my very sincere conviction that we should not pass a bill that is going to increase health care costs a total of about 13 or 14 percent, after you add in inflation. I really mean that. I am very sincere about that.

So we may have some differences, but, I have not totally given up on the idea of us working something out.

I will suggest the absence of a quorum. Maybe something else can be done to accomplish that.

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

Mrs. FEINSTEIN. I ask the Senator, before you do, may I respond to one quick thing you said on ''medical necessity''?

You made the comment: Nobody really knows what ''medical necessity'' is. Let me just very briefly read you the definition because it is a standard definition. The term ''medical necessity'' or ''appropriateness'' means, with respect to a service or benefit, ''a service or benefit which is consistent with generally accepted principles of professional medical practice.'' That is the definition of ''medical necessity'' or ''appropriateness'' in this bill.

Mr. NICKLES. Thank you.

Mrs. FEINSTEIN. Thank you very much.

Mr. NICKLES. 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. SCHUMER. 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. SCHUMER. In morning business, I ask unanimous consent I be given 10 minutes to address the Senate.

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

Mr. SCHUMER. Thank you, Mr. President.

PATIENTS' BILL OF RIGHTS

Mr. SCHUMER. Mr. President, I would just like to first thank my colleagues from South Dakota, Massachusetts, and California for bringing up this issue.

Let me just say that, again, as I travel across my State, the issue of the Patients' Bill of Rights is one that is foremost on the minds of my constituents. I have heard their pleas and complaints. I have heard about horrible situations that people are forced into. I have heard about the fears of tens of thousands of people in each community who do not have a problem now with their HMO, but having heard about a relative, a friend, a professional colleague who has, they worry about having one themselves.

So the bottom line is a simple one. We wish to have a free and open debate. That is our position. It is more important than many of the issues we were debating.

I heard the majority leader say we had to do the foreign operations bill. That is a bill that is important to me and to many of my constituents but hardly one as important as the Patients' Bill of Rights.