accountability, decisions of medical necessity and external appeals—were modeled after the Texas law. What we have found in Texas is that patients are right in about half of their appeals and health plans honor that decision. Since the law took effect, health-cost increases in Texas have been a reflection of rising prescription drug costs and inflation—just as we have seen in every other state.

It is our responsibility to ensure that patients get the high-quality health care they pay for and deserve. When Americans buy health insurance, they should not have to lose their relationship with their doctor or worry if their insurance plan will pay for the medical bill as they are heading to the emergency room. It is time that we provide patient-protection rights for consumers and for managed-care plans to be made accountable for delivering quality care and respecting basic consumer rights.

CONTINUATION OF DISCUSSION ON HEALTH CARE

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 1999, the gentleman from Iowa (Mr. GANSKE) is recognized for 60 minutes.

Mr. GANSKE. Mr. Speaker, I appreciate the remarks of my colleagues from across the aisle as they relate to health care. I am going to continue the discussion on health care, and if my colleagues from Texas want to contribute to some of this, that would be just great; and I will be happy to recognize them periodically.

Let us talk a little bit about how people receive health care in this country.

So I have a chart here I want to share with my colleagues.

□ 2130

Let us just assume that this square represents all of the health insurance market, and the circle represents, both red and white in the circle, employer-based health insurance. So that you have about two-thirds of employer-based health insurance, consisting of employers offering fully insured products, i.e., you have your small business that contracts with an HMO. About one-third of employer-based health insurance is what we call self-funded employer plans. Then you have, outside of the employer-based health insurance, you have health insurance that is provided by churches and certain nonprofit organizations, Medicare, Medicaid, public sector employees, i.e., government employees, both Federal and State, and you have individuals who buy insurance policies.

Now, Congress passed a law related to pensions about 25 years ago called the Employee Retirement Income Security Act, and those people who receive insurance from their employer, those within the circle here, are under that law, the ERISA law.

Now, about two-thirds of those employer-based programs are under both Federal and State regulation. To some extent states regulate those plans, but the white area here is totally regulated by the Federal law.

The problem is in this area that frequently there are jurisdictional disputes between whether the State has the right to oversee those plans in some ways, or the Federal Government does, and that frequently ends you up in court fighting that out or with legal disputes. That needs to be clarified by Congress.

But one thing is pretty clear, and that is that there has been a universal feeling that if you are in an employer-based plan, both the red and the white in this circle, that then you are shielded from any responsibility, any legal responsibility, for bad actions that could result from the medical decisions that your health plan makes. The health plan is shielded from their negligent actions. That is something we need to address here in a few minutes.

Now, we are going to be debating in the next two days both a bill related to increasing the number of people in this country that are inside this square, i.e., those that have insurance, and we are going to be debating what quality of care those who are inside the circle receive.

Let me speak for a minute about those that are off the chart, the 44 million Americans that do not have health insurance.

This number has gone up steadily over the last several years. As a percentage of the number of people in this country, however, it is staying about the same, about 16.2 percent. In other words, the number of people in our country is increasing as well.

Who are those people who are not inside the box, that do not have health insurance? They are primarily the young, i.e., those between 18 and 24, and the poor, and there is a sizable percentage of them who qualify for Federal programs already, but they are not enrolled.

There are 11 million uninsured children in this country today. More than half of those children qualify for Federal programs to pay for their insurance, either through Medicaid or through what we call the children's health insurance plan, the CHIP program.

Why are they not enrolled if they are qualified? Frequently it is a matter that the parents do not even know about it, or the states and Federal Government have not done a very good job in making sure that people who qualify take advantage of those benefits. That would go a long way. If you could reduce the number of uninsured children in this country by 5 million simply by getting those children into the programs that already exist, you have made a big dent in the number of uninsured. We ought to do that.

We are going to be debating on the floor some tax measures, some measures related to changes in what are called association health plans; there will probably be some debate on medical savings accounts, some things like that.

Some of those areas I agree with; some I have some problems with. I am worried that with the association health plan measure in the access bill that it could have unintended consequences to actually increase the cost of insurance for those who are, for instance, in the individual market, the individual health insurance market. Nevertheless, we are going to have a debate on that. I anticipate there will be some support for that bill from both sides of the aisle. Then we are going to have a debate on how to improve the health care for those people in this country who are already spending a lot of money on health care.

But while I have this chart up here, I think it is useful to point out something, because there was a recent study by the Kaiser Family Foundation on the relative cost of lawsuits in comparing those people who are in the ERISA plans who are shielded, whose plans are shielded from liability, to those that are in non-ERISA plans where you can obtain legal redress against your HMO if they commit an injury to you or your loved one.

Remember this: Government employees are in non-ERISA plans. That means that government employees have a right to sue their HMO. But if you receive your health insurance from your employer, either through an employer offering fully insured products, like HMOs or self-funded products, you do not.

So this is a good comparison, the comparison on premiums and on the incidence of lawsuits between those that can sue, i.e., churches, people in churches or public sector employees or individuals, versus those that cannot.

The Kaiser Family Foundation found out that the incidence of lawsuits in those who are in plans where you can sue is very low, and that the cost, the estimated cost for providing that right to those who do not have it, would be in the range of 3 to 12 cents per month per employee. That is a rather modest cost when you think about how that could prevent something truly awful.

Let me describe a case that is truly awful. We have here a little boy, a beautiful little boy about 6 months old, and he is tugging on his sister's sleeve. His name is James.

Sometime shortly after this picture was taken he became sick. At about 3 in the morning he had a temperature of 104 or 105, and his mother, Lamona, looked at him and she knew he needed to go to the emergency room because he was really sick. So she phones her HMO on a 1–800 number and says, ''My little boy is really sick and needs to go to the emergency room.'' Some disembodied voice over a 1–800 telephone line who has never seen Jimmy Adams says, ''Well, I guess I could let you go, but I am only going to authorize you to go to one hospital that we have a contract with.'' The mother says, ''That is fine, where is it?'' The medical reviewer says, ''I don't know. Find a map.''

Well, it turns out it is a long ways away, 70-some miles away, and you

have to drive through Atlanta to get there. So at 3 in the morning mom and dad wrap up little Jimmy and they start out in their truck. About halfway through they pass three hospitals that have emergency rooms, but, you know, they have not received an authorization from their HMO to stop there, and, if they do, their HMO is not going to pay for it.

They are not medical professionals. They do not know exactly how sick Jimmy is, so they decide to push on. Unfortunately, before they get to the authorized hospital, I would say an unreasonably long distance from where their home is, little Jimmy has a cardiac arrest.

So picture mom and dad trying to keep Jimmy alive in the car while they are driving like crazy to get to the hospital emergency room that has been authorized. They pull in to the driveway to the hospital, the mother leaps out holding little Jimmy screaming ''help me, help me,'' and a nurse comes running out and starts mouth to mouth resuscitation. They put in the IVs, they pump his chest, they get him moving, they get him going, the little guy is tough and he lives.

Unfortunately, because of that medically negligent decision, that medical judgment by the HMO that caused the cardiac arrest before he got in a timely fashion to an emergency room, little Jimmy ends up with gangrene of both hands and both feet. No blood supply to both hands and both feet, and both hands and both feet turn black and dead.

So, what happens? This is little Jimmy after his HMO care. Under that Federal law, the only thing that that HMO is liable for is the cost of the amputations of both his hands and both his legs.

This little boy will never be able to play basketball. This little boy will never be able to wrestle. Some day, when he gets married, he will never be able to caress the cheek of the woman that he loves with his hand.

I asked his mother how he is doing. Well, he is learning how to put on his bilateral leg stump, his leg prosthesis with his arm stumps, but he needs a lot of help in getting on his bilateral hooks. He is always going to be that way. He is doing great. He is a courageous little kid.

But I ask you, how is it that when HMOs under employer systems are making medical judgments and decisions that can result in losing your hands and your feet, that the only thing those plans are responsible for is the cost of the amputations? Is that fair? Is that justice? If that HMO had known that they would be liable, they would have been much more careful, and they would have said, ''Take him to the closest emergency room,'' not 70 miles away. That would have helped prevent this.

It is cases like this that have come before the Federal judiciary that has caused our Federal judges to be so frustrated, because the only recourse that Jimmy has at this point in time is the fact that the HMO paid for his amputations. That has caused some judges like Judge Gorton in Turner v. Fallon to say, ''Even more disturbing to this court is the failure of Congress to amend a statute that, due to the changing realities of the modern health care system, has gone conspicuously awry from its original intent.'' That statute that he is talking about is the Employee Retirement Income Security Act, ERISA, that 25 years ago was meant to be a plan that would protect employees in terms of their pensions.

□ 2145

It has been turned on its head as a protection for employers and for health plans, not for employees. Federal judges are saying, Congress, fix it.

Judge Garbis, in the case Pomeroy v. Johns Hopkins, says the prevalent system of utilization review now in effect in most health care programs may warrant a revaluation of ERISA by Congress so that its central purpose of protecting employees may be reconfirmed.

A judge looked at this case involving little Jimmy Adams. He reviewed the case. Do you know what he said? He said, the margin of safety by that HMO was ''razor thin.'' I would add to that, about as razor thin as the scalpel that had to cut off his hands and his feet.

Judge Bennett, in Prudential Insurance Company v. National Park Medical Center, said, ''If Congress wants the American citizens to have access to adequate health care, then Congress must accept its responsibility to define the scope of ERISA preemption and to enact legislation that will ensure every patient has access to that care.''

So I ask my colleagues on both sides of the aisle, but especially my colleagues, my fellow Republicans, do the right thing in the next 2 days, and you will be fulfilling Republican principles.

What are those principles? Those principles that we Republicans have talked about are individual responsibility. We have been for tort reform, we have been for States' rights, we have been for market reform. We have been for adequate enforcement on some of the legislation we have passed. We are all for fairness.

Let me go into this in a little bit more detail. I do not know how somebody who has voted for welfare reform, where we say that if a person is able-bodied, that they have a responsibility to go out and work, to get an education to work and support their family, that is a Republican principle of responsibility. That was the major thrust of our welfare reform bill.

Republicans have repeatedly on this floor, my fellow Republicans, myself included, said that if somebody commits murder or rape, then they ought to be responsible for that. How can we say that a health plan or an HMO which makes a medical decision that results in a little baby boy losing his hands and feet, that they should not be responsible? I do not know how one can justify his other actions. Do we only talk about responsibility if it does not involve some big special interest money? Let us think about this for a minute.

How about the issue of tort reform? This is tort reform. This is fairness. When we have a system that is tilted, that is unbalanced, it creates distortions. What we are talking about is that there is no other industry in this country that has this type of liability shield.

If an automobile manufacturer came to us and said, you know, I do not think under ERISA we should be liable for any of the bad things we do, or if an airplane manufacturer said that, I think they would get laughed off Capitol Hill. I mean, if they do a negligent action that cost the lives of our constituents, then they should be liable. They are not coming to us for that.

So we have this bizarre situation where an organization which is making daily life and death decisions by a 25-year-old antiquated law that needs to be updated in one particular area has an exemption from responsibility for their actions.

States' rights, let us talk about that for a minute. Today in our Republican Conference we had a discussion on patient protection legislation. I pointed out that a couple of the bills that will come up in the next 2 days seek to take away from State jurisdiction personal injury and move it into Federal courts.

After we had a discussion about that, which I am going to discuss some more, I said, somewhat tongue in cheek, to a colleague of mine from South Carolina, I just, I just do not understand how a successor for John C. Calhoun, the major proponent of States' rights, how Republicans who have repeatedly said, hey, we need to get big government off your back and devolve power back to the States, and we have said that on education, we have said that on welfare, we have said that on all sorts of things, I do not know how a representative from South Carolina could be for moving this to Federal court under two of the bills that we will, I hope, defeat in the next 2 days. And my friend said, yes, but John C. Calhoun is dead. And a voice from the back of the room said, yes, but he passed away because of his HMO.

Well, I think that when we are looking at States' rights, this is really important. Since the beginning of our Constitution, in the area of personal injury, this has been an issue that has been handled at the State level.

My father managed a grocery store. What was one of the things he always watched out for? A grape on the floor in the produce department, because somebody could slip on a piece of produce and hurt themselves, and once in a while that happened. Once in a while then you had a lawsuit arise out of that. That is handled, if you are talking about any national retail chain, whether you are talking about

Target or whether you are talking about Wal-Mart, anything like that today is handled in your local State court. That is where it should be handled.

But under two of the bills that we are going to be debating, the major thrust of the liability provisions is that you take those out of State jurisdiction and put them into Federal. That just stands our Federal-State relationship on its head. It would be the biggest usurpation of Federal big government power that I think I have ever seen in Congress, and unnecessary.

What the bipartisan consensus managed care bill says is that when we have a problem that requires that you go to court because of a health plan's problem, you simply go back to State court, to a jurisdiction where it has always been in the past. We are not creating a new cause of action, we are simply returning it back to where it was before 25 years ago.

Why is that important? Well, when we are talking about the issue of Federal versus State jurisdiction, I would read this report by Chief Justice William Rehnquist, Chief Justice of the Supreme Court. He said, ''This principle was enunciated by Abraham Lincoln in the 19th century and Dwight Eisenhower in the 20th century. Matters that can be handled adequately by the States should be left to them. Matters that cannot be handled should be undertaken by the Federal Government.''

Do Members know what? I will bet there is not a single Congressperson here who has gotten a phone call from one of his constituents complaining that their State court has not been able to take care of those problems of personal injury. I do not think that we are going to find very many Congressmen that think that their States are not able to handle this, their State courts are unable to handle this. So the bill that I support simply says, return the jurisdiction to that.

Look, if a State wants to pass a law like Texas did on managed care liability, or like California did, they can devise whatever law they want to. Under the bill, the bipartisan managed care consensus bill, we do not tell them how to do it in California or how to do it in Texas. For all I know, a State could pass a law that would say, we do not think that any employer ought to be liable for anything. And under our bill, that is the way it would be handled in that State, because I believe philosophically that this is where the decision should be made, in the States. I am willing to walk the talk.

I wonder if the gentleman from Texas (Mr. GREEN) would like to interject a comment.

Mr. GREEN of Texas. I thank my colleague, one, for being willing to do this night after night, and I know how firm he is in his belief, because I have watched the gentleman in our committee, in the Subcommittee on Health in the Committee on Commerce.

The fear I have from some of the options tomorrow, some of the poison pill amendments, as we call them, is that transfer to Federal court, in my experience as a lawyer, again, practicing law, I did not want to go to Federal court. I had one case in my almost 20 years of practicing law that was in Federal court, but I liked the State court one because you could get to court quicker, you had more access, more judges in the court.

Again, the Federal courts under our rules now, and we voted for them, they would give preference to criminal cases. I want that to still be the case. I want them to be able to handle the drug cases in the Southern District of Texas, because that is the overwhelming number we get in our Federal courts. I do not want to continue to add more cases to the Federal court when they cannot deal with the criminal cases now.

So that is what worries me about allowing these to be brought in Federal court. It will just delay it. They will have to be behind the criminal cases. Why should we not take advantage of the State courts, because these are State issues? Typically, insurance has been a State-regulated commodity, except on ERISA, but we have a right as a Member of Congress and as a Congress to say, on these issues, go back to your State court. I think that is good.

The gentleman used the great example of his father, who managed produce. If somebody had slipped on that grape, they were going to State court. Whether it is Wal-Mart or Safeway or anyone else, why should they not be able to go to State court, just like they would if there is a personal injury?

Mr. GANSKE. Reclaiming my time, Mr. Speaker, I think the gentleman would agree, if a Wal-Mart came to Congress and said, we think that we ought to take slip and fall injury out of State court and make it a Federal law, a Federal tort, does the gentleman not think they would be laughed off Capitol Hill?

Mr. GREEN of Texas. I would hope so. Again, I thank the gentleman for yielding to me. There are certain cases the Federal court needs to be dealing with.

We have not created Federal courts on the floor of this House. The Senate has trouble even filling the vacancies. But there are so many more opportunities for justice to be had in the local and State courts.

Like I said, in Harris County, Texas, Houston, Texas, we have dozens more State judges than we do Federal judges. And again, we have State courts for civil jurisdiction, and we have the district courts, depending on the size of the loss. We could go to a county court if it is a small loss, whereas on the Federal level, you are in there, whether it is your small case, you are in there with those multi-million dollar cases, but also you are behind the criminal cases.

Again, our experience in the Southern District of Texas with the border region we have that comes up to Houston, most of the cases in our Federal District Courts are drug cases and criminal cases. They do not try as many civil cases as they used to. All these issues would be behind those criminal cases, because I want them to do those criminal cases. We want that justice swift for someone who is accused of violating our law, so they can either be found not guilty, or start serving their time.

Mr. GANSKE. Let us be specific about this. The two bills that are going to come before us that would move an entire area of State law into the Federal courts are the Coburn-Thomas substitute and the Houghton substitute.

What are some practical implications for that? The gentleman has already alluded to some of them. Let me speak from Iowa's perspective. I represent central and southwest Iowa. In Iowa we have 99 counties. There is a State courthouse. There is a county courthouse in every one of those counties, and a State court, but there are only two Federal courts in Iowa, one in Des Moines and one in Cedar Rapids.

In Texas, I know there are 372 State courts, but there are only 39 Federal courts. Texas is a bigger State than Iowa. How about in Oklahoma? There are 77 State courts, but one Federal court.

What does that mean? That means that if we look at being able to get our say in court, and we have to go to Federal court in Iowa, someone may be traveling 200 miles to get into Des Moines, instead of going to the county seat. In Texas, I imagine, out in the panhandle, it could be significantly longer distances. Then you have the travel expenses, and as you mentioned, under a law that passed Congress about 25 years ago, the Federal judiciary is bound to handle criminal cases first before they can handle these.

□ 2200

And Chief Justice Rehnquist has told us that the Federal court system in the last 2 years has had a 22 percent increase in their caseload. They do not want this jurisdiction. They are understaffed now. If we look at current Federal judicial vacancies, there are currently 65 judicial vacancies. Twenty-two Federal jurisdictions, because of the case overload, are called emergency jurisdictions. We anticipate that there will be another 16 vacancies in the next 6 months.

That adds up to an understaffed Federal system, long distances, and for what purpose? The State courts are doing their job. I can hardly believe that some of my Republican colleagues would be in favor of expanding the big Federal Government in this area at the expense of their States.

And we have talked about the fact that criminal case filings in Federal court are up 15 percent in 1998 alone. That is because Congress has passed some laws related to increased criminal penalties. We have talked about the

fact that those criminal cases have priority in the Federal cases. So what does this mean? It means that consumers are not going to get a speedy resolution of their problem with an HMO if they have to go to Federal court.

Now, some people, i.e. some of the HMOs, they would love it if they could delay 5 or 6 or 7 years. They would especially love it if we do not change ERISA because maybe the patient is dead by then and at that point in time under the ERISA law they would be liable for nothing.

In Chief Justice Rehnquist's 1999 proposed long-range plan for the Federal courts he said, ''Congress should commit itself to conserving the Federal courts as a distinctive judicial forum of limited jurisdiction in our system of Federalism. Civil and criminal jurisdiction should be assigned to the Federal courts only to further clearly define a justified national interest, leaving to the State courts the responsibility for adjudicating other matters.''

And I have here a letter from the National Association of Attorneys General that says, ''Any Federal legislation enacted should at a minimum provide full authority for states to enforce all legal standards independently of Federal entities.''

I have here a letter from the National Conference of Chief Justices relating to this Federal-State issue. They say relating to court jurisdiction, ''Following the exhaustion of administrative remedies and consistent with the general principles of Federalism, State courts should be designated as the primary forum for the consideration of benefit claims.''

I think that quite frankly if the national governors are aware that we are about ready to take away State jurisdiction in something like this, they are going to come out pretty darn strongly against a piece of legislation that usurps State authority.

Now, let me move on to something that the gentleman from Missouri talked about in terms of how our bill, the bipartisan managed care bill, the Norwood-Dingell bill either does or does not protect employers, because this is a crucial point. I would say that it does protect employers. As a physician who ran a medical office, and who has a lot of friends who run medical offices, employing a lot of people providing health insurance for them, I would not be in favor of a bill that would say that they would now be liable for a decision by their HMO that they have contracted with for their employees that would put them at risk. The bill that we have does not.

We simply say this: that if one hires an HMO as a business and that HMO makes a decision that results in an injury to the patient and you as an employer have not entered into that decision, then you are not liable. Period.

I have here an assessment by one of the leading law firms in the country that deals with the Employee Retirement Income Security Act, the ERISA law. They analyzed the language in our bill that is designed to protect employers. They specifically addressed the claims by those opponents to our legislation. They say that those claims that our bill does not protect employers do not represent an accurate analysis of the employer protections in the bipartisan bill. The claims that the bill would subject plan sponsors or employers to a flood of lawsuits in State courts over all benefit decisions and suggests that plan sponsors, i.e. employers, would be forced to abandon their plans is incorrect for the following reasons:

Number one, most lawsuits would not be against employers. Under current ERISA preemption, lawsuits seeking State law remedies for injury or wrongful death of group health plan participants are already allowed in numerous jurisdictions; and those cases show that those suits are normally brought against HMOs, not against employers.

Mr. DREIER. Mr. Speaker, if the gentleman from Iowa will yield, I would simply like to congratulate my friend and tell him that I have just filed a rule, which in fact, will allow us to have the freest, fairest debate that we have had in over a quarter century on the health care issues.

We anxiously look forward to bringing that measure up tomorrow morning here on the House floor, and we will continue to debate it into Thursday. And I thank the gentleman for yielding, and I look forward to his continued remarks.

Mr. GANSKE. Mr. Speaker, I thank the gentleman from California (Mr. DREIER), chairman of the Committee on Rules for his comments.

Mr. Speaker, let me continue on talking about this analysis that was done by a leading law firm on how the bill that I support, the Norwood-Dingell bill, bipartisan consensus managed care reform act actually does protect employers. And there are about four or five points that this legal brief makes.

First is that lawsuits would not be against plan sponsors. Second is that plan sponsor is limited. Third is that the statute's plain meaning limits employer liability. And the fourth is that they point out several reasons why the private sector health care would not be destroyed.

This is what is in our liability provision. It basically says that if there is a problem, it goes back to State jurisdiction. But we do not want to increase the number of lawsuits. We want people to get the care that they need before they lose their hands or lose their feet like the little boy who I showed. So what we do is we say that an HMO should have an internal appeals process in a timely fashion, but that if the patient or family is not still happy with a denial of care at the end of the internal appeals, they go to an external appeal by an independent peer panel of doctors that can make a binding decision on the health plan and does not need to follow the plan guidelines.

In other words, they can consider those plan guidelines on medical necessity, but they can take into consideration the medical literature, prevailing standards of care, NIH consensus statements. In other words, the things that are necessary in order to make a determination.

We say they cannot overrule a specific exclusion of coverage. And so let me just say there is nothing in this legislation that prevents an employer who has business in many different States from being able to design a standard benefits package. There is nothing in this bill that says that they now have to follow State mandates as it regards to benefits.

All we are saying is that if they are up front and say they do not cover bone marrow transplants, then that independent panel, even if the patient needs it, cannot tell the health plan that they have to give it. But if they do not have a specific exclusion and that patient needs it, then the independent panel can tell the plan they have to provide it; and if the plan follows the recommendation, then we have a fair compromise.

The Democratic side of the aisle made a big compromise on this. It is that if the health plan follows that recommendation by the independent panel, then there can be no punitive damages against that employer; and that would be a punitive damages relief not just for group health plans but also for all other health plans. Individuals as well. Not just for ERISA plans but for non-ERISA plans. That is a major compromise, but it is a fair one because if the plan follows the recommendation of the independent panel that has made the decision, then they cannot be maliciously liable for someone else's decision.

But we need to have the liability provision in there as the ultimate inducer to the HMO to follow the law. Why is that? Let me give an example from Texas. Texas just passed this HMO reform bill that includes liability for health plans. In that bill they say that if a physician recommends treatment to a patient, say a patient is in the hospital but the HMO says no, we do not want to pay for it but the physician says, hey, this patient could suffer injury, then under the law that dispute is supposed to go immediately to a peer review organization for a determination. It is supposed to be sent there, the determination is supposed to be sent there by the plan.

Well, about a year or so ago after this law was passed in Texas, a psychiatrist who was taking care of a man who was suicidal. He was in the hospital. The psychiatrist thought that this man could commit suicide and so he told the health plan this patient needs to stay in the hospital. The health plan said no we are not going to pay for it any more. Send him home, and told the family that. Now, under Texas law they were required in that situation to get an independent peer

review decision, but they did not. They did not follow the law. They just told the patient to leave. So the patient went home that night. He drank half a gallon of antifreeze and he died. It took him 2 days of a horrible, painful death.

Now, in that circumstance under Texas law, that health plan is now liable. They did not follow the law. If we did not have liability, why would any plan ever follow the law? It will take about two or three cases like that and then the health plans in Texas will decide, we had better follow the law before a patient goes home and commits suicide.

That is part of the reason why we need enforcement. But I honestly think that if we combine the appeals process, if we combine the provisions in our bill related to emergency care, related to clinical trials, related to physicians being able to tell their patients all of their treatment options, and we follow an internal and external appeals process, that we are actually going to decrease the incidence of injuries, and we are going to decrease the number of lawsuits.

□ 2215

That in fact has been what Texas has found out.

Before they passed the Texas law, the HMOs, the business groups, they lobbied furiously against that law. They said the sky will fall, the sky will fall. There will be an avalanche of lawsuits. Premiums will go out of sight. The HMOs will all leave Texas.

What has happened? There has just been a couple lawsuits like the one I mentioned where the plans did not follow the law. Premiums have not gone up any faster in Texas than they have anywhere else. In fact, they still have lower than average premiums. There were 30 HMOs in Texas before this law passed. There are 51 HMOs in Texas today. The sky did not fall.

There have been over 600 decisions made to resolve disputes because of that Texas law, and more than half of them have been decided in favor of the health plans; and that has provided an adequate relief to the patients to know that they are getting the right care. But half of the time the independent panels have decided for the patient, and so they have gotten the treatment before an injury has occurred.

This is just common sense. All our bill does in terms of ERISA is say that, let the State jurisdiction as it relates to liability function. In Texas, one has to follow these rules and regulations. There are protections for employers. That is the law as it relates to liability.

California just passed an HMO liability bill. That would be the way that it would be handled in California. This is federalism. This is returning power to States. This is following up on Republican principles where the States are the crucible of democracy. This is following the Constitution. This is following the remarks of the Supreme Court Justice who says, please, do not load up the Federal judiciary any more than what would be absolutely necessary for national security. Do not take away jurisdiction from the States if they are doing a reasonable and good job; and they are in this area.

So I just have to ask my Republican friends, it seems to me that if they are for States rights, if they are for responsibility, then they would be against a bill that would remove this authority from the States. They would be against the Coburn-Thomas bill. They would be against the Houghton substitute. They would be for the Norwood-Dingell bill. Those are Republican principles, and they will be done at a very modest cost.

As I said before, we are looking at, for an average family of four, potentially an increase in the cost of premiums of about $36 a year. That is money that my constituents tell me is well worth it if it can reassure them that they are going to be treated fairly by their HMO.

So when we have our debate in the next day or so on this, let us try to get past some of the special interest smoke and mirrors and Chicken Little statements. Let us do something right. Let us do something for justice. Let us correct a problem that Congress created 25 years ago. Let us be for our principles of States rights and responsibility, and not tilting the deck against a fair market.

Let us be for the Norwood-Dingell Bipartisan Managed Care Reform Act. Vote, I would say to my colleagues, however my colleagues want on the access bill. My colleagues are going to have to balance some of those individual provisions. If it passes, it will go to conference. But I would urge my colleagues strongly to vote against the Coburn-Thomas bill and against another substitute that would be against our Republican principles of States rights and individual responsibility.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 2990, QUALITY CARE FOR THE UNINSURED ACT OF 1999, AND H.R. 2723, BIPARTISAN CONSENSUS MANAGED CARE IMPROVEMENT ACT OF 1999

Mr. DREIER (during special order of Mr. GANSKE) from the Committee on Rules, submitted a privileged report (Rept. No. 106–366) on the resolution (H. Res. 323) providing for consideration of the bill (H.R. 2990) to amend the Internal Revenue Code of 1986 to allow individuals greater access to health insurance through a health care tax deduction, a long-term care deduction, and other health-related tax incentives, to amend the Employee Retirement Income Security Act of 1974 to provide access to and choice in health care through association health plans, to amend the Public Health Service Act to create new pooling opportunities for small employers to obtain greater access to health coverage through HealthMarts, and for other purposes, and for consideration of the bill (H.R. 2723) to amend title I of the Employee Retirement Income Security Act of 1974, title XXVII of the Public Health Service Act, and the Internal Revenue Code of 1986 to protect consumers in managed care plans and other health coverage, which was referred to the House Calendar and ordered to be printed.

DRUG PROBLEMS IN AMERICA

The SPEAKER pro tempore (Mr. TOOMEY). Under the Speaker's announced policy of January 6, 1999, the gentleman from Florida (Mr. MICA) is recognized for 60 minutes.

Mr. MICA. Mr. Speaker, I thank the Chair for the opportunity to come before the House this evening, as I do on most Tuesday evenings when the House is in session, to talk about an area of responsibility that I inherited in this particular session of Congress. That responsibility is Chairman of the Subcommittee on Criminal Justice, Drug Policy and Human Relations of the House. It is an investigations and oversight panel of Congress.

One of its primary responsibilities is to try to develop a coherent and effective national drug policy. It is a very difficult task, but a very important task, because illegal narcotics have taken an incredible toll among our citizens.

We have a costs estimated at $250 billion a year affecting our economy, not only the cost of criminal justice, but lost employment, social disruption, costs that just transcends every part of our society. Those are the dollar and cents costs, not talking about human suffering and the effects on families and children across our Nation. Certainly illegal narcotics must be our biggest social problem.

Additionally, the statistics are staggering as to the number of people incarcerated. Somewhere between 1.8 million and 2 million Americans are in jails and prisons, Federal facilities, across the Nation. It is estimated that 60 to 70 percent of those individuals incarcerated are there because of a drug-related offense.

Now, there are many myths and misconceptions about some of these problems related to illegal narcotics. Tonight, I would like to touch upon a few of them.

As Chairman of this subcommittee with this responsibility, I have tried to not ignore the problem, not ignore the various alternatives, but try to have an open, free, and honest debate in our subcommittee and also stimulate it here in the Congress and the House of Representatives and among the American people, because we have a very, very serious problem facing our Nation.

In that regard, we have held a number of hearings, on average, three or four a month in this year. Prior to my