me recently and say, they are going to have to leave San Diego and California because they cannot live with this uncertainty.

So we have the power. The power is there. By the way, when we asked them why they did not produce, a TV station had talked to one of the people working there, and they revealed the logs and they said, they just turned it off. First they told me, well, we turned it off because there was environmental problems, restrictions, and we went to the air quality board and they said, that is a lie, there is no restrictions. They said there were mechanical problems, but the mechanics there said there were none. Then they said the system operator in the State did not ask them; it turned out that they did.

So we have this incredible situation.

Mr. SHERMAN. Mr. Speaker, a stage-3 alert is a desperate situation where we are asking everybody to conserve and produce.

Mr. FILNER. And, the blackouts occurred at a time when our capacity for production theoretically is 45,000 megawatts, the demand in the wintertime when air-conditioning is not on is about 30,000, so we have a 30,000 megawatt demand, we have a 45,000 capacity. Economics 101 says there ought to be sufficient supply at a reasonable price. We had blackouts, and we had blackouts because of the situation that the gentleman described earlier.

I wonder if the gentleman might share with us also the experience of those with public power; that is, there are 3,000 communities around this country that have public power. The City of Los Angeles, which the gentleman knows very well, produces its own power and distributes it. The City of Sacramento I think has its own power supply. Those cities and those municipalities, those areas that have public power are not under the control, for the most part, of this energy cartel. Does it work?

Mr. SHERMAN. Mr. Speaker, it works just fine. In the City of Los Angeles, and I live within the city limits, the prices are the same, no blackouts; we have no problems. Our city produces a little bit more electricity than it needs and sells it to the gentleman's city and others in the west. Occasionally, somebody will say, maybe L.A. is charging San Diego too much or too little, and somebody will write a story about it on page 6 of the newspaper. But the overwhelming story, the headline story is, no story here.

Mr. Speaker, regulated electricity, that is to say privately owned but subject to rate regulation, costs plus profit, worked fine in our State and virtually every other State for 80 to 100 years. Something even more regulated, that is to say the government actually owning the means of production and selling the electricity itself, works fine in Sacramento, the City of Los Angeles, the City of Burbank.

Unregulated power seems to work well in some of the States where their economy is not growing at all and their population relative to the rest of the country is contracting. But in a State like ours that is growing a bit, surrounded by other States that are also experiencing growth, an unregulated market is an invitation to be gouged. The theorists may not have realized that at the time. It seems apparent now. When we try something and it does not work, we should go back to what we had before that was working pretty well.

Mr. Speaker, the Federal Government will not let us. We get lectures from the White House, lectures about how, if only we had elected Republicans, this would not have happened. But we are having a hard time hearing the lecture, because we are bound and gagged by Federal law that will not allow us to go back to the same system that worked so well for us.

Mr. FILNER. Mr. Speaker, if I can sum up from my perspective and then give the gentleman a similar chance, California is being bled dry by a cartel of energy wholesalers. We are being charged at a rate of $3 billion a month, and the State is purchasing that because the utilities are bankrupt. Our first job is to get down those prices. We have legislation which virtually all of the Democrats and some Republicans from the States of California, Washington, and Oregon are supporting, which establishes cost-based rates for electricity in the western region. That will bring down the prices and stop the hemorrhaging, while the governor is programmed to build new plants and conserve more has its effect. We must bring down those prices. This Congress has refused to act and is going home for its Memorial Day recess without doing that.

We have to move in addition, for the long range, and it really comes back to the same problem, because these cartels will not do the research for renewable resources, for sustainable energy. We could in California be pretty self-sufficient with photovoltaic cells if we brought down the cost and purchased in mass. We have to do more work in that. San Diego, as are other regions in the State, are moving toward a public power authority so we can have our own plant like the one that I described earlier. We can build and have some leverage in the system. We do not have to expropriate the San Diego gas and electric distribution system. At their rate, they will be very happy to do it. But we need some leverage of our own electricity and our own capacity so we can take control of our own future from this cartel.

Whether we looked at gasoline in Chicago or whether we looked at electricity in California or natural gas as it flows, as the gentleman described, from Texas into California, the economic situation is the same. There is no competition, there is no market, there is a manipulated and controlled situation by a small group of major corporations. We must bring them under control, and we as different communities must establish our own sources to get out of their control.

So I thank the gentleman, and I will give him the last word in the few minutes that we have left.

Mr. SHERMAN. Mr. Speaker, the gentleman is right to bring up the natural gas prices.

As I indicated, the price of moving natural gas went up by 1,200 percent. That happened right after the Federal Energy Regulatory Commission, the same culprit as in the other situation, deregulated the pipelines and allowed them to charge, through a loophole, to charge as much as they wanted to charge. Imagine your home is burning down. You might have one neighbor who, for some reason, does not help you. But only the most malevolent of neighbors would seize your hose, watch your home burn down, hold on to your hose and lecture you about how it is your fault, you should not let the fire break out to begin with.

California is burning. The Federal Government is holding our hose, and we are being hosed by Washington, which will not give us the rate regulation that virtually all Californians want, and will not let us do it ourselves.

Mr. FILNER. Mr. Speaker, we call on the President and this Congress to act today. I thank the gentleman from California, and I thank our colleagues from Illinois.

□ 2340

PATIENT PROTECTION LEGISLATION

The SPEAKER pro tempore (Mr. GRUCCI). Under the Speaker's announced policy of January 3, 2001, the gentleman from Iowa (Mr. GANSKE) is recognized for 22 minutes.

Mr. GANSKE. Mr. Speaker, we are about ready to head home on recess, so I want to speak to my colleagues about something that I think that we should address when we come back from this recess. That is the issue of patient protection legislation.

We have been dealing with this for several years. I have just a few minutes left before we close down for the evening.

This is a really important issue. HMOs are making hundreds of thousands if not millions of decisions each day that can adversely affect the health and lives of the people who are supposed to get their insurance from them.

Mr. Speaker, remember a few years ago the movie As Good as It Gets? We had Helen Hunt talking to Jack Nicholson during the movie about her son who had asthma and was not getting the proper authorization for treatment by her HMO.

She then went into a long string of expletives about her HMO, and I saw something happen in a movie theater I never saw happen at any other time.

People stood up, applauded, and clapped for the sentiment that Ms. Hunt was expressing about her HMO.

In fact, we know the sentiment is widespread when we start to see humor, even if it is black humor. Here we have a cartoon about HMOs. We have a doctor at an operating table. We have the HMO bean counter next to him. The doctor says, ''scalpel.'' The HMO bean counter says ''pocket knife.'' The doctor says ''suture.'' The HMO bean counter says ''bandaid.'' The doctor says, ''Let's get him to an intensive care unit.'' The doctor says, ''call a cab.''

Now, Members may think that is just a joke, it is just funny, except for the fact that down in Texas there was a suicidal man. His doctor recommended that he stay in the hospital. The HMO said, ''No, we are going to make the medical judgment that he does not need to be in the hospital. If he stays, we are not going to pay for it.''

The families, like most families, they cannot afford an out-of-pocket expense like a hospitalization, so they took this poor patient home. That night, sure enough, he drank half a gallon of anti-freeze and he committed suicide.

That HMO should be liable. They did not even follow the Texas law, which says that in that type of case, they ought to get an expedited external review.

That is why, for instance, stories appear all across the country every so often, things like in the New York Post, ''HMO's cruel rules leave her dying for the doc she needs.''

Here is another cartoon. The doctor is reading to a patient. The HMO physician says, ''Your best option is cremation, $359 fully covered,'' and the patient says, ''This is one of those HMO gag rules, isn't it, Doctor?''

Mr. Speaker, 5 years ago now, Members co-signed a bill that I wrote, 300-plus bipartisan cosponsors, that would ban those HMO gag rules, the rules that would keep a doctor from telling a patient all of their treatment options.

Do Members know what? We could not get the leadership to bring it to the floor, even though I had been promised, even though we could have brought it to the floor under suspension with no amendments, and it would have passed overwhelmingly. We could not get it to the floor. Why? Because the HMO industry is a powerful special interest group.

How about this headline: ''What his parents didn't know about HMOs may have killed this baby.'' Maybe that headline, that real-life headline, spawned this cartoon. We have the maternity hospital. We have a drive-through window. ''Now only 6-minute stays for new moms.'' Remember those HMO rules, drive-through deliveries? The hospital technician says, ''Congratulations. Would you like French fries with that?'' as mom and dad are pulling out with newborn baby.

How about this cartoon. HMO Claims Department: ''No, we don't authorize that specialist. No, we don't cover that operation. No, we don't pay for that medication.'' Then the HMO reviewer hears something over the telephone and ends up saying, ''No, we don't consider this assisted suicide.''

Do Members know what? That joke may be funny to some, but it is not funny to this family, this little girl and boy and the father. Because the HMO did not inform their mom that they were putting screws on one of the health centers not to provide her necessary treatment, she ended up dying. This case ended up being covered on the front cover of one of the national news magazines as an example of HMO abuse.

Now, this is really black humor. Here we have an HMO receptionist saying, ''Cuddly Care HMO. How can I help you? You are at the emergency room and your husband needs an approval for treatment? Oh, he is gasping, writhing, eyes rolled back in his head? Doesn't sound that serious to me. Clutching at his throat? Turning purple? Uh-huh.'' Then the reviewer says, ''Well, have you heard about an inhaler?'' Then the next one is ''He is dead?'' And the next one says, ''Well, then he certainly doesn't need treatment.'' And finally, the reviewer looks at us and says, ''People are always trying to rip us off.''

How about the case where this young woman fell 40 feet off a cliff about 70 miles from Washington, D.C. She had to be evacuated to an emergency room and intensive care. She had a broken pelvis, a fractured skull, a broken arm. Her HMO would not pay her bill. She had not phoned ahead for prior authorization. I guess she was supposed to know she was going to fall off a cliff.

Gee, it would be just like that prior cartoon, the HMO saying, ''Those patients, they are always trying to rip us off.''

Speaking about emergency care, this little boy, when he was 6 months old and needed emergency care in the middle of the night, he had a temperature of about 105, 104, 105, mom phoned the 1–800 number and was told to take him to one specific hospital, the only one the HMO contracted with. Mom said, ''Where is it?'' The answer on the telephone, ''I don't know. Find a map.'' It turned out it was 70 miles away. ''But we are only going to authorize that one hospital.''

So they passed several other hospitals, not knowing how sick their little boy is. He has a cardiac arrest. En route, they are lucky, they manage to keep him alive. His mom leaps out of the car carrying the little baby. When they finally get to the emergency room, they put an IV in. They save his life, but they do not save all of this little baby, because he ends up with gangrene of both hands and both feet, which have to be amputated, because that HMO made a medical judgment.

Instead of saying, ''Take that little boy to the nearest emergency room right away,'' they said, ''We do not think it is that important. Take him to this one that is 70 miles away, because we can save money that way. We have got a contract with that emergency room.''

Before coming to Congress, I was a reconstructive surgeon. I took care of little babies with cleft lips and pallates like this baby. Guess what, 50 percent of the surgeons in this country that do this kind of surgery in the last 2 years have had cases denied like this because this is, according to the HMO, a cosmetic condition.

How did we get to this sorry state? We got to this because 25 years ago, Congress passed a law called the Employee Retirement Income Security Act, which was primarily a pension law meant to be for the benefit of the employee. But somehow or other, health plans got included in this, and along came managed care, which was much more intrusive, and all of a sudden we now have a situation where, under employer plans, health plans do not have to follow any State regulations.

Furthermore, they are not liable or responsible for any of their decisions. Think about this. As far as I know, there is only one group of people or an institution in this country that is free of responsibility for their decisions, that is foreign diplomats, except for the HMOs and employer health plans.

That little boy who lost both hands and his feet, under Federal law that plan is responsible for nothing except the cost of his amputations.

That, unfortunately, has led employer health plans to cut corners. Not all of them. Some plans try to do the right thing. But some plans have definitely cut corners in order to save money, in order to satisfy their stockholders.

□ 2350

That has resulted in unfair processes and unfair denials. And, furthermore, under this Federal law, it basically says that a health plan can define medical necessity in any way they want to.

They can say in their contract that we define medical necessity as the cheapest, least expensive care. That means, for instance, that the little child that had the cleft lip that I just showed my colleagues would not be able to get that. The HMO could deny a surgical correction which is standard of care. Maybe we would just put a piece of plastic in the roof of his mouth, because after all that would be the cheapest least expensive care.

Mr. Speaker, that is the way it works under this Federal law, which took away the oversight from States where it had resided for 200-plus years in this country.

I think that is unconstitutional. I think that is an abridgement of the 10th amendment, but it is incumbent on Congress to fix that, because it was Congress that created this problem 25 years ago.

Now, I am not the only one who thinks this. The Federal judiciary

thinks this, too. In fact, Judge Pickering, the father of one of our colleagues here in the House, told me that he thinks we need to fix this. He has come up against cases like this. Here we have a statement from Judge Arbis in Pomeroy v. John Hopkins. He says the prevalent system of utilization review now in effect in most health care programs may warrant a reevaluation of ERISA by Congress so that its central purpose of protecting employees may be reconfirmed.

Another judge, Judge Gorton, in Turner v. Fallon says 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 it original intent.

We are talking about ERISA. We are talking about messages coming to us from the Federal bench.

Judge Bennett says in Prudential Insurance v. National Park Medical Center, 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.

The Supreme Court has looked at this and the Federal courts are working their way towards this goal case by case modifying this ERISA law, because they are seeing gross inequities, but it is a slow process.

Mr. Speaker, what are the courts doing? They are remanding these medical judgment cases back to the States.

The Supreme Court in Pegram v. Herdrich said decisions involving benefits stay in ERISA, but decisions involving medical judgment should go to the States where they have traditionally resided, where we have 200 years of case law. That is what they should be doing. That is what is in the Ganske-Dingell bill, the McCain-Edwards bill that should come before the House and before the Senate.

But there is an alternative. The alternative is, oh, let us just move all of that into the Federal courts. I cannot believe that Republicans would propose federalizing an entire area of health care.

Are we not the party that traditionally says this should be a purview for States? There are about how many States, there are now nine States that have passed HMO accountability laws, Arizona, California, Georgia, Louisiana, Maine, Oklahoma, Texas, the home State of President Bush, Washington, and West Virginia.

They have all enacted legislation that permits injured patients or their estates to hold health plans responsible for negligent decisions.

You know what? One of the bills on the other side of the Capitol, the House rules prevent me from naming names, not the McCain-Edwards bill, let us just say the Breaux-Frist bill, the Breaux-Frist bill would move all of that jurisdiction into Federal courts. That is a bad idea. It is unconstitutional if my colleagues care about the 10th amendment. But more than that, there are a lot of other reasons.

Let us look at them. We need to decide, should the proposed legislation, is it within the core functions of the Federal system? I am going to talk about that. Whether Federal courts have the capacity to take on that new business without additional resources; whether the Federal courts have the capacity to form their core functions and to fulfill their mandate for just, speedy and inexpensive determination of actions.

Chief Justice Rehnquist said this, the principle was enunciated by Abraham Lincoln in the 19th century. 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.

In a proposal for a long-range plan for the Federal courts, Rehnquist has said, Congress should commit itself to conserving the Federal courts as a distinctive judicial forum. Civil and criminal jurisdiction should be a sign to the Federal courts only to further clearly define justified national interests leaving to the State courts the responsibility for adjudicating all other matters, and that means specifically health care.

Federal courts are not the appropriate forum for deciding cases from HMO negligent decisions.

Just last year, the Judicial Conference of the United States stated ''personal injury claims arising from the provision or denial of medical treatment have historically been governed by State tort law and suits on such claims have traditionally and satisfactorily been resolved primarily in the State system.''

The State courts have significant experience in personal injury claims and would be an appropriate forum to consider personal injury actions pertaining to health care treatment. Federal courts cannot handle this. They already have a huge number of judicial vacancies under Federal law.

They are obligated to give priority to criminal cases. Criminal case filings go up every year. You could not get a speedy resolution to these types of decisions, especially if we are coupling this with a review system.

I say to my colleagues we are going to have this debate soon. The gentleman from Georgia (Mr. NORWOOD), the gentleman from Michigan (Mr. DINGELL), I, and others, we have modified our bill. We have taken language from Senator NICKLES. We have taken language from the gentleman from Tennessee (Mr. HILLEARY). We have taken language from the gentleman from Arizona (Mr. SHADEGG).

We have made a good-faith effort to come up with a bill that includes a lot of ideas from other people. We have significant protections for employers. Employers cannot be responsible unless they directly participate in a decision.

The vast majority of employers do not want to have anything to do with a medical decision. They do not even want to know what is going on medically with their employees. It is a matter of privacy, and their employees do not want the employers to know.

So those are real and solid protections. The cost factor for our bill in terms of liability would be less than $2 per month per employee. That is less than the cost of a Big Mac meal.

We should remand these medical judgment decisions back to the States. We should fix the ERISA portion, and we should make sure that people get a fair shake from their HMOs.

This is something, Mr. Speaker, that I expect will come up shortly in the Senate and then come shortly to the House. I implore my colleagues to do the right thing, become familiar with the provisions of our bill, the Ganske-Dingell Bipartisan Patient Protection Law of 2001.

Let us pass this finally and let us do something for all of our constituents, all of them have experience with this through either a friend, a family member, a fellow worker. Eighty-five percent of the country has indicated that they think that Congress should pass a law to protect patients from HMO abuses.

Let us get this done finally, and let us put it on the President's desk. Our bill satisfies the President's principles. It is modeled after Texas law, and it would be a great victory for our constituents and the people who get their health care from their employers.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. VISCLOSKY (at the request of Mr. GEPHARDT) for today on account of attending a friend's funeral.

SPECIAL ORDERS GRANTED

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

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

Mr. LIPINSKI, for 5 minutes, today.

Mr. SHERMAN, for 5 minutes, today.

Mr. DEFAZIO, for 5 minutes, today.

Mr. ENGEL, for 5 minutes, today.

Mr. RUSH, for 5 minutes, today.

Mr. UNDERWOOD, for 5 minutes, today.

Mr. KIND, for 5 minutes, today.

Mr. HONDA, for 5 minutes, today.

Mr. GREEN of Texas, for 5 minutes, today.

Ms. NORTON, for 5 minutes, today.

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

Mr. SCHAFFER, for 5 minutes, today and May 24.

Mr. HORN, for 5 minutes, May 24.