to hear all of their treatment options—not just the cheapest ones. It says you have the right to go to the nearest emergency room when you need emergency care. It guarantees you the right to see a specialist if you need one. It gives women the right to see an OB–GYN without having to see another doctor first to get permission. And it guarantees that parents can choose a pediatrician as their child's primary care provider, if they need one.

But rights without remedies are no rights at all. That is why our bill guarantees people the right to appeal decisions by their HMO to an independent review board, and to get a timely response. Finally, if the HMO ignores the review board, our bill allows people to hold HMOs accountable—the same way doctors and employers, and everyone else in America is held accountable for their actions. The 85 million Americans enrolled in Medicare, Medicaid and other Federal health programs already have each of the protections in our bill. So does every Member of this Senate.

Our bill extends them to all privately insured Americans—no matter what State they live in, or what insurance plan their employers choose.

Opponents claim that guaranteeing these rights will cost too much. They say people will lose their insurance because insurance premiums will go through the roof. But the facts show otherwise. According to the nonpartisan Congressional Budget Office, our bill would increase employee premiums an average of about $1.20 a month for real rights that can be enforced—$1.20 a month.

Many things have changed since the first time this Senate passed a Patients' Bill of Rights. The bill itself has changed. We started with a bipartisan compromise: the Norwood-Dingell Patients' Bill of Rights. This bill is a bipartisan compromise on a bipartisan compromise.

One of the most important compromises concerns liability. This bill says very clearly that employers cannot be held liable unless they participate directly in a decision to deny health care. The only employers who can be held liable are the small fraction of companies that are large enough to run their own health care plans—less than 5 percent of all American businesses. Small businesses never make treatment decisions, so they would never be sued.

We have also compromised on where people can seek justice. Instead of allowing all disputes to be heard in State courts, this bill says disputes about administrative questions should be heard in Federal courts. Only cases involving medical decisions should go to State courts—just like doctors who make medical decisions.

Support for a Patients' Bill of Rights has grown—inside and outside of Congress. In the Senate, we have Senators MCCAIN, EDWARDS, and KENNEDY. In the House, we have Congressman JOHN DINGELL and two conservative Republicans, CHARLIE NORWOOD and GREG GANSKE. Outside of Congress, 85 percent of all people surveyed—and 79 percent of Republicans—support the protections in this plan, and so do more than 500 major health care, consumer and patient-advocate groups all across the country.

There has been one other significant change since the first time we debated a Patients' Bill of Rights. Before, we could only guess what would happen if people were able to hold HMOs accountable. Now we know. Texas and California have both passed Patients' Bills of Rights.

Texas passed its law in 1997. In nearly 4 years, 17 lawsuits have been filed—about five a year. In the last 6 months since California passed its law, 200 disputes have gone through the independent appeals process. None—not one—has gone to court. And two-thirds of the disputes were resolved in favor of the HMO. Experience from the two largest States—the two best laboratories—show that the scare tactics used by opponents of this bill are simply that: scare tactics.

There are some important things that have not changed in the years since we started this debate. Americans are still being hurt by our inaction. Every day that we delay passing a real Patients' Bill of Rights, 35,000 Americans are denied access to specialty care—and 10,000 doctors; see patients who have been harmed because an insurer refused to pay for a diagnostic test.

Despite the growing support inside and outside of Congress, we still face formidable opposition from the special interests.

HMOs and their allies reportedly are spending $15 million on ads to try to kill this bill this week. We welcome an honest and open debate on the issues. We hope opponents will resist the temptation to kill this bill by loading it up with amendments that make passage difficult.

Our hope is that this debate will be like the one we had not long ago on another important reform—campaign finance reform. In fact, I have personally suggested to Senator LOTT that we take up this bill under the exact same understanding that we took up campaign finance reform; that we have a good debate on amendments; that we offer the motion to table, if that would be offered; if it is not tabled, that it be subject to second degrees. I think it worked as well on the campaign finance reform as any bill I have recently had the opportunity to consider, and I hope we can do the same thing for the Patients' Bill of Rights. I am hopeful our Republican colleagues will agree to that this afternoon.

There is one more important change that has occurred since the first time we debated a Patients' Bill of Rights. We now have a new President. Members of his staff have said President Bush will veto our bill if this bill makes it to his desk. We remain hopeful that the President will decide to join us once he hears the debate and sees what our bill actually does.

In the second Presidential debate, then-Governor Bush said:

> It's time for our nation to come together and do what's right for people. . . . It's time to pass a national Patients' Bill of Rights.

We agree. The American people have been waiting too long. Working together in good faith we can end this wait and pass a real Patients' Bill of Rights.

I announce to all of my colleagues that it is my intention to stay on this bill for whatever length of time it takes. Obviously, we have this week and next week that are full weeks for consideration of the bill. My expectation is that if we finish the bill a week from this Thursday night, there would not be a session on Friday preceding the recess.

If we are not finished Thursday night, we will then debate the bill and continue to work on it Friday, Saturday, Sunday. We will not have a session on the Fourth of July, but we will pick up again on July 5 and go on as long as it takes. We will finish this bill. It is also my expectation that if we finish this bill in time, I would be inclined to bring up the supplemental appropriations bill following the completion of the Patients' Bill of Rights.

Those two pieces of legislation are bills I have already indicated to the Republican leader would be my hope that we could complete before the July 4th recess. In fact, it is my expectation and absolute determination to finish at least in regard to the Patients' Bill of Rights. We will see what happens with regard to the supplemental in the House and here in the committee.

BIPARTISAN PATIENT PROTECTION ACT—MOTION TO PROCEED

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 75, S. 1052, the Patients' Bill of Rights.

The PRESIDING OFFICER. Is there objection?

Mr. THOMAS. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DASCHLE. Mr. President, I now move to proceed to S. 1052.

The PRESIDING OFFICER. The motion is debatable.

The Majority Leader.

Mr. DASCHLE. Mr. President, I regret we are not in a position to begin consideration of this important legislation at this time. I remain hopeful that by the end of the day we will be able to do so. In the event that the Senate cannot proceed to the bill today, it is my intention to file cloture on the motion. Under the rules, this cloture vote would occur on Thursday morning 1 hour after the Senate convenes.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I reiterate my support for the majority leader's unanimous-consent request. I believe it is fair and also crucial for allowing us to finally engage in a real and meaningful debate that will get Americans the protections they need and want.

This unanimous-consent request is exactly along the lines of that which governed the campaign finance reform debate. Most Americans, no matter how they felt on that issue, believed that it was a fair, open, and honest debate in which the issues were ventilated and the majority of the Senate worked its will. That is how most Americans think we should function and, unfortunately, all too often we do not.

Under this unanimous-consent agreement, unlimited amendments can be offered, and each one will be provided a significant period of time, 2 hours, and after debate the amendment would be voted on by the full Senate.

I am struggling to understand why we can't agree that this is not only a fair proposal but truly it affords each and every one of us with an opportunity for engaging in a free and spirited debate. This format embodies the full spirit of the traditional Senate and should not be ignored or misconstrued as anything but a reasonable and honest proposal.

I think Americans are watching us to see if we can come together on an issue of great importance to everyone across our Nation. I don't think delay is warranted. We should not obstruct.

I am confident that engaging in a truly open debate on this issue, without stringent time restraints or limits on amendments, will result in the passage of a strong bipartisan patients' protection bill that can be signed into law by President Bush.

I want to reiterate, it is my sincere and profound commitment to see that we enact a bill that the President of the United States can sign. It would serve no one's purpose to go through the debate and amending process in the Senate and in the other body and conference and then have a bill the President will not sign.

I will make a couple of additional comments. There has been some debate as to who supports and who does not support this legislation. I have a list of over 300 organizations that are in support of this legislation—not only the nurses and doctors of America but traditional consumer advocacy groups, including health groups such as the American Cancer Society, the American Dental Association, the American Nurses Association, a long list of organizations that have traditionally advocated for the health of Americans either in a specialized or general way.

We have a clear division here between the health maintenance organizations, which according to a CNN USA Today poll enjoy the approval of some 15 percent of the American people, and the nurses and doctors and those who are required to and do commit their lives to taking care of the health of our citizens.

I have been asked many times why is it that I am involved in this issue, why is it that I have worked very hard to try to fashion a bipartisan agreement that we could use as a base for amending and perfecting a bill that we can have signed by the President. In my Presidential campaign, in hundreds of town hall meetings attended by thousands and thousands of Americans, time after time after time after time, average citizens stood up and talked about the fact that they have been denied reasonable and fair health care and attention they believe they deserve and need.

This is an issue of importance to some 170 million Americans who would be covered by this legislation. This is an issue to average Americans who are members of health maintenance organizations. This is a challenge and a problem.

These Americans want the decisions made by a doctor and not an accountant. These Americans want and need and deserve a review process that is fair. These Americans are not receiving the fundamental health care they deserve as members of health maintenance organizations and, frankly, that is available to other Americans who have larger incomes.

Mr. President, this is not something we should delay any longer. This is an issue we should take up and address, amend, debate, and then come to a reasonable conclusion. I want to repeat my commitment to working with the White House, to working with all opponents of the legislation in its present form. For us to do nothing, as has been the case over the last several years, as time after time this issue has been brought up and blocked through parliamentary procedures, is not fair. It is not fair and honest to the American people to refuse to address the issue.

As I said with campaign finance reform, if the result of the debates and amendments is not to my liking and I don't agree with the result, I will respectfully vote against it. But I will not try to block it. I hope Members on both sides of the aisle will make that commitment as well because of the importance of the issue to the American people. It deserves a full and complete debate and vote.

I want to work together with my colleagues on both sides of the aisle. We have had meaningful negotiations. We have had good discussions. As a result of amendments, we will have further discussions. I hope that over time we will be able to reach an agreement. I again express my support for the unanimous consent request the majority leader propounded because I think it is a fair and honest way, providing no advantage to either side on this debate.

Again, I thank my colleagues for their commitment and involvement in this issue, but most of all I want to thank these 300-some organizations—the nurses and the doctors of America, in particular—who have committed themselves to addressing this issue so that all Americans can receive the health care they deserve.

I ask unanimous consent that a list of organizations supporting the bill be printed in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

PROFESSIONAL GROUPS AND GRASSROOTS ORGANIZATIONS SUPPORTING THE MCCAIN-EDWARDS-KENNEDY BILL—THE BIPARTISAN PATIENT PROTECTION ACT

Abbott House of Irvington, NY; Abbott House, Inc. in South Dakota; AIDS Action; Alliance for Children and Families; Alliance for Lung Cancer Advocacy, Support and Education; Alpha 1; Alternative Services, Inc; Amalgamated Transit Union; American Academy of Child and Adolescent Psychiatry; American Academy of Dermatology Association; American Academy of Emergency Medicine; American Academy of Facial Plastic and Reconstructive Surgery.

American Academy of Family Physicians; American Academy of Mental Retardation; American Academy of Neurology; American Academy of Ophthalmology; American Academy of Otolaryngology—Head and Neck Surgery; American Academy of Pain Medicine; American Academy of Pediatrics; American Academy of Physical Medicine and Rehabilitation; American Association for Geriatric Psychiatry; American Association for Marriage and Family Therapy; American Association for Psychosocial Rehabilitation; American Association for the Study of Liver Diseases.

American Association of Children's Residential Center; American Association of Neurological Surgeons; American Association of Nurse Anesthetists; American Association of Oral and Maxillofacial Surgeons; American Association of Pastoral Counselors; American Association of People with Disabilities; American Association of Private Practice Psychiatrists; American Association of University Affiliated Programs for Persons with Developmental Disabilities; American Association of University Women; American Association on Health and Disability; American Association on Mental Retardation; American Bar Association.

American Board of Examiners in Clinical Social Work; American Cancer Society; American Children's Home in Lexington, NC; American Chiropractic Association; American College of Cardiology; American College of Gastroenterology; American College of Legal Medicine; American College of Nurse Midwives; American College of Nurse Practitioners; American College of Obstetricians and Gynecologists; American College of Osteopathic Emergency Physicians; American College of Osteopathic Family Physicians.

American College of Osteopathic Pediatricians; American college of Osteopathic Surgeons; American College of Physicians—American Society of Internal Medicine; American College of Surgeons; American Congress of Community Supports and Employment Services—ACCSES; American Council on the Blind; American Counseling Association; American Dental Association; American Family Foundation; Federation of Teachers; American Foundation for the Blind; American Gastroenterological Association.

American Group Psychotherapy Association; American Headache Society; American Health Quality Association; American Heart Association; American Lung Association; American Medical Association; American Medical Rehabilitation Providers Association; American Medical Student Association;

American Medical Women's Association, Inc.; American Mental Health Counselors Association; American Music Therapy Association; American Network of Community Options and Resources.

American Nurses Association; American Occupational Therapy Association; American Optometric Association; American Orthopsychiatric Association; American Osteopathic Association; American Pain Society; American Pharmaceutical Association; American Physical Therapy Association; American Podiatric Medical Association; American Psychiatric Association; American Psychiatric Nurses Association; American Psychoanalytic Association.

American Psychological Association; American Public Health Association; American Small Business Association; American Society for Clinical Laboratory Science; American Society for Therapeutic Radiology and Oncology; American Society of Cataract and Refractive Surgery; American Society of Clinical Oncology; American Society of Clinical Pathologists; American Society of Gastrointestinal Endoscopy; American Society of General Surgeons; American Society of Internal Medicine; American Society of Nuclear Cardiology.

American Speech-Language-Hearing Association; American Therapeutic Recreation Association; American Thorasic Society; American Urogynecologic Association; American Urological Association; American Urological Society; American for Democratic Action; Anxiety Disorders Association of America; Arc of the United States; Association for Ambulatory Behavioral Healthcare; Association for Education and Rehabilitation of the Blind and Visually Impaired; Association for the Advancement of Psychology.

Association of Academic Physiatrists; Association of Academic Psychiatrists; Association of American Cancer Institutes; Association of Community Cancer Centers; Association of Persons in Supported Employment Association of Women's Health, Obstetric and Neonatal Nurses; Assurance Home in Roswell, NM; Auberle or McKeesport, PA; Baker Victory Services In Lackawanna, NY; Baptist Children's Home of NC; Barium Springs Home for Children in Barium Spring, NC; Bazelon Center for Mental Health Law.

Berea Children's Home and Family in OH; Bethany for Children and Families; Bethesda Children's Home/Luthera of Meadsville, PA; Board of Child Care in Baltimore, MD; Boys & Girls Country of Houston Inc., TX; Boys & Girls Homes of North Carolina; Boys and Girls Harbor, Inc. in TX; Boys and Girls Home and Family Services in Sioux City, IA; Boys' Village, Inc. of Smithville, OH; Boysville of Michigan, Inc.; Brain Injury Association; Brazoria County Youth Homes in TX.

Brighter Horizons Behavioral Health in Edinboro, PA; Buckner Children and Family Service in TX; Butterfield Youth Services in Marshall, MO; Cal Farley's Boys Ranch and Affiliates; California Access to Speciality Care Coalition; Cancer Care, Inc.; Cancer Leadership Council; Cancer Research Foundation of America; Catholic Family Center of Rochester, NY; Catholic Family Counseling in St. Louis, MO; Catholic Social Services of Wayne County, in IN; Center for Child and Family Services in VA.

Center for Families and Children in OH; Center for Family Services, Inc. in Camden, NJ; Center for Patient Advocacy; Center on Disability and Health; Chaddock; Charity Works, Inc.; Child and Family Guidance Center in TX; Child and Family Service of Hawaii; Child and Family Services in TN; Child and Family Services of Buffalo, NY; Child and Family Services, Inc. in VA; Child Care Association of Illinois.

Child Welfare League of America; Children & Families First; Children & Family Services Association; Children and Adults with Attention Deficit/Hyperactivity Disorder; Children's Aid and Family Service in Paramus, NJ; Children's Aid Society of Mercer, PA; Children's Alliance; Children's Board of Hillsborough; Children's Choice, Inc. in Philadelphia, PA; Children's Defense Fund; Children's Home & Aid Society of Chicago, IL; Children's Home Association of Illinois.

Children's Home of Cromwell; Children's Home of Easton in Easton, PA; Children's Home of Northern Kentucky; Children's Home of Poughkeepsie, NY; Children's Home of Reading, PA; Children's Home of Wyoming Conference; Children's Village, Inc.; ChildServ; Christian Home Association-Child; Clinical Social Work Federation; Coalition of National Cancer Cooperative Group; Colon Cancer Alliance.

Colorectal Cancer Network; Committee of Ten Thousand; Community Agencies Corporation of New Jersey; Community Counseling Center in Portland, ME; Community Service Society of New York; Community Services of Stark County in OH; Community Solutions Association of Warren, OH; Compass of Carolina in SC; Congress of Neurological Surgeons; Connecticut Council of Family Service; Consortium for Citizens with Disabilities; Consuelo Foundation.

Consumers Union; Cornerstones of Care in Kansas City, MO; Corporation for the Advancement of Psychiatry; Council of Family and Child Caring Agencies in NY; Counseling and Family Services of Peoria, IL; Court House, Inc. in Englewood, CO; Covenant Children's Home and Families; Crittenton Family Services in Columbus, OH; Crossroads of Youth; Cure for Lymphoma Foundation; Cystic Fibrosis Foundation; Daniel, Inc.

Denver Childrens Home; DePelchin Children's Center in TX; Digestive Disease National Coalition; Dystonia Medical Research Foundation; Easter Seals; Edgar County Children's Home; El Pueblo Boys and Girls Ranch; Elon Homes for Children in Elon College, NC; Epilepsy Foundation of America; Ettie Lee Youth and Family Services in Baldwin Park, CA; Excelsior Youth Center in WA; Eye Bank Association of America.

Facing Our Risk of Cancer Empowered; Families First, Inc.; Families USA; Family & Children's Center Council; Family & Children's Center in WI; Family & Counseling Service of Allentown, PA; Family Advocacy Services of Baltimore; Family and Child Services of Washington; Family and Children's Service in VA; Family and Children's Services and Tulsa, OK; Family and Children's Services of San Jose; Family and Children's Agency Inc. in Norwalk, CT.

Family and Children's Association of Mineola, NY; Family and Children's Center of Mishawaka, IN; Family and Children's Counseling of Louisville, KY; Family and Children's Service in Minneapolis, MN; Family and Children's Service in TN; Family and Children's Service of Harrisburg, PA; Family and Children's Service of Niagara Falls, NY; Family and Children's Services in Elizabeth, NJ; Family and Children's Services of Central, NJ; Family and Children's Services of Chattanooga, Inc. in TN; Family and Children's Services of Fort Wayne; Family and Children's Services of Indiana.

Family and Community Service of Delaware County, PA; Family and Social Service Federation of Hackensack, NJ; Family and Youth Counseling Agency of Lake Charles, LA; Family Centers, Inc. in Greenich, CT; Family Connections in Orange, NJ; Family Counseling & Shelter Service in Monroe, MI; Family Counseling Agency; Family Counseling and Children's and Children's Services; Family Counseling Center of Central Georgia, Inc.; Family Counseling Center of Sarasota, FL; Family Counseling of Greater New Haven, CT; Family Counseling Service in Texas.

Family Counseling Service of Greater Miami; Family Counseling Service of Lexington; Family Counseling Service of Northern Nevada; Family Counseling Service, Inc. in Lexington, KY; Family Guidance Center in Hickory, NC; Family Guidance Center of Alabama; Family Resources, Inc. in IA; Family Service Agency of Arizona; Family Service Agency of Arkansas; Family Service Agency of Central Coast; Family Service Agency of Clark and Champaign Counties in OH; Family Service Agency of Davie in CA.

Family Service Agency of Genesee, MI; Family Service Agency of Monterey in CA; Family Service Agency of San Bernardino in CA; Family Service Agency of San Mateo in CA; Family Service Agency of Santa Barbara in CA; Family Service Agency of Santa Cruz in CA; Family Service Agency of Youngstown, OH; Family Service and Children's Alliance of Jackson, MI; Family Service Association Greater Boston; Family Service Association in Egg Harbor, NJ; Family Service Association of Beloit, WA; Family Service Association of Bucks County in PA.

Family Service Association of Central Indiana; Family Service Association of Dayton, OH; Family Service Association of Greater Tampa; Family Service Association of Greater Tampa, FL; Family Service Association of Howard County, Inc., IN; Family Service Association of New Jersey; Family Service Association of San Antonio, TX; Family Service Association of Wabash Valley, IN; Family Service Association of Wyoming Valley in PA; Family Service Aurora, WI; Family Service Center in SC; Family Service Center in TX.

Family Service Center of Port Arthur, TX; Family Service Centers of Pinellas County, Inc. in Clearwater, FL; Family Service Council of California; Family Service Council of Indiana; Family Service Council of OH; Family Service in Lancaster, PA; Family Service in Lincoln, NE; Family Service in Omaha, NE; Family Service in WI; Family Service Inc. in St. Paul, MN; Family Service of Burlington County in Mount Holly, NJ; Family Service of Central Connecticut.

Family Service of Chester County in PA; Family Service of El Paso, TX; Family Service of Gaston County in Gastonia, NC; Family Service of Greater Baton Rouge, LA; Family Service of Greater Boston, MA; Family Service of Greater New Orleans, LA; Family Service of Lackawanna County, PA; Family Service of Morris County in Morristown, NJ; Family Service of Norfolk County, MA; Family Service of Northwest, OH; Family Service of Racine, WI; Family Service of Roanoke Valley in VA.

Family Service of the Cincinnati, OH; Family Service of the Piedmont in High Point, NC; Family Service of Waukesha County, WI; Family Service of Westchester, NY; Family Service of York in PA; Family Service Spokane in WA; Family Service, Inc. in SD; Family Service, Inc. in TX; Family Service, Inc. of Detroit, MI; Family Service, Inc. of Lawrence, MA; Family Services Association, Inc. in Elkton, MD; Family Services Center in Huntsville, AL.

Family Services in Canton, OH; Family Services Cedar Rapids; Family Services of Central Massachusetts; Family Services of Davidson County in Lexington, NC; Family Services of Delaware County; Family Services of Elkhart County, IN; Family Services of King County in WA; Family Services of Montgomery County, PA; Family Services of Northeast Wisconsin; Family Services of Northwestern in Erie, PA; Family Services of Southeast Texas; Family Services of Summit County in Akron, OH.

Family Services of the Lower Cape Fear in NC; Family Services of the Mid-South in TN; Family Services of Tidewater, Inc. in VA; Family Services of Western PA; Family Services Woodfield; Family Services, Inc. in SC; Family Services, Inc. of Layfette; Family Services, Inc. of Wintson-Salem, NC; Family Solutions of Cuyahoga Falls, OH; Family Support Services in TX; Family Tree Information, Education & Counseling in LA; Family Violence Prevention Fund.

FamilyMeans in Stillwater, MN; Federation of Behavioral, Psychological & Cognitive Sciences; Federation of Families for Childrens Mental Health; FEI Behavioral Health in WI; Florida Families First; Florida Sheriffs Youth Ranches; Friends Committee on National Legislation; Gateway in Birmingham, AL; Gateways for Youth and Families in WA; George Junior Republic in Indiana; Gibault; Girls and Boys Town in NE.

Goodwill-Hinckley Homes for Boys; Greenbrier Childrens Center in Savannah, GA; Growing Home in St. Paul, MN; Haddasah; Heart of America Family Services in Kansas City, KS; Hemochromatosis Foundation; Hereditary Colon Cancer Association; Highfields, Inc. in Onondage, MI; Holy Family Institute of Pittsburgh, PA; Home on the Range in Sentinel Butte in Sentinel Butte, ND; Hubert H. Humphrey, III—Former Minnesota Attorney General; Human Services, Inc. in Denver, CO.

Huntington's Disease Society of America; IARCCA An Association of Children; Idaho Youth Ranch; Indiana United Methodist Children; Infectious Disease Society of America; International Association of Psychosocial Rehabilitation Services; Jackson-Field Homes in VA; Jane Addams Hull House Association in Chicago, IL; Jeffrey Modell Foundation; Jewish Board of Family & Children in New York, NY; Jewish Community Services of South Florida; Jewish Family & Career Services in Atlanta, GA.

Jewish Family & Children's Service in TX; Jewish Family and Children's Service in Minnetonka, MN; Jewish Family and Community Service in Chicago, IL; Jewish Family Service in Providence, RI; Jewish Family Service in Teaneck, NJ; Jewish Family Service in TX; Jewish Family Service of Akron, OH; Jewish Family Services of Los Angeles; Julia Dyckman Andrus Memorial Children's Center in NY; June Burnett Institute; Kemmerer Village; Kentucky United Methodist Homes.

Kidney Cancer Association; KidsPeace National Centers, Inc. in PA; Lakeside, Kalamazoo, MI; LaSalle School, Inc. in Albany, NY; League of Women Voters; Leake and Watts Services, Inc. in Yonkers, NY; Learning Disabilities of America; Lee and Beulah Moor Children's Home in TX; Leukemia and Lymphoma Society; Lupus Foundation of America, Inc.; Lutheran Child & Family Service in Bay City, MI; Lutheran Child & Family Services in River Forest, IL.

Lutheran Social Services of Wisconsin; Manisses Communications Group in RI; Maple Shade Youth & Family Services; Maryhurst, Inc.; Maryland Association of Resources for Families & Youth; Massachusetts Council of Family; MediCo Unlimited, LLC; Mental Fitness Center; Mental Health America, Inc.; Mental Health Liaison Group; Methodist Children's Home in TX; Metropolitan Family Service of Portland, OR.

Metropolitan Family Services of Chicago; Michigan Federation of Private Child & Family Agencies; Michigan State Medical Society; Mid-South Chapter of the Paralyzed Veterans of America; Milton Hershey School in Hershey, PA; Missouri Baptist Children's Home; Missouri Coalition of Children's Agencies; Missouri Girls Town; Mooseheart Child City and School in IL; Morning Star Boys' Ranch in WA; Mountain Community Resources; Namaqua Center in CO.

Natchez Children's Home in Natchez, MS; National Association of Public Hospitals and Health Systems; National Alliance for the Mentally Ill; National Alliance of Breast Cancer Organizations; National Association for Medical Direction of Respiratory Care; National Association for Rural Mental Health; National Association for the Advancement of Orthotics and Prosthetics; National Association of Children's Hospitals; National Association of County Behavioral Health Directors; National Association of Developmental Disabilities Councils; National Association of People with AIDS; National Association of Physicians Who Care.

National Association of Private Schools for Exceptional Children; National Association of Private Special Education Centers; National Assoicaiton of Protection and Advocacy Systems; National Association of School Psychologists; National Association of Social Workers; National Black Womens Health Project, Inc.; National Breast Cancer Coalition; National Catholic Social Justice Lobby; National Coalition for Cancer Survivorship; National College of Osteopathic Emergency Physicians; National Committee to Preserve Social Security and Medicare; National Community Pharmacists Association.

National Consumers League; National Council for Community Behavioral Health; National Depressive and Manic-Depressive Association; National Down Syndrome Congress; National Family Planning and Reproductive Health Association; National Health Council; National Hemophilia Foundation; National Marfan Foundation; National Mental Health Association; National Multiple Sclerosis Society; National Organization for Rare Disorders; National Organization of Physicians Who Care.

National Organization of State Association for Children in MD; National Parent Network on Disabilities; National Partnership for Women and Families; National Patient Advocate Foundation; National Psoriasis Foundation; National Rehabilitation Association; National Therapeutic Recreation Society; National Transplant Action Committee; National Women's Health Network; National Women's Law Center; Nation's Voice on Mental Illness; Nazareth Children's Home in Rockwell, NC.

NETWORK; Neurofibromatotis, Inc.; New Community Corporation in Newark, NJ; Newark Emergency Services for Families in New Jersey; NISH; Norris Adolescent Center in WI; North American Brain Cancer Coalition; Northeast Parent & Child Society in New York; Northern Virginia Family Service; Northwest Chapter of Paralyzed Veterans of America; Northwest Childrens Home, Inc.; Northwood Children's Services in Duluth, MN.

Oak Grove Institute Foundation; Oakland Family Services; Olive Crest Treatment Centers; Omaha Home for Boys in Nebraska; Oncology Nursing Society; Organization of Specialist in Emergency Medicine; Outcomes, Inc. in Albuquerque, NM; Ovarian Cancer National Alliance; PA Alliance for Children and Families in Hummelstown, PA; Pacific Lodge Youth Services; Paget Foundation; Pain Care Coalition.

Palmer Home for Children in Columbus, MS; Pancreatic Cancer Action Network; Paralyzed Veterans of America; Patient Access Coalition; Patient Access to Responsible Care Alliance; Patients Who Care, Inc.; Pediatric Orthopaedic Society of North America; Pennsylvania Council of Children in Harrisburg, PA; Perkins School for the Blind; Personal & Family Counseling Service of New Philadelphia, OH; Philadelphia Health Management Corporation in PA; Planned Parenthood Federation of America;

Presbyterian Home for Children; Pressley Ridge Schools in PA; Provident Counseling, Inc. in St. Louis, MO; Rehabilitation Engineering and Assistive Technology Society of North America; Religious Action Center of Reform Judaism; Research Institute for Independent Living; RESOLVE; Riverbend Head Start & Family Service; Salem Children's Home; Salvation Army Family Services; San Mar, Inc. of Boonsboro, MD; Scarsdale Edgemont Family Counsel in NY.

School Social Work Association of America; Seattle Children's Home in WA; Seedco/Non-Profit Assistance,; Service Net. Inc. in PA; Sheriffs Youth Programs of Minneapolis; Sipe's Orchard Home in Conover, NC; Sjogren's Syndrome Foundation; Society for Excellence in Eye care; Society for Maternal-Fetal Medicine; Society of Cardiovascular & Interventional Radiology; Society of Gastroenterology Nurses and Associates, Inc.; Society of Gynecologic Oncologist;

Southmountain Children's Homes in Nebo, NC; Spina Bifida Association of America; St. Anne Institute of Albany, NY; St. Colman's Home in Watervliet, NY; St. Joseph Chilren's Home; St. Joseph's Indian School in SD; St. Mary's Home Home of Beaverton, OR; St. Vincent's Services, Inc. of Brooklyn, NY; Starr Commonwealth; Sunbeam Family Services of Oklahoma City, OK; Sunny Ridge Family Center; Susan G. Komen Breast Cancer Foundation.

Tabor Children's Services, Inc. of Doylestown, PA; Teen Ranch, Inc. Marlette, MI; Tennessee Citizen Action; Texas Association of Leaders in Children & Family; Texas Medical Association; The Arc of the United States; The Bradley Center in PA; The Center for Families, Inc.—Shreveport, LA; The Children's Home in Catonsville, MD; The Endocrine Society; The Family Center; The Hutton Settlement in WA.

The Learning Disabilities of America; The Mechanicsburg Children's Home of Mechanicsburg, PA; The Omaha Home for Boys in NE; The Organization of Specialists in Emergency Medicine; The Paget Foundation for Pagets's Diseases of Bone and Related Disorders; The Pressley Ridge Schools in PA; The Village Family Service Center in Fargo, ND; The Woodlands in Newark, OH; Third Way Center; Thornwell Home and School for Children in SC; Title II Community AIDS National Network; Tourette Syndrome Association.

Treatment Access Expansion Project; Triangle Family Services in Raleigh, NC; Tulsa Boys' Home in Tulsa, OK; Turning Point Center; Uhlich Children's Home; United Auto Workers; United Cerebral Palsy Association; United Community & Family Service; United Family Services in Charlotte, NC; United Methodists Childrens Home; United Ostomy Association; United States Public Interest Research Group (U.S. Pirg).

US TOO International, Inc.; USAction; Vera Lloyd Presbyterian Home & Family Services in AR; Verdugo Mental Health Center; Village for Families & Children; Virginia Home for Boys; Webster-Cantrell Hall; Wellness Community; Whaley Children's Center; Wisconsin Association of Family and Children; Wisconsin Paralyzed Veterans of America; Woodland Hills in Duluth, MN; Yellowstone Boys and Girls Ranch in Billings, MT; Youth Haven, Inc. in Naples, FL; Youth Service Bureau in Portland, IN; YWCA of Northeast Louisana.

Mr. McCAIN. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. EDWARDS. Mr. President, I ask unanimous consent that at the conclusion of my remarks I be followed by Senator KENNEDY, who is also a sponsor of this legislation.

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

Mr. EDWARDS. Mr. President, I thank my friend from Arizona, who worked with me over a period of many months to help put together this legislation—after work had been done for many years by a number of Members of the Senate, led by Senator KENNEDY.

The law for many years in this country has been on the side of big HMOs and insurance companies. They have been treated like no other person in America is treated, like no other business, small or large; they are privileged citizens. The American people want to take away that privileged status from HMOs and insurance companies. They are the only group in America that can say to a family: Your child is not going to get the medical care your doctor thinks they need.

They can overrule the decision of a medical doctor that has been made after many years of training and experience, even though they may have no experience or training whatsoever. Some young clerk sitting behind a desk somewhere can overrule a medical expert, and if they do it, there is absolutely nothing that can be done about it.

The HMOs, the insurance companies, are accountable to no one. Their judgment can't be questioned; their decision can't be reversed; and they can't be challenged anyplace, including in court.

That is what this bill is about. What we are about—Senator MCCAIN, Senator KENNEDY, I, and all of the sponsors of this legislation—is changing the law. We want to move the law from the side of big insurance companies and HMOs and finally put the law on the side of patients, nurses, and doctors.

Every one of us, in traveling around our home States, has heard horror story after horror story of families and patients being run over by big HMOs. Let me recount one I heard in North Carolina.

A young man, Steve Grissom, contracted leukemia. In the course of his treatment, he had to get a blood transfusion. As part of the blood transfusion, he got AIDS. He got sicker and sicker and sicker. He was being seen by a heart specialist at Duke University Hospital. That doctor prescribed 24-hour-a-day oxygen for Steve because he needed it. This was a doctor with many years of training at one of the leading medical institutions in the country. Steve's wife's employer changed HMOs. Some clerk sitting behind a desk somewhere, without medical training, having never seen Steve Grissom, knowing nothing about it, decided they weren't going to pay for this oxygen anymore. They literally cut off his oxygen.

Steve had nowhere to go. Why? Because under the law of the land, as we stand here today, HMOs can do exactly what they did to Steve Grissom, and no one can do a single thing about it. You can't question their decision; you can't question their judgment; you can't reverse it; and you can't take them to court. So somebody such as Steve, who has a terrible time trying to pay for this oxygen himself, is stuck—even though they have paid premiums and paid for coverage, and any reasonable physician in America knows he needs this care.

That is what this act is about. The Bipartisan Patient Protection Act changes that. We are going to change the law so that finally patients, nurses, doctors, and health care providers who know how to make these medical decisions and families who are involved and whose children are being affected by these decisions will have some power of the law on their side.

Let me talk briefly about some specifics of our legislation. We provide and guarantee access by women to OB/GYNs as their primary care provider. They don't have to get permission from anybody. They can do that. If a child needs to see a specialist, a pediatrician—a child with cancer who may need to be seen by a pediatric oncologist—that child has an absolute right to go see that specialist if they need it for their life-sustaining care.

Emergency room care. If a patient or a family experiences an emergency and they need to get to the doctor, to the hospital, to the emergency room, they don't have to call a 1–800 number; they don't have to call the HMO; they don't have to get written permission. What any family will do when under an emergency situation such as that and they need care quickly, quality care, they can go straight to the nearest emergency room without worrying about whether the HMO will cover. Under our law, they are covered, period.

Scope. Our bill specifically provides that every American who has health insurance or HMO coverage is covered by our bill, period. They have at least the protections provided in this bipartisan legislation. If a State has better protections for the patient, better protections for the doctor, those protections stay in place. But our bill provides a floor below which no State can go.

So the basic protections provided in our bill—access to specialists, women being able to go see an OB/GYN, going to the nearest emergency room, access to clinical trials, which is critical to many Americans—they will have under this legislation an absolute right to those protections.

Finally, accountability. Mr. President, these rights mean nothing if they are not enforceable. If they are not enforceable, this is not a Patients' Bill of ''Rights;'' it is a patients' bill of ''suggestions.'' But because we have accountability and we have enforceability, these are substantive rights that in fact can be enforced. Finally, HMOs are going to be treated as everybody else in America. They are going to be held accountable, held responsible, which means at the outset that they have an incentive to do the right thing, which is what this legislation is about—having the HMO do the right thing from the beginning and having the patient, if they don't, be able to do something about it.

What we do is set up a system that is designed to avoid lawsuits. We have, first, an internal review process so that if the HMO says they are not going to cover a particular kind of care or treatment, the patient can go through an internal review at the HMO. Second, if that process is unsuccessful, the patient can then go to an independent external review. This is a panel of doctors, health care providers, who aren't connected to the HMO, aren't connected to the patient or the treating doctor, who can make a fair and objective decision about whether this treatment is necessary. So the patient now has two different ways to get the HMO's decision reversed.

If that is unsuccessful, if for whatever reason the appeals process does not work, as a last resort, if the patient has been unsuccessful after doing all of that and if the patient has been injured as a result of what the HMO did, then as a matter of last resort the patient can go to court.

Now, first of all, with respect to employers, we specifically provide that employers cannot be held responsible. They cannot be sued; they cannot be liable. Employers are specifically protected under our bill. The only exception to that is if the employer actually makes a medical decision—if they step into the shoes of the HMO and do what no small or medium-sized employer in America would do if they actually make a medical judgment.

By the way, this provision that employers can only be held responsible if they make a medical decision and otherwise they are protected is identical to President Bush's principle on this issue. His principle provides that employers may only be held responsible if they make medical decisions. That is precisely what our bill does.

On this issue, the protection of employers, the President's principles and our bill are exactly the same.

If it becomes necessary after a patient has gone through the appeals process—internal and external review—and a patient has been injured for the case to go to court, we start with a very simple principle. That principle is this: We want to treat HMOs and insurance companies just as the other health care providers. They are making health care decisions. They have decided to overrule a doctor who decided a patient needed a particular kind of care. When they decide to overrule the doctor and step into the shoes of the doctor, we think they ought to be treated like the doctor, just like the hospitals, just like the nurses.

What we provide is they can be taken to State court, just like the doctors, just like the hospitals, and they are subject to whatever limitations exist under State law by way of recovery.

The majority of the States in this country have caps or limits on recovery, limits on noneconomic damages, in some cases, what is called pain and suffering, limits on punitive damages, and some States provide you cannot recover punitive damages.

The bottom line is this: Whatever the State law is, that law applies to the HMO, just exactly as it applies to the doctor, to the nurse, to the hospital, to everybody else in the State. We start with the basic idea that HMOs are not privileged citizens; that they are just the same as the rest of us and ought to be treated the same as the rest of us. That is what our bill does: It treats the HMOs the same as the other health care providers when they, in fact, overrule a doctor and make a health care decision.

That structure—sending those cases to State court—is what has been recommended by the Judicial Conference of the United States headed by Chief Justice Rehnquist. It is what is recommended by the American Bar Association. It is what is recommended by the State attorneys general.

People who understand the court system but are objective, not on one side or the other of this debate, have decided this is the place these cases should go for a variety of reasons. No. 1, it treats the HMOs the same as doctors and hospitals are treated. No. 2, they are courts accustomed to handling these types of cases. It makes it more likely the patient can get their case heard more quickly.

It is fair. It is equitable. It is supported by every group of objective experts—Judicial Conference, the ABA, the State attorneys general—and, by the way, follows exactly the outline set forth by the U.S. Supreme Court in the Pegram decision.

This idea of sending these cases to State court is an idea that is supported by the big legal organizations across the country and as outlined by the U.S. Supreme Court in the Pegram case.

The basic principle is we treat HMOs exactly the same way we treat doctors and hospitals if they are going to be in the business of making medical decisions.

The only cases that would go to Federal court under this bill are the cases that have, since 1974, been decided in Federal court. Those are the cases involving pure language of the contract. For example, whether a particular provision has been met or whether the 90-day waiting period has been met. Those cases go to Federal court. They have always been in Federal court. We leave them exactly where they are.

What we do not do is what has been proposed by some, which is to send every case against an HMO to Federal court. The Federal courts are backlogged so that is a way to bury the cases and assure they never get heard. It is more difficult to get attorneys because many attorneys do not practice in Federal court, and many people are a long way from the nearest Federal courthouse. There is almost always a State courthouse close by, but Federal courthouses, especially in rural America, are hundreds of miles away in many cases.

We have a system that works. It has been outlined by the U.S. Supreme Court. It is what legal experts say should be done. Most importantly, it is fair. It treats the HMOs the same as everybody else, which is the goal of this legislation.

Finally, we do require, in order for a case to be brought to court, that, first, all appeals be exhausted. That is, the patient must first go to the internal review and, second, to the external review. What we have learned from the two States that have served as models for this legislation—Texas and California—is almost all cases are resolved by that process. The reason is we structured the bill to avoid lawsuits. It has, in fact, worked in the two States that have followed our model—California and Texas, two of the biggest States in the country, two of the States where there has been historically the largest amount of litigation in the country.

There have been 16, 17 lawsuits since those bills have been enacted in those two States. The vast majority of cases have been resolved exactly as our bill provides. They have been resolved through the process of the appeal.

There has been some argument made about health care costs going up and people losing their insurance. The majority leader spoke to this earlier. Our bill, according to the Congressional Budget Office, raises insurance premiums about 4 percent over 5 years. Not 4 percent annually, 4 percent over 5 years.

The competing bill, the Frist-Breaux provision, raises insurance premiums about 3 percent over 5 years. So there is very little difference between the two bills.

In addition to that, of the 4 percent increase in our bill, the vast majority of that has to do with better health care. It has nothing to do with lawsuits, nothing to do with litigation.

Mr. President, .8 percent, less than 1 percent, has to do with litigation. The remainder, over 3 percent, has to do with better access to the clinical trials, better access to specialists, better access to emergency rooms.

It specifically provides better care. When people get better care, it costs a little bit more, and they will get a better product.

On balance, both bills increase costs slightly—3 percent in 1 case over 5 years; 4 percent in our case over 5 years. But as a direct result of this legislation being passed, people will have better quality care, and the cost has very little to do with the fact the HMOs can now be held accountable and be taken to court.

It is not an accident that the American Medical Association and over 300 health care and consumer groups in America support our bill. It is not an accident that the big HMOs and their lobby are spending millions of dollars to defeat our bill. It is not an accident that the HMOs like the Frist-Breaux bill and do not like our bill.

As we go through this debate, it will become clear that on every single difference, between the legislation we have offered and the competing legislation, whether it is coverage and whether States can opt out, whether it is access to specialists outside the plan, whether it is a truly independent review that the HMO can have no control over, whether it is going to court and which court you go to, in every single difference we protect the patients, they protect the HMOs.

Their bill, as Dr. NORWOOD, a Republican House Member from Georgia who has fought on this issue for years, has described it, is an HMO protection act. It is not an accident that all the health care groups in America and the American Medical Association support our bill.

These are people who deal with these issues every single day, and they know that on all these important issues—access to specialists, who is covered, emergency room, access to a true independent review process—our bill protects the patients; their bill protects the HMOs.

All of us have worked long and hard on this issue for a substantial period of time. Some have worked on it, including Senator KENNEDY, for many years. It is time to quit talking about doing something about HMOs and HMO reform and actually do something about it. The American people are not interested in the politics—Republicans, Democrats, Independents—and their positions politicizing this issue. What they care about is that when their child needs to see a specialist, they want to be sure that child can see that specialist. When they need to go to the emergency room, they need to know they can go to the emergency room without having to worry if the HMO is going to pay for it. If the HMO does something wrong and runs over them and runs over their family and overrules a doctor's medical decision, they want to be able to do something about that. They want the HMOs to be treated just as all the rest of us.

Ultimately that is what this bill is about. The bottom line question is, with whom do we stand? Do we stand with the big HMOs and the big HMO lobbies or do we stand with the doctors, nurses, and families of America?

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, before the Senator leaves, I wonder if he might respond to a question or two as one of the principal sponsors.

First of all, I wonder if he shares with me a certain degree of disappointment that we are not going to have the opportunity to debate these protections that are so important for American families. Every day that we fail to

take action, families are being hurt. Without this legislation, more than 50,000 of our fellow citizens today are going to suffer further injury or pain. This is the result of failing to take action.

I want to make some general comments along the lines of those that the Senator made. I first say that that was an outstanding presentation with regard to the substance. It is difficult for me to understand the opposition to this, other than, as the Senator pointed out, the special interests of the HMO industry do not want it. I have not heard the administration or the Senators who are in opposition, indicate what protections in this legislation they would not want to give to the American people.

We were informed by the Republican leadership that because this bill has been changed so many times, we need to hold further hearings to find out what is in it. There have been no hearings since March of 1999.

One of the leaders pointed to paragraph (C) in the legislation, where employers can be held accountable. Then they talked about the rising costs of 20 percent a year and talked further about employer liability.

As I understand, the changes that had been made over the weekend were basically in response to some of the observations that were made about the underlying legislation. One question was about whether you could be sued in Federal or State court. The opposition claims our bill allows them to be sued in Federal and State courts at the same time. This was never the intention. I understand there was an attempt to explicitly clarify that proceeding so there would not be two forums. I understand that was one of the clarifications made. It was never intended to permit forum shopping and that was clarified.

I might mention the rest, since there were only four of them, and then get the reaction of the Senator since he was very much involved in this.

No. 2 was the question about the exhaustion of appeals before going to court. The opposition claims our bill made it too easy to go to court, arguing that patients can bypass the appeals process simply by alleging harm. Since it was not our intent to make it easy to bypass appeals, we resolved this matter by eliminating the word ''alleged.''

The third was about making it easier to sue doctors. The other side has been claiming our bill makes doctors liable for plan administration. This is a rather technical issue, being sued in State court and now in Federal court again. That wasn't the intent. We clarify that the positions are protected. We also included language to extend civil protections to hospitals and insurance agents. There was some question about the application of the language. The change was specifically included to clarify that, to demonstrate the protections for those groups.

In the fourth change, regarding protecting the State cause of action, we added clarifying language to protect existing State court jurisdiction from inadvertent preemption under our bill. A rather extraneous example or two were given that might have created some confusion. As I understand it, that was the fourth piece of clarifying language.

Finally, the IRS enforcement language was dropped, including an additional enforcement provision that we understand has a revenue impact and a blue-slip problem. To avoid the blue-slip issue, we dropped the provision.

Those are the totality of the changes. Evidently they are being used to somehow represent that there were major kinds of alterations or changes to the bill which are difficult to understand. Therefore, the other side refuses to permit us to begin the debate on the bill.

If the Senator would be good enough to indicate to me whether it is his understanding that these were the areas in which adjustments were made and whether the representations that were made, in terms of the clarifications? Was that his understanding as well?

Mr. EDWARDS. Will the Senator yield for me to reply to the question?

Mr. KENNEDY. I am glad to yield.

Mr. EDWARDS. In response to the question, the areas that were changed were all changes in the direction of the objections of our opponents. In other words, they raised concerns and we made changes to clarify so there would be no question but that we intended exactly what they intended.

For example, the first one the Senator mentions: exhaustion, which means you have to go through the appeals before you can take somebody to court, both sides intended that that be required because we want cases to be decided by the appeal without having to go to court, to avoid unnecessary lawsuits. We made it clear in this clarification that there is no question about that. We intend for that to be true. That was the purpose of the clarification.

Second is the cases being brought in State and Federal court. The purpose for the change was to make it clear we want nobody to be sued in both State and Federal court; to clarify the language so there was no doubt in anybody's mind about which cases go to State court and which cases go to Federal court.

Third, they complain that under our bill some physicians, perhaps, could be subject to lawsuits to which they otherwise would not be subject. So we made a change to eliminate that possibility.

Our bill, as the Senator well knows, is intended to empower doctors, to empower nurses, to make the health care decisions that only they have the medical training and experience to make, that they have the qualifications to make, not some bureaucrat sitting behind a desk at some HMO somewhere. That is the purpose of this clarifying language.

Mr. KENNEDY. Let me speak to this point. I am confused as to why there is an attempt by the Republican leadership to misrepresent what is in the employer provisions of the bill on page 144. I think all of us who have been around here find language is misrepresented and subsequently individuals disagree with the misrepresentation. It appears that is what is happening.

The Senator has stated my understanding. Then if we look at page 144, regarding the responsibility of the employer in the plans, it says:

> Causes of action against employers. . . .

Then it says:

> Subject to subparagraph (B), paragraph (1)(A) does not authorize a cause of action against an employer or other plan sponsor maintaining the plan (or against an employee of such an employer or sponsor acting within the scope of employment).

That is extremely clear. In the President's language, which he sent to the Congress, and I have here, the President lists his requirement in his bill of particulars, which says:

> Only employers who retain the responsibility for and make final medical decisions should be subject to the suit.

That is what President Bush said is the principle. It is my understanding that that exact point is stated in the legislation on page 145, line 8:

> . . . to the extent there was direct participation by the employer. . . .

That talks about when they would be open to the responsibility.

But as I understand it, and I welcome the comments of the Senator, that completely conforms with what President Bush himself has established. Is that correct?

Mr. EDWARDS. The Senator is correct. The President specifically provided he does not want employers to be sued unless they make medical decisions. Our legislation does exactly that. The language completely conforms, in almost identical language, to the President's principle. We do not want employers to be sued unless somehow they step in the shoes of the HMOs and make a medical decision. That is exactly what the President is suggesting. The Senator is correct, to the extent our opponents—who, by the way, are trying to prevent this bill from ever being considered at this point in this Chamber—to the extent our opponents suggest under our legislation lawsuits against employers are allowed, they need to read the President's principles because, in fact, our legislation is identical to the President's principle on this issue.

Mr. EDWARDS. Mr. President, if the Senator will allow me one final comment, the Senator well knows, having fought on this issue for many years and having led the fight, as Senator DASCHLE, our majority leader pointed out in his earlier comments, the American people can get a lesson from what is happening at this moment. We made it clear we intended to bring bipartisan patient protection to the floor of the Senate, a bill supported by Republican

Senators in this Chamber and also in the House.

What has been the response by our opponents? Has the response been to debate this issue in an open way before the American people and to make their case to support the HMOs' position on the floor of the Senate? No. Their response is to try to prevent an issue that affects millions and millions of Americans every year from even being heard on the floor of the Senate.

I think it becomes clear who wants to provide real and meaningful patient protection and who wants to keep this issue from ever getting to the floor of the Senate so HMOs maintain their privileged status.

Mr. KENNEDY. Mr. President, I thank the Senator.

In the press conference of the Republican leadership, it was represented that there were complicated changes and alterations to the bill. The Senator responded to questions raised as to what these changes and clarifications are. This is a result of the White House asking the principals to work out some clarification in these areas and to accommodate these kinds of requests.

Those changes were made. Now they are being used as an excuse for failing to bring this matter up.

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

Mr. KENNEDY. Yes; briefly.

Mr. GREGG. I know that the Senator from Massachusetts and the Senator from North Carolina said the employer is not subject to liability under this bill. The Senator cited section 5 on page 144, subparagraph (A). The Senator didn't cite subparagraph (B), which says, notwithstanding subparagraph (A), the cause of action may arise against an employer, or other plan sponsor—it goes down the list—as directed participation in the employer's plan, and the decisions of the plan under section 102.

So, very clearly, an employer is subject to liability under that section, and that ''directed participation'' is an extremely ambiguous phrase, I believe. I would be happy to discuss that.

Then, if we go to page 141, where a new Federal cause of action against employers is created, subsection (ii) on that page says, ''otherwise fails to exercise ordinary care in the performance of a duty under the terms and conditions of the plan with respect to a participant'' in the plan. That action creates a new cause of action, which is a new cause of action against the plan's sponsor, and, by the terms of ERISA, section 3 definition, plan sponsor is defined as—lo and behold—the employer.

I believe it is very clear under this bill that employers are subject to the right to be sued. They are subject to the right to be sued for what I expect are going to be multiple opportunities for a creative attorney. In fact, the Congressional Budget Office has basically rated this as a lawsuit against employers and has in fact rated the costs in this bill, which is significant and will lead to employers giving up their insurance.

I would be interested in the Senator's definition and explanation of why, when the bill says in part (B) on page 144 that cause of action may arise against an employer or other plan sponsor, the language means something other than cause of action arising against the employer or other plan sponsor.

Mr. KENNEDY. I am glad to respond. I hope we can do this briefly because we are going to recess. I will let the Senator from North Carolina respond to that, if I may.

Mr. EDWARDS. Mr. President, I respond to the Senator's question by saying, first of all, I suggest that he read the principles because the language of this legislation comes directly from the President's principles.

Mr. GREGG. If the Senator will yield, I am not asking the President.

Mr. EDWARDS. Excuse me. Do I have the floor? Excuse me.

The PRESIDING OFFICER. The Senator from Massachusetts has the floor.

Mr. KENNEDY. Mr. President, I think we only have 2 or 3 more minutes. I wanted to give the opportunity for a response. I think the answer, as the Senator pointed out, is read from President Bush's own words. Only employers who retain responsibility for or make final medical decisions should be subject to suit. It is that language and that principle that has been included in the language.

If the Senator from New Hampshire thinks that is in some way ambiguous, or doesn't achieve that objective, that is the objective that we had. That is the language that was drafted in the Senate to carry that purpose forward. But we are open.

Does he agree with that principle? I ask the Senator. Does the Senator agree with that fundamental principle or differ with the President on it?

Mr. GREGG. No. I actually agree with the principle. I think the President's point was that employers generally should not be subjected and opened up to massive liability. And this bill does that. That is why I asked the Senator to explain the section.

Mr. KENNEDY. I will have to reclaim the floor.

Mr. GREGG. The Senator asked me a question. Doesn't he want me to respond?

Mr. KENNEDY. I asked specifically whether the Senator agreed with the President's principles. The Senator said yes, he did.

He went on to say that the language in the legislation opens up massive opportunity for suing employers, which is different. He answered my question. I am reclaiming my time since I only have about a minute and a half left.

I wish we had the opportunity to debate this because it is very clear what has been done with the drafting of this legislation. The employers, outside of those who are actually going to be making medical decisions affecting patients, are excluded.

I have been going to the conferences with those who are opposed to it. They say, oh, no, that is not what it does.

It is a favorite whipping provision in this language. They keep saying that isn't what it does. That is what we intend to do. That is what we have done in this language. We will have more of an opportunity to debate that later.

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

Mr. KENNEDY. I only have about 5 or 6 minutes to be able to make some presentation on this. I look forward to that time. I will be glad to yield. Could I ask that we defer the recess time from 12:30 until 12:35?

Mr. GREGG. Mr. President, I ask unanimous consent that at the expiration of the discussion of the Senator from Massachusetts I be given 10 minutes.

Mr. KENNEDY. We are about to recess.

Mr. GREGG. I am asking that the time for the recess be extended beyond the Senator's period for 10 additional minutes and that I be recognized.

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

The Senator from Massachusetts.

Mr. KENNEDY. Fine.

Mr. President, so how much time remains? It is now 12:30.

The PRESIDING OFFICER. The Senator from Massachusetts has another 5 minutes by the previous unanimous consent agreement. Then the Senator from New Hampshire will have 10 minutes, and then we will recess until 2:15.

Mr. KENNEDY. Fine.

Mr. President, this whole debate should remain focused on what it is really about. What this debate is really all about is that doctors, nurses and families are going to make decisions. And those decisions ought to be carried out. They should not be overturned by bean counters and accountants working for HMOs thousands of miles away. These accountants do not have the training, do not know the patient, and do not know the complete medical circumstances surrounding the patient's case. That is what this legislation is really all about.

We have taken the kinds of protections which have been outlined now by the Senator from Arizona and the Senator from North Carolina and indicate what those protections are. There are 26 different protections which have been included. We have yet to hear from the other side, as we have had these debates now for 2 or 3 years, regarding which protections they do not agree with. Is it the emergency room? Is it the clinical trials, specialty care, or the OB/GYN protections? Is it the gag rules? We have not heard what particular guarantees and protections that are there for the American families to which they object.

They talk a good deal about the cost of this legislation. They want to do the bidding, I guess, of the HMOs, and have them be the one industry in this country not held accountable for actions

they take that can harm, kill, or maim children and workers in our country.

What we are basically saying is, if HMOs make decisions which put individuals at risk, then they ought to be held accountable. The HMOs should be held accountable. If there is an employer making a similar decision which is going to result in the same kind of pain and affliction to that individual, they ought to be held accountable. Otherwise, employers that just go out and make the contracts should not be. If there is a question of clarification of language, we would work that out.

Over the period of time, one of the attacks that has been made on this legislation is its potential cost. I want to say that is an old red herring. I was here not long ago when we passed the Family and Medical Leave Act. We had the Chamber of Commerce stating the cost of the Family and Medical Leave Act was going to be $27 billion a year on American industry. It is not. It has been an enormous success, and companies have welcomed it. And there is going to be the opportunity to expand it.

I was here when we debated the portability of health care for those individuals with disabilities, the Kassebaum-Kennedy bill. We heard at the time that it was going to increase premiums by billions and billions of dollars. It has not. It is working, and there is no one here to suggest that we should not have gone ahead on it.

I was here when we heard the question: Should we increase the minimum wage? There were those who said it was going to mean hundreds of thousands of people were going to lose their jobs, and that it was going to add inevitably to the problems of inflation. It has not.

We know the scare tactics that were being used in terms of the cost in the past, and they are the same kinds of scare tactics that are being used at the present time.

The CBO, as the Senator from North Carolina has pointed out, indicates that last year premiums went up 10 percent, and the top four or five HMOs had $10 billion in profits in our country. They estimate that 20 percent of every premium dollar paid goes to advertising, administrative expenses, and large salaries for these individuals. It went up 10 percent last year. It went up 8 percent the year before.

As the CBO estimates, under the Breaux-Frist bill, it will go up 2.9 percent over 5 years; and under the McCain-Edwards bill, 4.2 percent—a 1.3-percent difference. As the Senator from North Carolina pointed out, if you look at those figures, the difference is in the additional kinds of expanded opportunities for patients, such as for clinical trials. For example, women need those clinical trials in relation to breast cancer. We need to make sure they are going to be able to have those trials.

We have to have greater access to specialists. If a child has, as my child had, an osteosarcoma—which only 1,200 children in this country have—they need a pediatric oncologist. They shouldn't go to a general practitioner to make the recommendation for the kind of treatment that resulted in the saving of my son's life. We are talking about access to those kinds of specialists. We see there is a difference between the bill we have before us and that which the opposition favors.

The PRESIDING OFFICER. The Senator's additional 5 minutes have expired.

The Senator from New Hampshire is recognized for 10 minutes.

Mr. GREGG. Mr. President, I had not intended to speak right now, but I do think some of the things that have been said in this Chamber do need to be responded to because it is very obvious there is a significant disagreement, and it is a disagreement which is core to this issue.

First off, let's begin with the question of how this bill is coming forward. You have to remember, this bill has not had a hearing since March of 1999. We have not had any hearings on this particular bill. And this is one heck of a complicated bill. The bill on Wednesday was not the bill we got on Thursday.

So when the other side says we are delaying, I think that is a little bit of a straw man debate primarily because, as a matter of responsibility, we have to at least read the bill. And then we have to figure out what is in it.

One of the big issues in relation to what is in it is what effect this will have on employers. I think the language is unequivocal on that point. The language in section (B), as I cited before, 144, says: A cause of action may arise against an employer. Sure they have the nice title, ''Exclusion of Employers,'' but they wipe out that language with the language which says: Notwithstanding anything in subparagraph (A)—that is the one with the nice title on it, ''Exclusion of Employers''—a cause of action may arise against an employer or other plan sponsor—and then it lists why.

One of the standards here is if the employer had direct participation. And ''direct participation'' has become a word of art that is incredibly broad. ''Direct participation'' just means an employer had to maybe wink at his employee, as he headed off to his doctor's office, and say: Hope you get better.

As a practical matter, today direct participation essentially brings in every employer in this country that has a plan. That is why a lot of employers are going to drop their plans. That is why no employer group supports the McCain bill—none—because it is an attack on employers, as versus a legitimate effort to try to get at malfeasance, misfeasance negligence in the areas of HMOs.

We all want to make sure that people who are poorly treated by their HMO have a right for recovery. We put together proposals which accomplish that. But let's not draw all the employers into the process and stick them with lawyers running around them in circles, suing them like crazy, shooting arrows at them, trying to recover from them because then we will drive the employers out of the insurance market, and more people will be uninsured. That is why it is projected that this bill will increase the number of uninsured by over 1.2 million people.

I am a little surprised that some of the sponsors of this bill want to expand the number of uninsured in this country. I think some supporters of this bill may want to because there is, I believe, a belief that nationalization of the health care system is a good idea, and one way to energize support for nationalization is to have a lot of uninsured. But I am hopeful some of the other folks who look at this bill and are supportive will say: Hold it. That was not our intent. We didn't want to drive employers out of the business of insuring and cause more people to be uninsured. We wanted to do just the opposite.

So this language is extremely broad, extremely pervasive, and will attack the employers of America—small employers, employers with 10 employees, with 5 employees, with 25 employees, with 50 employees. There is no exemption in this bill. Then there is other language in this bill. This bill creates a whole new cause of action against employers that has never been seen before, a whole new Federal cause of action. And it is a biggy. This is one where lawyers can really have a good time because, under this bill, it makes the employers responsible for the performance of the duties under the terms and conditions of the plan. This is a brand new concept under Federal law.

It defines the people responsible, as I said earlier, as plan sponsors. Plan sponsors, under ERISA, are defined as employers. It brings in the employers. We went through the different obligations under a plan that an insurance company has that offers that plan and which are enforceable, not today by the individual but by a variety of different processes. We calculate that there are potentially 200 new opportunities for private causes of action against employers as a result of this language. There are a lot of lawsuits because there are a lot of lawyers who can take those 200 opportunities and multiply them. That is one of those factors which has an infinity symbol beside it as to the number of potential lawsuits, that little circle you learned in eighth grade when you took physics, a little infinity circle connecting the lawyers to lawsuits as a result of this language.

I would rename this bill ''the lawyers who want to be a millionaire act'' because that is essentially what it is. This representation that employers are not subject to liability is absolutely inaccurate. Under the clear terms of the bill itself, it is absolutely inaccurate.

What is the practical effect of this bill? This issue is not about, as the Senator from Massachusetts outlined, a whole series of coverages that people need. This is not about that. We give

those coverages in our State. Most States have those coverages as a requirement in their States. It is not about that. It is not about whether or not a patient has access to a specialist, and it is not about whether or not a woman has access to an OB/GYN. All of that is available and should be available. Those are being thrown up as red herrings to try to develop support. That issue is not even on the table because there is hardly a State in the country that does not give those types of coverages and require those types of coverages of their HMOs.

It is not about whether a patient should have a timely right to appeals, both internal and external, because all the laws, all the proposals that have come forward have done that. It is not about that.

It is not about whether a patient should be compensated if they get harmed by their doctor or their HMO. All of the bills that have come forward, all the proposals that have come forward have had that as part of their language. All these bills share those same goals.

This is about a dramatic expansion in the opportunity to sue. That is what the bill is about, as it is brought forward; specifically, to sue employers, with the practical effect being that more people will be uninsured in our country today because more employers will drop their insurance. The number of new opportunities in this bill for lawyers to create havoc is significant.

You have the fact that you can basically forum shop between States and Federal law. You have States stepping into the area of ERISA. ERISA is an incredibly complex piece of legislation on which Federal courts have spent a lot of time developing expertise. There has been over 10,000 cases on ERISA decisions. Suddenly Federal and State courts are going to take on this issue. Not only are they going to get to take it on, but they are going to get to take it on without any liability caps. Essentially, there are no liability caps against health plans. There may be caps against doctors in some States, but take California; they don't have caps against health plans.

There are no liability caps.

You are going to have punitive damages, economic damages without caps. The implication of what that means is that you are going to have forum shopping from State to State, depending on which State makes the most sense for a person, which structure makes the most sense for a lawyer to pursue. Then you are going to have them proceeding in that structure. And you are going to have the employer brought in.

Plus this concept that you have to go through an appeals process before you get to bring a lawsuit is also totally subjugated in this bill. The way this bill is structured, all you have to do is show harm and you are out of the appeal process—or alleged harm. Originally it was ''alleged'' harm. Basically, you get into court and claim you show harm and then everything else gets to the table. No more appeals process of any nature. The concept of trying to reduce the amount of litigation by having a reasonable appeal process is totally undermined by this bill.

It should also be noted that the economic impact of this bill has been scored not by me, not by some political organization, but by CBO. This bill costs 4.2 percent. That is not over 5 or 10 years, as was represented here earlier. That is an annual cost on top of the health care costs which are inflating fairly rapidly right now. A 4.2 percent increase translates into a very significant increase, as has been mentioned earlier, in the uninsured because employers will have to drop their insurance because they can't afford it. That should not be our goal here.

What should our goal be?

The PRESIDING OFFICER. The Senator from New Hampshire has used his 10 minutes.

Mr. GREGG. I ask unanimous consent for 2 more minutes.

Mr. REID. Mr. President, reserving the right to object, I have no objection to my friend using 2 extra minutes. Following that, I would like to be recognized and then the Senator from North Carolina would be recognized for 5 minutes and then we will go to our party conferences.

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

The Senator from New Hampshire now has 2 minutes, to be followed by a statement from the Senator from Nevada, and then 5 minutes to the Senator from North Carolina.

Mr. GREGG. Mr. President, the goal here should be this: When you go to see a doctor and you go to your HMO, if that is who covers you, you should expect to get good treatment. If you don't get good treatment, you should have relief. And you should expect to have a certain amount of flexibility as to who you see and especially with some very common events such as OB/GYN and areas such as that, where you should have the capacity as the patient to make some choices: your primary care provider, things such as that.

That is all accomplishable. In fact, the bills that have been brought forward from our side of the aisle—some of them in a bipartisan way, such as the Breaux-Frist-Jeffords bill, last year's, the Nickles amendment, which did not have any Democratic support—have accomplished that. In the process of accomplishing that, we should not fundamentally undermine the interests of employers to participate in health insurance for their employees, which is what, unfortunately, the McCain bill does. And we should not do unnecessary and significant damage to States rights which is, unfortunately, what the McCain bill does. That is a whole other discussion. There are a variety of other problems.

The goal can be accomplished, which is better health care and better protection of our patients and people who use our health care system without this very egregious, very intrusive, very litigious piece of law being passed.

To reiterate, this is not a debate about whether patients should have rights.

This is not a debate about whether patients should be able to go the nearest emergency room without being penalized.

This is not a debate whether a patient should be able to access a specialist with appropriate expertise and training; prescription drugs that are medically necessary and appropriate; or comprehensive information about their health plan.

This is not a debate about whether a female patient should be able to directly access OB/GYN without prior authorization, nor is it a debate whether the parents of a child should be able to designate a pediatrician as their child's primary care provider.

This is not a debate about whether a pregnant, sick, or terminally ill patient is able to continue receiving care from her physician through the entire course of treatment—even if the plan terminates her physician from the network.

This is not a debate about whether physicians are able to tell their patients about all treatment options without being gagged by the health plan.

This is not a debate about whether there should be procedures to ensure that health plans make timely decisions and patients have the right to both an internal appeal to the plan and an independent external review when a plan denies coverage. And this is not a debate about whether the external review is independent from the plan and the reviewer makes a decision based on the best medical evidence and highest standard of care.

This is not a debate about whether all Americans should enjoy these types of rights.

This is not a debate about whether patient rights should be enforceable or even whether a patient should be fairly compensated when harmed or killed by the decision of his or her health plan or HMO.

We agree on all these issues. Both sides share these goals. Democrats and Republicans.

The real debate is about how we can best achieve these common goals. It's about putting patients first—ahead of special interests. It's about accomplishing these goals without driving up health care costs, giving employers more reasons to drop health coverage, adding millions more Americans to join the ranks of the uninsured, or dismantling our private, employer-based health care system.

The bill we are about to debate—the Bipartisan Patient Protection Act sponsored by Senators MCCAIN, EDWARDS, and KENNEDY—fails on all these counts.

I believe we can accomplish our common goals without inviting these unintended consequences. Unfortunately,

there appears to be no interest from the majority in addressing these concerns. Senator DASCHLE said recently that he sees no reason to compromise or address these concerns. I think that is very unfortunate for consumers and for patients.

I would like to highlight the very real problems in this bill, S. 1052 which was just introduced on June 14.

The McCain bill creates two opportunities to take a bite at the apple. First, it allows unlimited lawsuits against health plans and employers under state law. Second, it creates an expansive new remedy with very large damages under federal law.

The dual Federal-State scheme under the McCain bill will encourage dual claims and forum shopping. Plaintiff's lawyers will shop around for the forum with the highest limits on damages. And there is nothing in the bill that would prohibit suits based on the same or a similar set of facts from being filed simultaneously or consecutively in both State and Federal court.

This dual Federal-State scheme will raise complicated and costly jurisdictional questions and will ensure that plan benefits and administration will vary from State to State. This will only serve to confuse patients who are already faced with the task of navigating a complex health care system.

This scheme will also impose needless and excessive costs that will discourage employers from sponsoring health plans. It will ultimately increase the ranks of the uninsured.

Federal courts have been routinely hearing cases involving complicated employee benefit cases. The McCain bill would essentially remove all coverage and claims decisions from Federal court and place them under State jurisdiction, even though States have no experience with ERISA and employer-sponsored benefits.

Federal courts have honed their expertise in resolving complicated employee benefits issues since they were given exclusive jurisdiction over such cases in the Employee Retirement Income and Security Act of 1974, ERISA. Approximately 10,000 ERISA cases are filed each year in Federal court.

In order to provide high quality and affordable benefits to employees, employers that sponsor health plans across State lines must be able to administer their benefits in a uniform, consistent and equitable manner. The McCain bill will produce multiple and conflicting State laws, regulations and court interpretations, making it difficult for employers to administer their health plans.

Congress' rationale for giving Federal courts exclusive jurisdiction with respect to remedies is as applicable today as it was in 1974. From ERISA's legislative history: ''It is evident that the operations of employee benefit plans are increasingly interstate. The uniformity of decision which the Act is designed to foster will help administrators, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying state laws.''

Proponents of the McCain-Edwards bill would have you believe that they have compromised by adding a $5 million cap on punitive damages for the Federal cause of action. But this cap is merely illusory.

The bill has no caps on Federal or State economic or non-economic damages.

Plus, there are no caps on damages specified for the numerous lawsuits that would fall under State jurisdiction. And there is no evidence to suggest that State law caps would be applied to these various causes of action. In fact, most State medical malpractice law damage caps only apply to physicians and other health professionals—not health plans. California is one such example.

Excessive damage awards only harm physicians and patients. According to a study by Tillinghast-Towers Perrin, health plan liability will increase physician medical malpractice liability premiums by 8 to 20 percent because plaintiffs will target all possible defendants, including physicians. These costs will be passed on to patients in the form of higher premiums or reduced coverage.

Health plans will also pass on the increased costs of being exposed to large damage awards to employers who will in turn pass the costs on to employees or reduce or terminate coverage.

The McCain bill allows patients to go straight to court—for the purpose of collecting monetary damages—without exhausting administrative remedies first.

The independent medical review process is the best, most efficient remedy for the majority of patients. It ensures that patients get the medical care when they need it. In contrast, tort damages are only available to patients after they are injured.

The ''go straight to court provision'' creates a perverse incentive for patients, encouraged by their attorneys, to bypass the review process in order to seek the big damages awards in court.

Proponents of the exhaustion loophole argue that external review is ''not enough.'' They would have you believe that an exhaustion requirement somehow precludes the ability of an injured patient to seek recourse in court. But this is not the case. The external review process is merely a required and beneficial step before going to court.

The high standards that the medical reviewer is required to follow will help inform the court's decisions in determining whether the plan decision was the right one. Just as a medical expert is not versed in the specifics of the law, the court is not well versed in medicine and will benefit from the finding of the independent, external review—as will the patient.

The McCain bill allows the medical reviewer to consider but ''not be bound by'' a plan's definition of medical necessity which may be used to determine whether a plan covers a benefit. In effect, this allows the medical reviewer to ignore contract definitions of medical necessity and substitute their own definitions or opinions as a basis for overturning a health plan's decision.

This provision would lead to routine reversals of health plan decisions and generate increased litigation. Employers and health plans would have no predictability in administering their plans or estimating their exposure to liability. Alternatively, this may cause plans to routinely approve all coverage thereby driving up premiums astronomically and raising quality and safety concerns for the patient. Employers may reconsider their commitment to offer and administer health benefits if the McCain bill becomes law.

Health plans and employers that honor their contractual obligations could be on the losing end of a lawsuit when an external medical reviewer decides to disregard a term in the health plan contract. Even plans that adhere carefully to the terms of their contracts, no matter how generous those terms are, could be held liable if the reviewer decides to apply a different standard.

Contrary to continued assertions by its proponents, the McCain bill does not protect employers from open-ended liability. In fact, the bill specifically authorizes certain types of lawsuits to be brought against employers in Federal court for failing to perform a duty under the terms and conditions of the plan.

Because employers are required to carry out a broad range of administrative duties under ERISA's statutory scheme, the McCain bill will leave them wide open to new Federal personal injury suits. Employers will be sued for all types of alleged errors such as issuing notices required by the Health Insurance Portability and Accountability Act, HIPAA, and the COBRA, regardless of whether such errors result in a denial of a covered benefit.

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

The ''direct participation'' provision in the McCain bill provides little comfort to employers who will still be

dragged into court on every case. Employers who do not ''directly participate'' in such decisions are not protected from being sued; they are only provided with a defense to raise in court.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I disagree with what my friend from New Hampshire has said about the content and the direction of the McCain-Edwards legislation. Why don't we decide if he is right or I am right. And how you do that is you come to the Senate and you debate the issue.

We are being prevented from doing that today. The Republicans have objected to our going forward to consider this bill. So this will necessitate our going through the procedure of filing a motion to invoke cloture which we will vote on Thursday. I believe rather than wasting that time, we should be here debating the principles enunciated by the Senator from New Hampshire and what we have been saying on this side all day.

That seems to be the fair way to do it, rather than talking about all the scary points of this bill from their perspective and the positive points from our perspective. Let's debate the issues. This bill has been around for 5 years in one version or another. We believe that we have refined this legislation. Because of the courageous actions of the Senator from Arizona and the brilliant input of the Senator from North Carolina, we now have a piece of legislation that is extremely good. It is better than the ones that have come before us before. It is so good that on our side we are going to offer very few, if any, amendments because we believe this legislation is so good.

This legislation deals with accountability. We spent 8 weeks in this body talking about education. What were we trying to establish? We wanted students and teachers and administrators to be accountable and to make sure we had good education in our public schools.

Accountability: That same argument should be and will be carried over into this legislation dealing with the Patients' Bill of Rights.

I have a lot of other things to say and I will not say them now. I showed to the Presiding Officer in the Senate that we have only a partial list of those organizations that support this legislation. These are business groups, nurses groups, physician groups, starting with the Abbott House, Inc.—Abbott House in Irvington, NY. That is No. 1 on the list. At the end of this list we have the YWCA of northeast Louisiana. Of the 300-plus groups we have listed here, we have groups that should know the difference between good and bad medical care. For example, there is the Wisconsin Paralyzed Veterans of America. They believe what we want to do is right.

It is not often that you find legislation in the Senate that is supported by hundreds and hundreds of groups. Every consumer group in America supports our legislation. We have the physician organizations, specialties and subspecialties, that support this legislation. We have the American Medical Association that supports this legislation.

You know, for the first time that I can ever remember, we have the doctors and the lawyers thinking this is good legislation. So I say to my friend from New Hampshire, who is going to be the manager for the Republicans on this legislation—I believe he should listen to what he said if he believes this—and I know he does—let's debate it, as my dad would say, ''like men,'' and now women because they are a vital part of the Senate. Let's debate this issue as grownups, not hiding behind procedural matters. If they think our legislation is so bad, let them prove it out here.

I am willing to take my chances on an up-or-down vote on the Senate floor. That is how we should decide issues. We should not be hiding behind some procedural prohibition that prevents us from moving this legislation forward.

One last thing. The majority leader said today, right here at 11:30, that this legislation, the Patients' Bill of Rights, is going to be completed before we leave for the recess—if we have a Fourth of July recess. That is what he said. He is not playing games. He is majority leader of the Senate. He said today that if we don't finish this bill by next Thursday night—if we do, we are off Friday. We have the Fourth of July recess. If we don't finish this bill by next Thursday evening, we are going to work Friday, Saturday, Sunday, and we are going to work Monday—every day except the Fourth of July. Then we will come back on the fifth. We are going to be here until we finish this legislation. So all staff members here in Washington and people watching this on C–SPAN should understand that we, the Senators, may not be home for our Fourth of July break. We may be here doing the people's work, trying to work our way through this legislation, through all the obstacles being thrown up procedurally by the money interests of this country—the HMOs who think they own the medical care of this country. They don't. It is owned by the people—the patients, nurses, and doctors.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. EDWARDS. Mr. President, the great thing about debate on the floor of the Senate—particularly extended debate—is that we get past the high-pitched rhetoric and actually get to the facts. I want to respond briefly to some of the comments of my friend and colleague from New Hampshire.

He argues that under our bill employers can be held responsible—citing a particular page of the legislation—if they make a comment to an employee going out the door on the way to their doctor saying, ''hope you feel better''.

First of all, President Bush has issued a set of principles that are specific to this issue. His principles say, ''Only employers who retain responsibility for and make final medical decisions should be subject to suit.'' So the President himself, in his principles, has said employers that are making medical decisions about individual cases are subject to sue and should be subject to sue.

My colleague from New Hampshire cited language on page 141 of the bill referring to, ''otherwise, calls of action created by failing to exercise ordinary care in the performance of a duty.'' Two pages later in the bill, which unfortunately my colleague didn't talk about, there is language at the bottom of the page, subsection (A), that says: ''This section does not authorize a cause of action against an employer.''

What I suggest to my colleague is that he read the entirety of the section to which he refers.

The language of what constitutes making a medical decision in a specific case is very clear in our legislation. It includes none of the general things that the Senator from New Hampshire talked about. What has to happen under the specific language of our bill, and as set forth by the President of the United States, is that the employer has to actually override and make the decision as an HMO would in a particular case. Otherwise, under the language of our bill, and under the President's principle, the employer is protected, period.

We want to protect employers. That is the whole purpose of this language. It is why Senator MCCAIN and Senator KENNEDY and I have worked for months and months in crafting this language.

The second argument my colleague made is that there would be forum shopping between State and Federal court. The language is clear. If an HMO makes a medical decision, that case goes to State court. If the question is on the specific provisions of the plan the employee is covered by, that case goes to Federal court, period. It is where the cases have always been. The reason the other cases—the medical decision cases—go to State court is because when they make a medical judgment and overrule a doctor, we want them to be treated just as the doctors and the health care providers.

Third, he argues that ERISA is a very complicated law that will be difficult for State courts to apply. Well, the State courts won't be applying ERISA. What the State courts would be doing is applying their own State law because what our bill provides is that when a medical judgment is made by an HMO and some child is hurt as a result, and they take their case to State court, that State's law applies, so that if there are recovery limits—and there are, I think, 30-some-odd States in the country. And the argument was made that there are no caps in our legislation; there will be an outrageous explosion of litigation.

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

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

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

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

RECESS

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

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

The PRESIDING OFFICER. The Senator from Nevada.

STATUS OF SENATOR BRYAN

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

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

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

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

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

BIPARTISAN PATIENT PROTECTION ACT—MOTION TO PROCEED—Continued

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

Mr. SCHUMER. I thank the Chair.

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

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

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

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

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

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

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

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

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

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

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

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

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