Congress of the United States
Washington, DC 20515

September 4, 2001

Dear Colleague:

When Congress reconvenes after the August recess we have an opportunity to finally deliver a meaningful Patients' Bill of Rights to the American people. To accomplish this goal, we will need a conference that produces a bill that reflects the superior rights afforded to patients in the Senate-passed legislation. The *New York Times* editorial below makes this case clearly. We hope that you will take a moment to read it.

Curing the Patients' Bill of Rights

During their monthlong recess back home, members of Congress have no doubt been hearing from constituents about the need for a strong patients' bill of rights and from state officials about the need for a bill that does not thwart state efforts to protect those wronged by their health care plans. As they reconvene in Washington this week, they should take the message to heart. A patients' rights bill is headed for a House-Senate conference committee. Congress must ensure that the version that ultimately emerges sticks close to the Senate's proposal rather than the weak alternative adopted in early August by the House.

The Senate version provides a floor of rights that states can build upon if they desire. The House version, by contrast, sets a ceiling on patients' rights that states cannot exceed and pre-empts the ability of states to set their own standards. That was one of the ill-advised provisions of the deal struck at the 11th hour by President Bush and Representative Charlie Norwood, the longtime champion of H.M.O. reform, who seems belatedly to have realized that he was snookered by the White House. Indeed, in rolling back many states' provisions already benefiting patients, the Bush-Norwood law is rightly derided by critics as an H.M.O. bill of rights.

But there is reason to be hopeful. Having had time to reflect upon what he agreed to in his visit to the White House and in the frenetic all-night drafting session that followed, even Mr. Norwood appears to be having some second thoughts. He now says the bill should give states more leeway in enforcing their laws.

The House and Senate bills share some positive features. They provide patients prompt access to emergency care and specialists, such as pediatricians and gynecologists, without a referral from a primary care physician. But in the six years that Congress has been debating the issue, many H.M.O.'s have moved to provide these services on their own, and many states have passed laws forcing them to do so.

The crucial difference between the competing Congressional measures involves the enforcement of these rights. The Senate bill, written by a Republican, John McCain, and two Democrats, John Edwards and Edward Kennedy, would allow H.M.O.'s to be held accountable in state court, as are doctors, for their medical decisions. So did Mr. Norwood's bill, supported by 68 House Republicans last session, until he cut his deal with the president.

The House bill now allows suits in state courts, but only under an unduly restrictive set of federal rules that would make it far more difficult for patients to prevail against their health plans. The bill grants insurance companies too much say in designating members of outside review panels. In cases that proceed to court, it grants undue influence to the panel's findings, but only when the decision is in the H.M.O.'s favor. The House bill also has a lower limit on damages, and forces plaintiffs to prove that an H.M.O.'s negligence was the sole cause of harm.

Forty states already give patients an independent medical review of any plan's denial of care, and 10 states allow patients a right to sue in state court under traditional medical malpractice law. But if the House approach prevails, those protections for patients will be lost.

In their haste to please the insurance industry, House leaders and the White House are trampling on their party's professed interest in preserving states' traditional powers. That point has not been lost on local G.O.P. officials, many of whom have been critical of the Bush-Norwood assault on what are, in essence, state medical regulations.

The states' experience actually undermines the White House assertion that its restrictive approach to litigation is needed in order to prevent a flood of frivolous lawsuits. In Texas, for instance, only two dozen suits have been filed since Mr. Bush, as governor, allowed a patients' bill of rights much like the one passed by the Senate to become law — without his signature — in 1997. In July, in the first verdict in such a case, the jury sided with an H.M.O. defendant. Other states with similar laws have also seen few cases, mainly because effective external review procedures resolve most disputes. The prospect of litigation with potentially large damages ensures that companies abide by these reviews and by their commitments to consumers.

When he was asked last year about a patients' bill of rights in his last debate with Al Gore, Mr. Bush took credit for the Texas legislation that he initially resisted. For good measure, he said he did not want a federal law to "supersede good law like we've got in Texas." President Bush should embrace this earlier position and join Mr. Norwood in expressing second thoughts about the hastily drafted Bush-Norwood deal. The federal government needs to set a floor, not a ceiling, when it comes to patients' rights.

Sincerely,

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