

# Congress of the United States

Washington, DC 20515

September 13, 1999

## **Business Roundtable Myth #1: H.R. 2723 exposes all employers, large or small, to unlimited liability under differing state laws.**

Dear Colleague:

**Chicken Little, the sky is falling!!! The sky is falling!!!**

Here are the facts:

First and foremost, employers who don't make medical decisions cannot be held liable. The language in section 302 (e)((2) of H.R. 2723 clearly states that a cause of action may only be filed against an employer if such action is based on the employer's exercise of discretionary authority to make a decision on a claim for benefits covered under the plan *and* the exercise by such employer of such authority resulted in personal injury or wrongful death.

The bill further clarifies that 'discretionary authority' does not include an employer's decision to include or exclude from the plan any specific benefit, to provide an extra-contractual benefit, or not to provide a benefit while an internal or external review is being conducted.

Plus, the bill states (in section 302 (e)(4)(A)) that an injured patient does not have a cause of action under state law for the failure to provide an item or service that is specifically excluded from coverage under the group health plan.

Second, the bill does not allow for unlimited liability for either employers or health plans. Damages are only available to the extent allowed by state law. Many states have passed tort reform limiting allowable damages. Currently, 24 states limit non-economic damages and 22 states cap punitive damages. In addition, state courts generally have a very high standard for awarding punitive damages.

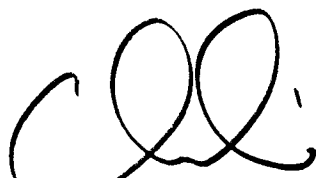
Additionally, under this bill, punitive damages are never available if the plan complies with the external review process in a timely manner.

The concept of liability in H.R. 2723 is very simple. If an insurer makes a decision about whether or not to authorize a covered benefit, the insurer should be responsible for that decision. If that decision harms or kills someone, the insurer should be held accountable for damages in a court of law.

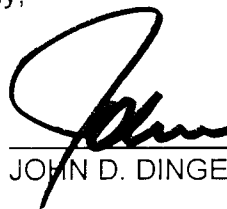
One of the fundamental principles underlying American society is the concept of personal responsibility. The truth of the matter is that The Business Roundtable and the managed care industry will never accept any language that holds them responsible for their actions.

H. R. 2723 is a reasonable, bipartisan compromise that strikes a proper balance in protecting patients. We encourage you to join us in passing this vital legislation.

Sincerely,



CHARLIE NORWOOD



JOHN D. DINGELL