Congress of the United States

Washington, DC 20515

September 13, 1999

Business Roundtable Myth #2: ***H.R. 2723 does not require exhaustion of the external review process and the shield on punitive damages is only available when a plan complies with external review. Therefore there will be a flood of patients bypassing the review process and going directly to the courts to get damages.***

Reality: ***Patients are more interested in getting needed health care than in going to court. The BRT claims are merely scare tactics and aren't borne out by any real-world experience to date.***

Dear Colleague:

Sick patients are, first and foremost, interested in getting the care that they need to recover. To get care, a patient's best course of action is to use the internal and external review process. External review is faster and a whole lot cheaper than going to court. Put yourself in this position. If you're sick, would you rather a) go to court or b) get treatment and get well?

As a common practice, most courts require plaintiffs to exhaust administrative remedies before proceeding to litigation. If an enrollee tried to take a case to court without exhausting other options, experience shows that the court is likely to send them back to external review. This is what happens in the current legal system today.

State employees and individuals in the individual health insurance market can already sue their health plan for cases of personal injury or wrongful death under applicable state law. There is no evidence to show that in either of these markets there has been a rash of lawsuits or that costs have been significantly higher as a result of individuals being able to hold their health plan accountable in a court of law.

In Texas, where the state passed a law creating an external appeals process and allowing lawsuits against HMOs, less than a handful of suits have been filed to date. Missouri also has both an external review process and a law allowing patients to sue HMOs, and its experience is similar to that of Texas. Patients clearly preferred to take their case to an external appeal board to try to get the needed care.

Clearly, The Business Roundtable and the managed care industry want to ignore the real world experiences that contradict their wild assertions. The fact of the matter is that they just don't want to accept any bill that holds them responsible for their actions.

The concept of liability is 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 health insurance industry flatly refuses to accept responsibility.

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