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Health - Kennedy -
Kassenbaum Bill

Health - Kennedy - Kassebaum bill

THE WHITE HOUSE

WASHINGTON

July 6, 1998

HEALTH CARE PORTABILITY EVENT

DATE:	July 7, 1998
LOCATION:	Grand Foyer
BRIEFING TIME:	1:30 pm (Oval Office)
EVENT TIME:	2:00 pm - 3:00 pm
FROM:	Bruce Reed/Chris Jennings

I. PURPOSE

To issue an Executive Memorandum to stop health plans from violating the protections of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

II. BACKGROUND

As we arrive at the one year anniversary of the implementation of the Kassebaum-Kennedy legislation, there have been reports that some health insurers are circumventing the HIPAA protections. Reportedly, some insurers are giving their agents incentives to avoid enrolling qualified Americans with pre-existing conditions and/or are delaying processing applications to the point that eligible applicants have a sufficient break in coverage to lose eligibility for Kassebaum-Kennedy protections. Such actions are inconsistent with the letter and the spirit of the 1996 law.

At this event you will be taking the following actions to crack down on insurers who violate the Kassebaum-Kennedy protections:

- **Direct OPM to Ensure Health Plans Are In Compliance With Kassebaum-Kennedy In Order to Participate in Federal Employees Health Benefits Program (FEHBP).** In order to be eligible to participate in the FEHBP, insurance carriers subject to HIPAA will have to certify in writing to OPM that they are providing access to health insurance consistent with the Kassebaum-Kennedy protections.

- **Direct OPM to Take Action, Up To and Including Termination, of Health Plans That Delay or Deny Coverage to Americans Eligible Under HIPAA.** To ensure compliance with HIPAA, you will direct OPM to take all appropriate actions -- up to and including termination of a participating health plans from

FEHBP. This action will help ensure that the 350 participating carriers in this program, who serve 9 million enrollees, are providing access to health insurance to all Americans eligible under the important 1996 law.

- **Direct HCFA to Report Any Abuses to OPM.** You will also direct HCFA to report to OPM immediately any actions taken by an insurer or insurer representative that in any way precludes or inhibits access to the insurance protections provided under HIPAA. Such referrals would not alter HCFA's obligation to utilize any other enforcement tools at their disposal.

- **Initiate New Collaboration With the National Association of Insurance Commissioners (NAIC) to Help Stop Abuses.** You will be introduced by the President of the NAIC, Glenn Pomeroy, who will announce NAIC's commitment to help identify and report to OPM any insurers they discover who are denying or delaying providing individuals the Kassebaum-Kennedy protections.

- **Request HHS and Labor Departments Report on the Successes and Shortcomings of HIPAA.** You will also request Secretary Shalala and Secretary Herman to report back within six months on specific legislative or regulatory recommendations that would be necessary to further strengthen this law.

These steps build on your earlier directive to HHS to issue strong warnings regarding unacceptable insurance practices. When you first learned of efforts to circumvent the HIPAA law you asked HHS to take steps to stop health plans and their agents from such harmful practices. HCFA responded by immediately releasing a strong guidance bulletin on March 18th to insurance commissioners around the nation. This bulletin advised insurers that delaying or denying health care coverage to Americans eligible for insurance under HIPAA was unlawful and inappropriate and underscored the Federal Government's commitment to ensuring compliance. Today, you are taking even further enforcement actions to ensure that health plans do not violate these protections.

III. PARTICIPANTS

Briefing Participants:
Bruce Reed
Rahm Emanuel
Chris Jennings
Larry Stein
Thurgood Marshall, Jr.

Event Participants:
The Vice President
Glenn Pomeroy, President of the National Association of Insurance Commissioners and State Commissioner of North Dakota. He is the brother of Congressman Earl Pomeroy.

Seated on stage:
Secretary Shalala, HHS
Director Janice LaChance, OPM
Administrator Nancy Ann Min DeParle, HCFA
Senator Kennedy

IV. PRESS PLAN

Open Press.

V. SEQUENCE OF EVENTS

- **YOU** will be announced into the Grand Foyer accompanied by the Vice President, Glenn Pomeroy, Secretary Shalala, Director LaChance, Administrator DeParle, Senator Kennedy.
- The Vice President will make remarks and introduce Glenn Pomeroy, NAIC President.
- Glenn Pomeroy will make remarks and introduce **YOU**.
- **YOU** will make remarks and then depart.

VI. REMARKS

Remarks Provided by Speechwriting.

PRESIDENT CLINTON ISSUES EXECUTIVE MEMORANDUM TO STOP HEALTH PLANS FROM VIOLATING KASSEBAUM-KENNEDY PROTECTIONS
July 7, 1998

Today, following the one year anniversary of the implementation of the Kassebaum-Kennedy legislation, the President issued an Executive Memorandum directing the Office of Personnel Management (OPM) to take action to ensure compliance with the Kassebaum-Kennedy law. It would not only require health insurers to comply with the 1996 law in order to participate in the Federal Employees Health Benefits Program (FEHBP) but to take all actions necessary -- up to and including termination against insurers that violate the protections afforded by the Health Insurance Portability and Accountability Act (HIPAA). The President also announced that the Health Care Financing Administration (HCFA) and the National Association of Insurance Commissioners (NAIC) will forward any reports of violations to OPM, allowing the agency to take strong actions against these health plans.

There Have Been Reports That Some Health Insurers Are Circumventing Kassebaum-Kennedy Protections. The HIPAA law helps individuals keep health insurance when they change jobs, guarantees renewability of coverage, and guarantees access to health insurance for small businesses. According to the General Accounting Office, HCFA, and press reports, some insurers are giving insurance agents incentives to avoid enrolling qualified Americans with pre-existing conditions, who are guaranteed access to coverage under HIPAA. Agents also have reportedly delayed processing applications submitted by HIPAA-eligible individuals or small groups in order ensure that applicants have a sufficient break in coverage to lose eligibility for Kassebaum-Kennedy protections. Such actions are inconsistent with the letter and the spirit of the 1996 law.

Today, the President took strong action against insurers who violate the Kassebaum-Kennedy protections. Specifically, he:

- **Directed OPM to Ensure Health Plans Are In Compliance With Kassebaum-Kennedy to Participate in FEHBP.** In order to be eligible to participate in the FEHBP, insurance carriers subject to HIPAA will have to certify in writing to OPM, which oversees FEHBP, that they are providing access to health insurance consistent with the HIPAA protections.

- **Directed OPM to Take Action, Up To and Including Termination, of Health Plans That Delay or Deny Coverage to Americans Eligible Under Kassebaum-Kennedy.** To ensure compliance with HIPAA, the President directed the OPM to take all appropriate action -- up to and including termination of a participating health plan from FEHBP. This action will help ensure that the 350 participating carriers in this program, who serve 9 million enrollees, are providing access to health insurance to all Americans eligible under the important 1996 law.

- **Directed HCFA to Report Any Abuses to OPM.** The President also directed HCFA to report to OPM any actions taken by an insurer or insurer representative that in any way precludes or inhibits access to the insurance protections provided under HIPAA.

- **Announced Collaboration With the National Association of Insurance Commissioners (NAIC) to Help Stop Abuses.** The NAIC has also committed to help identify and report to OPM any insurers they uncover who are denying or delaying providing individuals the Kassebaum-Kennedy protections.

- **Requested HHS and Labor Departments report back within six months on the successes and obstacles to implementation of HIPAA.**

These Actions Build on the President's Commitment to Assuring That HIPAA Provides Millions of Americans Access to Health Insurance.

- **Directed HHS to Issue Strong Warnings Regarding Unacceptable Insurance Practices.** Earlier this year, when the President first learned of efforts to circumvent the HIPAA law, he instructed the Department of Health and Human Services to take appropriate actions to stop health plans and their agents to cease and desist all such harmful and likely unlawful practices. HCFA responded by immediately releasing a strong guidance bulletin on March 18th to State Insurance Commissioners for distribution to insurers in each state. This bulletin advised insurers that delaying or denying health care coverage to Americans eligible for insurance under HIPAA was unlawful and inappropriate and underscored the Federal Government's commitment to ensure compliance.

- **Fought Hard for Kassebaum-Kennedy Insurance Reforms in 1996.** This act includes several other high priority Clinton Administration health initiatives, including:

  -- **Eliminating the discriminatory tax treatment of the self- employed.** Increased the tax deduction from 30 percent to 80 percent for the approximately 10 million Americans who are self-employed. The President also signed into law a provision to phase it in to 100 percent in the Balanced Budget Act of 1997.

  -- **Strengthening efforts to combat health care fraud, waste, and abuse.** The Kassebaum-Kennedy law created a new stable source of funding to fight fraud and abuse that is coordinated by the HHS Office of the Inspector General and the Department of Justice. In the first year alone, this effort saved the Medicare Trust Fund nearly $1 billion.

  -- **Providing consumer protections and tax incentives for private long-term care insurance.** This law also makes private long-term care insurance more affordable by guaranteeing that employer sponsored long-term care insurance will receive the same tax treatment as health insurance and implemented new consumer protections to assure that any tax favored product meets basic consumer and quality standards.

PRESIDENT CLINTON:
INCREASING ACCESS TO HEALTH CARE

July 7, 1998

"This is a moment of unsurpassed hope and opportunity. If we put aside partisanship for the sake of progress, we can give all Americans the health care protections they deserve and strengthen the nation for the 21st Century."

President Bill Clinton
July 7, 1998

Today, President Clinton issues an Executive Memorandum directing the Office of Personnel Management (OPM) to take all necessary actions, up to and including termination from the Federal Employees Health Benefits Program (FEHBP), against health insurers of federal employees who do not comply with the protections afforded by the Health Insurance Portability and Accountability Act (HIPAA). In addition, the President announces that the Health Care Financing Administration (HCFA) and the National Association of Insurance Commissioners (NAIC) will forward any reports of violations to OPM.

REPORTS SHOW POSSIBLE EVASION OF KASSEBAUM-KENNEDY. The HIPAA law helps individuals keep health insurance when they change jobs, guarantees renewability of coverage, and insures access to health insurance for small businesses. According to the General Accounting Office (GAO), HCFA, and press reports:

- Some insurers are giving insurance agents incentives to avoid enrolling qualified Americans with pre-existing conditions who are guaranteed access to coverage under HIPAA;
- Agents have reportedly delayed processing applications submitted by HIPAA-eligible individuals or small groups in order to ensure that applicants have a sufficient break in their coverage to lose eligibility for Kassebaum-Kennedy protections.

PRESIDENTIAL ACTION TO STEM ABUSE. Today, the President takes strong action against insurers who violate the Kassebaum-Kennedy protections, including:

- **Directing OPM To Ensure Health Plans Are In Compliance with Kassebaum-Kennedy** in order to participate in the FEHBP. These health insurers will be required to certify that they are providing access to health insurance consistent with HIPAA protections;
- **Instructing OPM To Take All Action, Including Termination** of health plans that delay or deny coverage to federal employees who are eligible for health insurance under Kassebaum-Kennedy. This action will help ensure that the 350 participating carriers in this program, who serve 9 million enrollees, are providing access to health insurance to all qualified Americans;
- **Directing HCFA To Report Any Abuses To OPM.** The President is directing the HCFA to inform OPM of any actions taken by an insurer or an insurer's representative that in any way precludes or inhibits access to the insurance protections provided by HIPAA;
- **Announcing A Collaborative Effort To Help Stop Abuses.** The NAIC has also committed itself to identifying and reporting to OPM any instances of insurers denying or delaying access to Kassebaum-Kennedy protections;
- **Requesting A Report In Six Months** from the Departments of Labor and Health and Human Services measuring the successes and obstacles of implementing HIPAA protections.

INCREASING ACCESS TO HEALTH CARE. The President has led the fight to assure HIPAA provides millions of Americans access to health insurance. When the President first learned of reports of insurers circumventing HIPAA, he instructed HHS to take appropriate action to stop health insurers from engaging in these forms of harmful and likely unlawful practices. HCFA responded immediately by mailing a guidance bulletin to all state insurance commissioners for distribution to private insurers. This bulletin advised insurance companies that denying or delaying HIPAA protections was unlawful and underscored the federal government's commitment to ensuring compliance. The President also fought for key reforms that were included in Kassebaum-Kennedy, including:

- An increased insurance tax deduction for self-employed Americans from 30 to 80 percent, with a phase in to 100 percent under the Balanced Budget Act of 1997;
- A coordinated effort by the HHS Office of Inspector General and the Department of Justice to combat waste, fraud, and abuse that has, in its first year, saved the Medicare Trust Fund nearly $1 billion;
- Making private long-term care more affordable by guaranteeing employer sponsored long-term care is given the same tax treatment as health insurance;
- Implementing new consumer protections to assure that any tax favored product meets basic consumer and quality standards.

health - Kennedy Kassebaum

Sarah A. Bianchi 03/17/98 08:34:15 AM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: here's what I was planning to work off with speechwriter

The Kennedy-Kassebaum legislation I enacted in 1996 is an extremely important achievement. The Administration is conducting a thorough review of this law to ensure we do everything possible to eliminate these harmful practices and make this law work for all Americans. Unfortunately, there are reports that despite this important legislation some insurers are thwarting the intent of the law -- by giving insurance agents incentives not to sign these Americans up for health care coverage or delaying until they are ineligible. These practices are intolerable and we must stop them. The Administration is conducting a thorough review of this law to ensure we do everything possible to eliminate these harmful practices and make this law work for all Americans. To ensure that they stop now, tomorrow, I am asking the Department of Health and Human Services to send a notice to every insurer in every state to affirm that creating incentives that make it difficult for eligible individuals to sign up is explicitly inconsistent with the law. The Department will advise states to use all their current enforcement authority to eliminate these harmful practices. And where they don't take action the Federal government will.

health - Kassebaum Kennedy

Christopher C. Jennings
03/14/98 05:37:38 PM

Record Type: Record

To: Rahm I. Emanuel/WHO/EOP, Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Gene B. Sperling/OPD/EOP

cc: Sarah A. Bianchi/OPD/EOP, Michelle Crisci/WHO/EOP
Subject: kennedy-kassebaum ruling

Elena asked me about our response to a GAO report that was released at the end of this week. The GAO study confirmed a Robert Pear article from a few months ago which reported that insurance agents were discriminating against individuals with preexisting conditions who are attempting to purchase insurance under the new Kassebaum-Kennedy law.

Over the last several months, we have been trying to get HCFA to develop a ruling that explicitly instructs states that these types of practices are unlawful under Kassebaum-Kennedy. Today, Nancy-Ann informed me that such a ruling may well be available for release next week. Since we have moved the Medicare buy-in event to Tuesday, one option might be to integrate this in the President's departure statement on Wedsnesday. We will be getting paper on what might be available on Monday morning. As soon as we know more we will inform you.

It would be helpful to know whether we should make this a priority or not.

cj

Chris - per our conversation
Elena

Health Insurance, 1st Ld-Writethru, a0475,250
port says health insurers are skirting portability law
DS: SUBS 1st graf to CORRECT low to law

WASHINGTON (AP) Congressional auditors say health insurance companies are finding ways to stymie a new law intended to guarantee Americans won't have to go without health insurance when they change jobs.

They found companies jacking up premiums for people who try to use the Health Insurance Portability and Accountability Act to convert their group policies to individual coverage and said some companies are discouraging their agents from writing the high-risk policies by reducing or eliminating commissions.

``Consumers attempting to exercise their right have been hindered by carrier practices and pricing,'' the General Accounting Office, Congress' investigative arm, said in a report released Wednesday.

In addition, some consumers have misunderstood parts of the complex law, unwittingly losing their chances to take advantage of it, the report said.

Overwhelmingly approved in both the House and Senate, the law was hailed as a bipartisan victory when President Clinton signed it in August 1996.

But while the law required insurance companies to sell the policies, it didn't guarantee the policies would be sold at reasonable prices.

The GAO said companies charge higher rates because they believe people who attempt to use the law's guarantee to access to individual health insurance will, on average, be in poorer health than others in the individual market.

**** filed by:APE-(--) on 03/12/98 at 04:06EST ****
**** printed by:WHPR(JMAS) on 03/12/98 at 07:43EST ****

Schedule visit - look for Monday
Refer a pending
media - [illegible]

get report

Health - Kennedy Kassebaum

THE PRESIDENT HAS SEEN
10-6-97

Gene / Bruce / C Jennings

What are we going to do about this? — Important

BC

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Health - Kennedy - Kassebaum bill

THE PRESIDENT HAS SEEN
10-6-97

HEALTH INSURERS SKIRTING NEW LAW, OFFICIALS REPORT

SHUNNING RISKY CASES

Agencies Discourage Sales by Charging High Premiums and Penalizing Agents

A1

By ROBERT PEAR

WASHINGTON, Oct. 4 — State officials say they see worrisome signs that some health insurance companies are circumventing a new law intended to make coverage more readily available to millions of Americans who change or lose their jobs.

Insurers have found ways of discouraging sales to eligible individuals and groups, sometimes by charging very high premiums or by penalizing insurance agents who sell coverage to customers with pre-existing medical problems, the officials said.

"There is some troubling behavior in the marketplace," said Kathleen Sebelius, the Insurance Commissioner of Kansas, who was among those expressing concern.

Josephine W. Musser, the Wisconsin Insurance Commissioner, who is president of the National Association of Insurance Commissioners, agreed. "Carriers are attempting to circumvent the law" in various ways, she said.

And Jay Angoff, director of the Missouri Insurance Department, said: "Congress had good intentions. But if insurers can charge whatever they want, they won't sell many policies to the people Congress wanted to protect."

Some states already have laws that prohibit insurers from denying coverage to sick people or charging them higher rates for a particular product. For example, New York passed such a law in 1992. In an interview this week, Gov. George E. Pataki said: "It's worked very well. We haven't seen the disruptions or the efforts to evade the new Federal law that you see in other states."

When President Clinton signed the legislation on Aug. 21, 1996, he said, "It will eliminate the possibility that individuals can be denied coverage" because of pre-existing medical conditions and "will require insurance companies to sell coverage to small employer groups and to individuals who lose group coverage." The law, he said, will benefit "as many as 25 million Americans."

But some insurers are shunning the very people who were supposed to benefit from the law, the Health

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Insurance Portability and Accountability Act.

For example, some companies have told agents that they will not get commissions for selling insurance to people with medical problems. In a recent bulletin to agents in seven states, the American Community Mutual Insurance Company of Livonia, Mich., said, "We as an industry have greater exposure to more high-risk groups" because of the new law. Accordingly, it said, sales to such groups "will not be eligible for commission" payments.

Laura Quinn, a lawyer for the company, defended the practice, saying that agents would otherwise have had strong financial incentives to sell insurance coverage to people with serious medical problems. "Those folks do need coverage," she said, "but we were afraid we'd get an unusually high number of such cases."

Janet A. Stokes, director of state government affairs at the National Association of Health Underwriters, which represents 14,500 agents, strongly objected to the practice of limiting or eliminating commissions on sales to higher-risk customers.

High-risk customers who change or lose their jobs are still being denied medical coverage.

"It's not in good-faith compliance with the law," she said. "It's an attempt by some companies to control their share of the less desirable cases."

In a letter to the Federal Department of Health and Human Services, Ms. Stokes described the practice as "a direct attempt to circumvent the law" and said the Federal Government should prohibit it. Otherwise, she said, "companies that play by the rules will get more than their share of high-risk business, forcing them to increase premiums for all their customers."

Members of Congress who worked on the 1996 law and insurance industry spokesmen said they were surprised by the efforts of some insurers to get around the law.

"These kinds of abuses go contrary to the intent of the legislation," said Representative Gerald D. Kleczka, Democrat of Wisconsin.

Bill Gradison, president of the Health Insurance Association of America, said that such practices "bear monitoring." He said he had been unaware of the specific problems reported by state insurance regulators.

But, he said, "We warned that some of the bill's requirements could result in unacceptable premium increases for families purchasing individual health insurance policies."

The New York Times
Sunday, October 5, 1997

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Senator Edward M. Kennedy, Democrat of Massachusetts and a co-author of the 1996 law, said: "Efforts to skirt the spirit and letter of the law are intolerable. Not only does this practice deny coverage to people who need health care because they are ill, it also disrupts the market because honest companies are put at a competitive disadvantage."

The measure is often called the Kassebaum-Kennedy law. Nancy Kassebaum Baker, a Kansas Republican who retired from the Senate this year, was its other author.

The law was popular in Congress, passing by votes of 421 to 2 in the House and 98 to 0 in the Senate. Aides to Mr. Kennedy said they thought he would have broad support for efforts to tighten the law if further investigation found widespread abuses.

The law says that employers who provide benefits to their workers must generally cover pre-existing medical problems like cancer. But new employees qualify for this protection only if they were previously enrolled in a group health plan, and they lose credit for all prior insurance if there is a break in coverage of 63 days or more.

Mr. Angoff said he had evidence that at least one insurer was delaying price quotations and decisions on coverage beyond 63 days so that applicants would not get the benefit of this guarantee.

Insurers say that the law, while guaranteeing access to health benefits for many "eligible individuals," did nothing to regulate what insurers may charge for such coverage. On the other hand, state officials say the law does indicate that there should be some means to spread the costs or subsidize premiums so high-risk customers will not have to bear the full cost themselves.

Here are other examples of insurance company practices under the new law, as described in company documents and in interviews with state officials:

¶Some insurers and health plans assert that they can charge up to five times the standard rate to individuals and families who qualify for health insurance under the new law. One company, American Medical Security of Green Bay, Wis., a subsidiary of United Wisconsin Services, described such charges as "reasonable and appropriate" for people with an extensive history of medical problems.

¶Several insurance companies and insurance brokers said they automatically imposed a 35 percent surcharge on policies sold under the new law, with coverage of pre-existing conditions. In a recent bulletin to its employees, Design Benefit Plans of Schaumburg, Ill., a unit of the Conseco insurance company, said that eligible individuals must "pay 35 percent extra" for policies purchased under the law.

¶Alliance Blue Cross Blue Shield in St. Louis charges twice its normal rates to individuals it is required to insure under the new law. A 30-year-old man enrolling in one of its managed care plans with a $1,000 deductible pays $144 a month compared with a standard monthly rate of $72.

¶Some companies have established special insurance policies and separate rate schedules, with higher premiums, for individuals entitled to coverage under the new law.

The law says that such policies are supposed to be "actively marketed" to sick and healthy people alike. But Mrs. Sebelius, the Kansas commissioner, said, "If you're healthy, you don't need the law to get coverage."

Representative Pete Stark, a California Democrat, said that insurers in many states were charging $6,000 a year for individual insurance policies offered to people with pre-existing conditions. That represents one-third of the median income of one-person households last year, as reported by the Census Bureau. For such individuals, Mr. Stark said, the promise of the Federal law is "a cruel hoax."

States have been regulating insurance for more than a century, and the Kassebaum-Kennedy law allowed them to retain a large role.

But in Rhode Island, Missouri and California, a state that accounts for about 10 percent of the nation's insurance market, the legislatures adjourned this year without taking the actions needed to conform their laws to the new Federal requirements.

In California, Federal officials will police the individual insurance market. This is a huge new responsibility for the Federal Government, and it sets a precedent for direct Federal regulation of the industry.

No day is complete without The New York Times.

The New York Times
Sunday, October 5, 1997