

Himself a poet and author of eight books of fiction and history, Senator COHEN knows that it is as hard to accurately recount history and to draw lessons from it, as it is to create a complete and consistent fictitious history, which he does so well in his novels. His ability to draw upon the lessons of history and the possibilities of fiction is reflected in the diverse references from his reading that are found in his witty and pointed questions and statements.

One of Senator COHEN'S books, "Men of Zeal," coauthored in a bipartisan effort with his former colleague from Maine, Senate Majority Leader George Mitchell, looked at the sorry Iran-Contra affair from the perspective of a man who played a critical role in upholding ethical standards in Government. Senator COHEN served on the special committee that investigated that scandal. A Republican Party member who held to a higher standard than party in order to keep the executive branch in check, as the Founding Fathers intended, Senator COHEN demonstrated the ethical toughness that has always been his most noteworthy and laudable characteristic.

Even before the Iran-Contra scandal, while a member of the Judiciary Committee in the House of Representatives in 1974, Senator Bill Cohen voted to bring impeachment charges against a Republican President. Later, he helped to create the independent counsel law, providing for special prosecutors to investigate Executive Branch wrongdoing. He worked to reauthorize the independent counsel law in 1992 and 1993, over the objections of some of the Members in his own party. Most recently, he joined with Senator LEVIN to sponsor the lobby disclosure and gift ban bill that was passed in the last session of this Congress. This effort was also marked by bipartisan negotiation and compromise that allowed the legislation to move forward.

Mr. President, Senator William Cohen has enriched the Senate with his presence here. Like his former colleague, Senator Mitchell, he brought to this floor and to these committee rooms some of the best that Maine has to offer the Nation—a willingness to work hard, to make tough and principled decisions, and a willingness to seek a common ground to serve the common good. And to that, he added his own unflappable good nature and his ability to see through partisan politics to the central policy compromise that could bring two embattled sides together. Having only just turned 56 this past August 28, he is someone about whom I can feel confident in predicting that his retirement from the Senate is only a prelude to future endeavors in new fields. Therefore, while I congratulate him for his work in the Senate, and thank him on behalf of the Senate and those of us who have been and are his colleagues in the Senate, I also wish for him and his new bride great happiness and success in the future.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WYDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. WYDEN. I thank the Chair.

ACCESS TO PATIENT INFORMATION

Mr. WYDEN. Mr. President, I rise to take just a few moments to talk a bit about the gag clause that involves the right of patients across this country to know all the information about their medical condition and the treatments that are appropriate and ought to be made available. I wish to discuss it in the context of the pipeline safety bill.

In the beginning, I particularly wish to thank the bipartisan leadership of Senator DASCHLE and Senator LOTT who have worked closely with us on this also, the continued bipartisan effort of Senators KENNEDY and KYL who, in particular, have worked very hard to try to address this legislation in a responsible way and to demonstrate the bipartisan spirit of this effort. It really all began with Dr. GANSKE of Iowa and Congressman ED MARKEY on the House side, where both pursued this effort in a bipartisan way. Senators LOTT and DASCHLE, KYL, KENNEDY, and I and others have spent several days working to reach an agreement with respect to the legislation that I originally sought to offer several weeks ago with respect to the patient's right to know. These negotiations have been lengthy, they certainly have been difficult, and they are not yet concluded.

Because there has been much good faith on the part of a number of Members on both sides of the aisle, on both the Democratic and Republican side of the aisle, I think it is fair to say that we have made a considerable amount of progress, and I want to make it very clear to the Senate I intend to keep up this fight throughout the session because it is so fundamentally important that the patients of this country in the fastest growing sector of American health care, the health management organization sector, have all the information they need in order to make choices about their health care.

I do think it is important to say tonight that I do not think it is appropriate to withhold any longer a vote on the pipeline safety bill as these negotiations go forward. The pipeline safety bill, in my view, is a good bill. It is an important bill. It, too, has bipartisan support as a result of a great deal of effort, and I would like to put in a special word for the efforts of Senator EXON, of Nebraska, who has labored for a long time on this measure. He is, of course, retiring from the Senate. His leaving will be much felt, and it seems

appropriate that this important and good bill to protect the safety of our energy pipelines go forward. And so I want to make it clear to the Senate tonight I do not think the Senate should withhold a vote on the pipeline safety bill any further as the negotiations go forward with respect to the gag clause in health maintenance organizations that is so often found in plans around this country.

If I might, I wish to take a few minutes to explain why this issue is so important in American health care. Most people say to themselves, what is a gag clause? What does this have to do with me? Why is it so important that it has generated all this attention in the Senate?

A gag clause is something that really keeps the patients in our country from full and complete information about the medical condition and the treatments that are available to them. I think it is fair to say—I know the Senator from Utah, Mr. BENNETT, has done a lot of work in the health care field—reasonable people have differences of opinion with respect to the health care issue. People can differ about the role of the Federal Government; they can differ about the role of the private sector, but it seems to me absolutely indisputable that patients ought to have access to all the information—not half of it, not three-quarters, but all the information—with respect to their medical condition.

What is happening around the country is some managed care plans—this is not all of them. There is good managed care in this country. My part of the Nation pioneered managed care. Too often managed care plans, the scofflaws in the managed care field are cutting corners, and so what they do either in writing or through a pattern of oral communication, these managed care plans tell their doctors, "Don't fill those patients in on all the information about their medical condition." Or they say, "There are some treatments that may be expensive and we think you shouldn't be telling everybody about them." Or maybe they say, "We're watching the referrals that you're making and if you make a lot of referrals outside the health maintenance organization to other physicians, other providers, we're going to watch that. If you make too many of them, we're going to consider getting some other people to deliver our health services."

So these are gag clauses in the literal sense. They get in the way of the doctor-patient relationship and either in writing in the contract established by the health maintenance organization or orally through a pattern of communications between the health maintenance plan and the physician, the doctor is told in very blunt, straightforward terms, "Look, you're not supposed to tell those patients all the facts about their medical condition or all the treatments that might be available to them." I think these restrictions on access to patient information

care turn American health care on its head. The Hippocratic oath, for example, to physicians starts with, "First do no harm."

If you have these gag clauses, essentially, instead of "First do no harm," in these health maintenance organizations the charge is, first, think about the bottom line. Think about the financial condition of the plan and that maybe the plan will have a little less revenue if physicians really tell their patients what is going on and tell them about referrals and the like. Trust, in my view, is the basis of the doctor-patient relationship. Without that trust, physicians cannot perform adequately as caregivers. The patients get short-changed, in terms of the quality of their health care. And I think that, when you limit straightforward and complete information between physicians and their patients, what you are doing is prescribing bad medicine.

Mr. President, there are a number of provisions that are central to this debate and there are two or three that have consumed most of our attention over the last few days, in terms of trying to work this legislation out on a bipartisan basis. Let me say, especially Senator KYL has done yeoman work, in terms of trying to bring all sides together. He has led the effort on the Republican side. He has worked particularly hard with me on a couple of the provisions that I would like to take just a minute or two of the Senate's time to discuss this evening.

The first is with respect to enforcement provisions in this bill. Senator KYL and I both share the view that the States should take the leadership role with respect to enforcement of these gag clause provisions. There is precedent for this in the medigap legislation, the legislation to protect older people from ripoffs in the supplemental policies sold in addition to their Medicare. We have looked at other approaches. In particular, the enforcement provisions that the Senate came together on in a bipartisan way in the maternity legislation looked attractive, but Senator KYL and I have spent a special effort, trying to work out the provisions with respect to ensuring that the States are given the lead in terms of enforcing the anti-gag clause legislation. I think we have made considerable progress. All Senator ought to know there is bipartisan interest in not having some Federal micromanagement, run-from-Washington kind of operation with respect to the enforcement provisions in this gag clause legislation.

The second area that has consumed considerable amount of time in our discussions involves matters of religious and moral expression. Here, the issue, as it does so often in the U.S. Senate, involves especially abortion. Senator KYL and I have worked hard to try to ensure that an individual physician who has religious or moral views with respect to abortion would not be required to express those views in a way

that was contrary to deeply held religious or moral principles that that physician had. At the same time, I think it is understood that, if this is not carefully done, such provisions could become a new form of institutional gag, which would limit communication between doctors and patients. Senator KYL and I have, I think, been able to bring about an approach that does allow an individual physician who, for religious or moral reasons, desires not to discuss abortion issues to be able to do that. I think we will be able to resolve that in a way that is good health policy, is fair, and bipartisan.

Now, the continuing resolution, of course, is before us. The Senate will be dealing with this in the hours ahead. Some may consider it will be the days ahead—but certainly the hours ahead. I want the Senate to understand that I think, with respect to the future of American health care, making sure that patients have access to all information about their medical condition and the treatments that are available to them is about as important as it gets.

The Senator from Vermont also has done a great deal of work in the health care area over the years. We have had a chance to work together on ERISA legislation, and a variety of other matters.

I come back to the proposition that there are a lot of areas where people can differ in the health field. Health is a complex riddle by anybody's calculus. And these debates about the role of the Federal Government and the role of the private sector—these are areas where reasonable people do have differences of opinion. What I think is indisputable, however, is the importance of patients getting all the facts and the patients being in a position to know all of the matters that relate to their getting the best treatment for them, given the kind of medical problems that they face.

So, this ultimately, this question of how to deal with this issue, is not an issue about abortion. No abortions are being performed or referrals made. It is not a question of Federal micromanagement, because the States are put clearly in the lead position with respect to enforcement. It is not a regulatory paradigm, in the sense that Members may have different views with respect to the type of approach. Whether it is a medical savings account approach that some have favored, or single-payer approach that some have favored, this bill does not touch any of those issues. This bill gets to one question and that is: As we look to the decisions involving 21st century health care, are we going to put patients in the driver's seat with respect to their own health care so they can get information?

It seems almost absurd to me that, at a time when we look at how medical information may be exchanged in the future using the Internet, so that folks in rural Vermont and rural Oregon can

tap all these exciting new technologies so as to get more information about their health care and about the treatments available to them, it seems almost fundamental to say that, when a patient and a doctor or a nurse or chiropractor at a health plan sits down with a patient and that patient's family, that provider, that doctor or nurse or chiropractor, is in a position to say to the family, "Look, here are all the facts that you and your loved ones face with respect to your medical condition. You may want to pursue this particular treatment. Perhaps I should refer you to Dr. A or Dr. B, who is outside the health plan." But whatever the ultimate choice of the consumer is at that point, at least the consumer can make it in an informed way.

Right now, while there is good managed care in our country, and I have seen it in my part of the United States, in the Pacific Northwest, too often there have been managed care plans that do not meet those high standards. There are plans that have told their physicians, their nurses, their chiropractors and others: We are going to be watching you, with respect to making referrals.

We want you to know, we are looking over your shoulder with respect to expensive treatments, and those kinds of gag provisions are getting in the way of the doctor-patient relationship, and the trust that is so important.

So I want it understood, Mr. President, that I am going to use every ounce of my strength, working with Senator KYL and Senators on both sides of the aisle, to make sure that this legislation is part of the continuing resolution.

I want to, again, let the Senate know that we are very appreciative of Senators DASCHLE and LOTT and the bipartisan leadership that has worked cooperatively with us. We want to make sure that this legislation gets into the continuing resolution.

Managed care is the fastest growing part of American health care. Both Democrats and Republicans throughout this Congress have looked to managed care repeatedly as the discussions have gone forward on Medicare and other issues. So it is important that patients in these plans get all the facts, get all the information, and we are going to go forward in good faith, as we have done over the last week.

Senator KYL and I have put a big chunk of our waking hours into this effort to try to do it in a bipartisan way. I believe we can get it done. And in the spirit of the progress that has been made and to facilitate the passage of other important legislation, I would like to make it clear that I believe that the Senate should no longer withhold a vote on the pipeline safety bill.

Mr. President, I yield the floor.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. LOTT. Thank you, Mr. President. Mr. President, I would like to express

my appreciation to the distinguished Senator from Oregon for his comments. We have been working together in a cooperative fashion. I think progress has been made. It has been one of those things where I thought it was worked out, and it didn't seem to be quite worked out.

I know there is good faith all around. Senator DASCHLE and I have been following it closely. I thank the Senator for allowing this pipeline safety legislation to go forward. It is very important legislation, and if it expired, it certainly would pose problems for pipeline safety in the country. We will work with him to see if we can come to an agreement. There is at least one more vehicle it can be attached to if we can get it worked out.

So I thank the Senator for allowing this important legislation to go forward.

MORNING BUSINESS

Mr. LOTT. Mr. President, it is my pleasure to rise today in recognition of 100 years of significant accomplishments by the American Academy of Ophthalmology. Since 1896, the four major causes of blindness in the world have been identified and are now preventable, and Academy pioneers have led the way in the eradication of cataract blindness worldwide. The Academy's mission of helping the public maintain healthy eyes and good vision is a lasting tribute to its membership.

In April 1896, Dr. Hal Foster of Kansas City sent out more than 500 invitations to physicians practicing ophthalmology and otolaryngology, inviting them to Kansas City for organizational purposes. Several name changes of the nascent medical society resulted in what ultimately became known as the American Academy of Ophthalmology and Otolaryngology, and remained so until 1979 when the two medical disciplines split into separate academies.

Today, the American Academy of Ophthalmology is the largest national membership association of ophthalmologists—the medical doctors who provide comprehensive eye care, including medical, surgical and optical care. More than 90 percent of practicing U.S. ophthalmologists are Academy members—20,000 strong—and another 3,000 foreign ophthalmologists are international members.

Many principles and strategies that the American Academy of Ophthalmology founded over the years are still championed today. The Academy has fostered a culture of outstanding clinical and educational programs, cutting edge technologies, the latest ophthalmic practice support mechanisms, and highly effective public and government advocacy activities.

Education remains the primary focus of Academy activities. Academy members will celebrate the Centennial Annual meeting in Chicago, October 27-31, 1996. One of the largest and most important ophthalmological meetings in

the world, this 5-day educational event will offer symposia, scientific papers, instructional courses, films, posters, and exhibits designed to educate ophthalmologists and others about practical applications of new advances in eye care.

In the coming years, it is my sincere hope that both the individual and collective efforts of ophthalmologists will continue to transform new knowledge into improved clinical care for the benefit of the American public.

On this centennial observance, I commend the American Academy of Ophthalmology for its steadfast dedication in helping the public maintain healthy eyes and good vision. I urge my colleagues to join with me in saluting the members of the American Academy of Ophthalmology for their many sight-saving accomplishments over the past 100 years.

WYDEN-KENNEDY AMENDMENT PROHIBITING GAG RULE IN HEALTH INSURANCE PLANS

Mr. KENNEDY. Mr. President, gag rules have no place in American medicine. Americans deserve straight talk from their physicians. Physicians deserve protection against insurance companies that abuse their economic power and compel doctors to pay more attention to the health of the company's bottom line than to the health of their patients.

You would think everyone would endorse that principle. But the insurance companies that profit from abusing their patients do not—and neither does the Republican leadership in the House and Senate. Senator WYDEN and I offered an amendment to the Treasury-Postal appropriations bill to end this outrageous practice. A 51-48 majority of the Senate voted with us. But the Republican leadership used a technicality of the budget process to raise a point of order requiring 60 votes for our proposal to pass. We have now revised our proposal so that there will be no point of order when we offer it again.

But the delaying tactics of our opponents still continue. We first offered our amendment on September 10. The point of order was raised against it on September 11. We tried to offer the revised version later that day. We waited on the Senate floor all afternoon and evening, and through the next day as well. We were ready to agree on a time limit to permit a prompt vote. Still the Republican leadership said, "no." Finally, the Republican leadership abandoned the whole bill, rather than allow our amendment to pass.

Since September 12, we have waited for another bill on which to offer this proposal. We were prepared to offer it on the pipeline safety bill, but the Republican leadership will not allow that bill to move forward unless we agree to drop our amendment. The pipeline bill was first offered on September 19—and then abandoned in order to block our amendment.

Since September 19, we have also been attempting to negotiate a reasonable compromise with the Republicans that would achieve the goal of protecting doctor-patient communications, but each time agreement has seemed close, new demands have surfaced. Rolling holds were used to block the Kassebaum-Kennedy bill for months. A similar tactic is being used now.

This issue could be resolved in a few minutes of debate on the Senate floor. A stricter approach than the one we proposed was approved by a 25-0 bipartisan vote in the House Health Subcommittee last June, and the full House Commerce Committee approved it by a voice vote in July. The only thing that stands between the American people and ending these outrageous HMO gag rules is the insistence of the Republican leadership on putting the insurance companies first—and patients last.

The need for this proposal is urgent, which is why we are pressing this issue so strongly in the closing days of this session. Patients deserve this protection—and so do doctors. So why is the Republican leadership in Congress protecting the insurance industry?

One of the most dramatic changes in the health care system in recent years has been the growth of health maintenance organizations and other types of managed care. Today, more than half of all Americans with private insurance are enrolled in such plans. In businesses with more than ten employees the figure is 70 percent.

Between 1990 and 1995 alone, the proportion of Blue Cross and Blue Shield enrollees in managed care plans more than doubled—from 20 percent to almost 50 percent. Even conventional fee-for-service health insurance plans have increasingly adopted features of managed care, such as continuing medical review and case management.

In many ways, these are positive developments. Managed care offers the opportunity to extend the best medical practice to all medical practice. It emphasizes helping people to stay healthy, rather than just caring for them when they are sick. Managed care often means more coordinated care and more effective care for people with multiple medical needs. It offers a needed antidote to profit incentives in the current system to order unnecessary care. These incentives have contributed a great deal to the high cost of health care in recent years.

But the same financial incentives that enable HMOs and other managed care providers to practice more cost-effective medicine can also be abused. They can lead to under-treatment or arbitrary restrictions on care, especially when expensive treatments are involved or are likely to reduce HMO profits.

There is a delicate balance between the business side of medicine and the medical side of medicine, and Congress has an important role to play, especially in cases such as this, where doctors and patients are on one side and