

The per beneficiary limits imposed on home health agencies do not, for a great number of agencies, accurately reflect the costs necessarily incurred in the efficient delivery of needed home health services to beneficiaries.

The amount of reductions in reimbursement for home health services furnished under the Medicare program significantly exceeds the amount of reduction in reimbursement for any other service furnished under the Medicare program. This comes at a time when the need for home health services by the Nation's elderly citizens is growing.

Although this is a nation-wide problem, the impact on my home state of Oklahoma has been disproportionately high. In Oklahoma alone, 198 of the 381 licensed home health care agencies have been forced to close their doors, of which 146 were Medicare certified.

Surviving home health agencies which have managed to stay in business have curtailed their medical services due to financial constraints. As a result of this terrible tragedy, the sickest, most frail Medicare beneficiaries are being deprived access to medically necessary home health services. Thousands of elderly and disabled Americans are not receiving the type of quality care at home that they so much need and deserve.

In our efforts to end fraud and abuse, we must make certain that the benefits and much needed services of home health agencies are not lost. Home health care is the least expensive, most cost efficient provider of medical services for Medicare beneficiaries and must be preserved.

For that reason, I am introducing the Medicare Home Health Services Equity Act of 1999. It is critically important that we address this crisis promptly and pass this vital legislation.

#### ASSESSING HMO CURBS

### HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, July 27, 1999*

Mr. BEREUTER. Mr. Speaker, this Member highly commends to his colleagues the following portions of an editorial "Assessing HMO Curbs," which appeared in the July 21, 1999, edition of the Omaha World-Herald.

[From the Omaha World-Herald, July 21, 1999]

#### ASSESSING HMO CURBS

A lot of hot air accompanies the debate over whether Congress ought to provide a "bill of rights" for people who obtain their health care from health maintenance organizations.

But one thing is reasonably clear. The debate so far has been less about health care than it has been about campaigning for election in 2000.

Democrats want to go into the election season with an excuse to portray Republican candidates as indifferent to the suffering of sick and injured people. The theme is part of a blue-print for restoring Democratic Party control of Congress.

Michael M. Weinstein, in The New York Times, took a calm look at the situation for his readers Sunday. "The debate consisted largely of name-calling," he said, with Vice President Al Gore and House Democratic Leader Richard Gephardt calling the GOP plan a charade and a fraud, respectively, and

GOP Sen. Phil Gramm of Texas accusing the Democrats of wanting to destroy HMOs by mandating expensive coverage that would drive costs into the stratosphere.

"But the partisanship obscures an important truth," Weinstein wrote. "The substantive differences are narrower than they seem. Removed from the context of election-year politics, combatants on both sides concede they could find ways to give Americans protection from health-care plans that wrongly skimp on coverage."

Republicans, said Weinstein, know that their bill would never get past President Clinton. They like the bill because it will help them wring campaign contributions out of HMOs and insurance companies.

Democrats, the Times writer said, privately concede that their bill overreaches. But it will make them even more popular with their generous long-time allies, the members of the Trial Attorneys Association. The Democratic bill would repeal a ban on lawsuits against HMOs, furthering the attorneys' goal of expanding the field for punitive damages.

Weinstein identifies four issues that he says should be relatively easy to compromise: A method by which patients and their physicians can appeal to medical authorities the denial of reimbursement by an HMO; a definition of medical necessity; a modified right to sue for denial of service; and the question of whether the legislation would cover 160 million patients in state-regulated health plans as well as the 50 million in employer-sponsored plans not covered by state regulations.

Political partisanship is not an evil thing. Americans have been well-served by the clash of ideas between two political parties with different philosophical approaches to government. It is part of the system of checks and balances.

However, there are some things that should be obvious to members of both parties.

Patients and their physicians tend to over-use health care, driving up the cost. Sometimes they have no other choice. The Wall Street Journal reported yesterday that visits to emergency rooms, one of the most expensive forms of treatment, are up in some places where HMO treatment is not available at nights and on weekends. Some HMOs want the right to decline reimbursement for emergency room treatment. Is that reasonable? In a case of medical necessity, of course it is not.

HMOs, in attempting to drive the cost back down, have sometimes gone too far in denying care. Although determining the extent of the problem is difficult, it has caused physicians to recoil in horror at the damage done to patients who were sent home from a hospital prematurely or in other ways denied treatment.

Mandated coverage, such as a patient bill of rights, drives up costs, which are typically passed on to the buyers of the health-care coverage—the same businesses and patient groups that turned to HMOs to keep costs down. Policy-makers must not avoid the question of what would happen if costs were raised so high that more people, because of unaffordability, became uninsured. What would be the logic behind that?

The question is how to preserve the benefits of cost-cutting while minimizing its potential to hurt people. Reasonable people, including a handful of moderate Republicans, seem to be saying that a rational way exists to make the system more humane without sacrificing cost-control.

#### INTRODUCTION OF PATIENT ABUSE PREVENTION ACT OF 1999

### HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, July 27, 1999*

Mr. STARK. Mr. Speaker, I am pleased to introduce the "Patient Abuse Prevention Act of 1999", which is being simultaneously introduced in the Senate by Senator HERBERT KOHL (D-Wis.). This bill is designed to ensure that all prospective employees in long-term care facilities undergo criminal background checks. The bill is similar to a proposal in the Administration's budget, also establishing a national registry of individuals with histories of patient abuse by utilizing data from existing state registries. The goal of the new national registry is to prevent workers with a history of abuse from being hired to provide care for the frail elderly.

Previous legislation enacted in 1998 permits—but does not require—nursing homes, skilled nursing facilities and home health agencies to conduct criminal background checks on applicants. This bill takes the next logical step by requiring that all long-term care facilities screen all applicants for employment. The bill is enthusiastically supported by the Secretary of Health and Human Services and the National Citizens' Coalition for Nursing Home Reform. Secretary Shalala believes that this is "the toughest set of requirements ever proposed for long-term care workers." Both letters of endorsement are attached at the conclusion of this statement.

In order to overcome industry resistance to this needed change, this bill allows long-term care facilities to include such costs on their reports submitted to the federal government for reimbursement purposes.

It is clear from several General Accounting Office analyses and hundreds of media reports that in order to improve the quality of care provided in long-term care facilities and decrease fraud and abuse, the federal government must take a more active role in making certain that those who are hired to care for seniors are fully qualified to do so. Thus, in addition to the background check requirements, the bill imposes significant civil monetary penalties upon providers who hire workers who do not pass background checks.

We have all heard the horror stories about convicted violent offenders obtaining jobs in long-term care facilities. Such occurrences are intolerable. This bill is an important step in guaranteeing the safety of our seniors who receive long-term care. I look forward to working with my colleagues in the House and Senate to pass this important quality improvement for Medicare and Medicaid patients.

THE SECRETARY OF HEALTH AND HUMAN SERVICES,

*Washington, DC, July 21, 1999.*

Hon. HERBERT H. KOHL,  
U.S. Senate,  
*Washington, DC.*

DEAR SENATOR KOHL: I want to commend you and Senator Reid for your leadership on the vitally important matter of assuring that our most vulnerable frail and sick elderly and disabled Medicare and Medicaid beneficiaries are protected from people with violent criminal backgrounds or a history of abuse. We in HHS appreciate working with you and your staffs to help ensure that seniors and persons with disabilities receive the safe, high quality care they deserve.

Your "Patient Abuse Prevention Act" will require nursing homes and other long term care providers to initiate background checks of prospective workers. We have a few issues with the bill that we would like to continue to work with you to address. We recognize, however, that this set of requirements is the toughest ever proposed for long term care workers. It builds on earlier proposals by the current bill's sponsors and is similar in a number of respects to proposals made by the President last year. For the many competent, caring, professionals and facilities who provide safe, quality long term care, it sends a message that we respect and value their high standards and want to find new workers who will live up to them as well. However, for criminals and those with a history of abusing or neglecting those dependent on their care, and for those who may have allowed such individuals access to vulnerable beneficiaries, it says in a clear and unmistakable way that you will not find a job in long term care paid for by Medicare or Medicaid because we will not tolerate it.

As President Clinton said when he called for such an approach, "When families have to worry as much about a loved one in a nursing home as one living alone, then we are failing our parents and we must do more." This bill does do more. We applaud your efforts and look forward to continuing to work with you on this bill to improve the safety of sick and frail elderly and disabled people.

Sincerely,

DONNA E. SHALALA.

NATIONAL CITIZENS' COALITION FOR  
NURSING HOME REFORM,  
Washington, DC, July 27, 1999.

Hon. FORTNEY STARK,  
U.S. House of Representatives,  
Washington, DC.

DEAR REPRESENTATIVE STARK: The National Citizens' Coalition for Nursing Home Reform (NCCNHR) commends you and your staff for your initiative in seeking to improve care and conditions in long-term care facilities. NCCNHR is a non-profit consumer organization whose mission is to improve the quality of care and life for long term care residents. Our organization represents residents and their advocates. We work closely with the nation's long-term care ombudsmen and house the National Long Term Care Omnibus Resource Center.

We strongly support your proposed legislation cited as the Patient Abuse Prevention Act, which would require criminal background checks for nursing home workers. This legislation would provide residents protection from individuals with a history of committing crimes against residents. It would also create a much needed National Registry for long-term care employees with a history of abuse, to be used by nursing homes hiring employees for their facilities.

In particular, NCCNHR applauds your revisions to last year's bill, the "Long-Term Care Patient Protection Act of 1998" to include (1) a requirement that criminal background checks of employees will be conducted in all facilities (including specifically, nursing homes, home health, and hospices); (2) that applicants may not be charged for costs of the checks; (3) that applicants who challenge the accuracy of the background check will also be able to appeal the decision and (4) that there is no longer a prohibition on Medicare and Medicaid reimbursement for the costs of conducting background checks.

We strongly urge, however, that the legislation also expand its language to provide criminal background checks on all long-term care workers and not just employees who have direct access to residents. Considering

the vulnerability of long-term care residents, criminal background checks should be conducted on all workers, including contract workers, in all health care settings, including home care, and assisted living.

Again, NCCNHR congratulates you, Representative Stark, on your persistence and foresight. If you need further information, contact me or Ana Rivas-Beck, J.D., Law and Policy Specialist.

Sincerely,

SARAH GREENE BURGER,  
Executive Director.

## RELIEF FROM INTEREST AND PENALTIES ON FERC REFUNDS

### HON. DENNIS MOORE

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 27, 1999

Mr. MOORE. Mr. Speaker, on July 29, the House Commerce Subcommittee on Energy and Power has scheduled a hearing on H.R. 1117, legislation introduced by my colleague from Kansas, JERRY MORAN, and cosponsored by the entire Kansas House delegation.

This legislation would provide relief from unfair interest and penalties on refunds retroactively ordered by the Federal Energy Regulatory Commission. For two decades, FERC allowed gas producers to obtain reimbursement for payment of the Kansas ad valorem tax on natural gas. In a series of orders, FERC repeatedly reaffirmed the rights of gas producers to collect the ad valorem tax, rebuking various challenges to this practice. In 1993, however, FERC reversed 19 years of precedent and ruled that the ad valorem tax had not been eligible for reimbursement. FERC has since ordered all producers operating during a 5-year period in the 1980's to refund both principal and interest associated with reimbursement of the ad valorem tax.

With this legislation hopefully headed toward consideration by the full House of Representatives. I am taking this opportunity to place in the RECORD a letter recently sent by Kansas Senate Democratic Leader Anthony Hensley to House Commerce Committee Ranking Democrat JOHN DINGELL, concerning the legislative history of ad valorem and severance taxes in Kansas. This background will be very helpful to our colleagues as they review this issue in the weeks ahead.

STATE OF KANSAS,

OFFICE OF DEMOCRATIC LEADER,

Topeka, KS, June 18, 1999.

Re: Kansas Ad Valorem Tax refund detrimental  
reliance on federal law.

Hon. JOHN D. DINGELL,  
House of Representatives, Committee on Commerce,  
Rayburn House Office Building,  
Washington, DC.

DEAR CONGRESSMAN DINGELL: On June 8, 1999, the House Energy and Power Subcommittee held a hearing on the Kansas Ad Valorem Tax refund issue. This issue is extremely important to the State of Kansas and one of our most important industries, the production of oil and gas. As a 23-year veteran of the Kansas Legislature and as the Minority Leader of the Kansas Senate, I am writing to request your support of Congressman Jerry Moran's legislation to alleviate what I believe is a serious miscarriage of justice.

I was a member of the Kansas Legislature in 1983 when Governor John Carlin promoted

and obtained passage of a severance tax on oil and gas. Prior to 1983, Kansas did not have a severance tax, only an ad valorem tax. At that time, the ad valorem tax took approximately 3.1% of the value of production and was revenue used by counties and local school districts. Oklahoma and Texas, on the other hand, had severance taxes in place for many years equal to 7.085% to 7.5% of the value of gas production. Wyoming had in place a 4% severance tax on oil and gas "in addition to" a 6.5% property tax on oil and gas for a total tax burden of 10.5%. Likewise, Colorado had a severance tax on gas ranging from 2%-5% "in addition to" a 5.4% property tax, for a total tax burden of 7.4% to 10.4%.

As you know, federal law allowed purchasers to add all of these taxes on to the Federal Power Commission's (FPC) maximum lawful price when purchasing gas. In Wyoming and Colorado, both a severance tax and a property tax were permitted to be added to the maximum lawful price. Texas had both a severance tax and a property tax, however, because of the way its property tax was structured, it was allowed to add on only the 7.5% severance tax to the FPC maximum lawful price. The Kansas Attorney General requested clarification from the FPC to determine whether Kansas' ad valorem tax could lawfully be added to the FPC maximum lawful price. In 1974, Opinion 699-D clarified this issue and did allow the Kansas ad valorem tax as a lawful addition to the price.

In 1981, the State of Kansas needed additional funding for education, roads and infrastructure, and Governor Carlin began studying the potential for a severance tax. One of our state's most valuable natural resources was being depleted and consumed out of state, pipelines were strewn across Kansas, drilling equipment was taking its toll on Kansas roads and infrastructure, and little benefit was being derived by Kansas government. The price of gas at the wellhead, sold in interstate commerce, was being controlled by the federal government at prices far below fair market value, resulting in the transfer of enormous wealth from Kansas to out of state consumers. Texas, Oklahoma, Colorado, Wyoming and other states were collecting taxes on oil and gas at over twice the Kansas tax rate.

Governor Carlin proposed a severance tax which, when added to the existing ad valorem tax, would be comparable to the taxes on oil and gas production collected in other producing states. The legislature studied various severance tax proposals for three years. Oil and gas severance and property tax in neighboring states were studied carefully. A comparative chart used by the Senate Tax Committee is passing the severance tax is enclosed with the attached Memo of Severance and Property Taxes prepared by the Kansas Legislative Research Department during the 1981 severance tax debate.

One of the issues raised during legislative debate was whether both a severance tax and an ad valorem tax on gas could be added to the maximum lawful price of gas as established by the Federal Energy Regulatory Commission (FERC). We were advised that this was allowed in Wyoming, Colorado and other producing states, and that FPC Opinions 699-D allowed the pass through of the Kansas ad valorem tax. This Opinion had been specifically requested by the Kansas Attorney General and the Kansas Legislature relied on Opinion 699-D without further question.

Finally, in 1983, the Kansas Legislature passed a severance tax "in addition to" the existing ad valorem tax. A credit against the severance tax for ad valorem taxes paid was added to the bill resulting in a 7% severance tax on gas and a 4.33% tax on oil. Clearly,