

with the pending agriculture appropriations bill, as well as the two pending Patients' Bill of Rights proposals. Senator DASCHLE and I talked numerous times throughout the day. At one point, beginning on Tuesday night, we talked about trying to find a way to take the Patients' Bill of Rights issues up and deal with them on Wednesday and Thursday. We could not quite get that approved.

Then a proposal was made to go ahead and go forward with the appropriations bills and maybe some other legislative issues that could be cleared and to take up the Patients' Bill of Rights issue on Monday, July 12, when we come back from the recess, and spend until the close of business that week, Thursday, July 15, on the Patients' Bill of Rights issue. Originally, I was thinking it would just be sort of a jump ball; we would get started. We would go forward, no limits on amendments, no limits on time, but understanding everybody had to be fair with each other. There should not be an attempt on this side to block a reasonable number of amendments. Neither should there be an attempt on the other side to say we have to have 18 or 26 or 35 or any requisite number of amendments but just do like we do legislative bills—we take them up and go forward.

Concerns developed on both sides of the aisle, and we modified that proposal two or three times. As of late last night, about 6, we were still exchanging ideas. So we do not have a finalized agreement.

I think progress has been made toward finding a way to complete action on the pending bill; that is, the underlying bill, the appropriations bill, as well as other important appropriation bills. We should be able to find a way to consider the Patients' Bill of Rights issue, because there is belief, I think on both sides, that there are some areas that need to be addressed. There are some rights that need to be protected. There should be some way to appeal decisions within HMOs. Once we make up our minds that we will get together and work through it, I think we will be able to do that. We can continue trying to negotiate, which I am always willing to do, or we can just go ahead and go forward and see what happens.

Keep in mind that this Patients' Bill of Rights issue, or pieces of it, would be on the agriculture appropriations bill, which is not the normal place we would want it. Also, I presume it won't be there when the appropriations bill comes back. So I do not quite understand why we would be doing it this way.

To enable us to negotiate, I will ask for a period of morning business, but I would like to discuss that momentarily with Senator DASCHLE and leadership on both sides.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### MORNING BUSINESS

Mr. LOTT. In order to continue working to find a way to handle these appropriation bills, particularly the underlying bill, the agriculture bill, and the Patients' Bill of Rights, I now ask that there be a period of morning business until 10:30 today, with the time equally divided in the usual form.

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

Mr. LOTT. As always, we will notify Senators as to when votes are scheduled, and we will now have the opportunity for Senators who are on the floor and wish to speak to do so while we continue negotiations.

I yield the floor.

Mr. KENNEDY. Mr. President, as I understand, we are in morning business; is that correct?

The PRESIDING OFFICER. The Senator is correct.

#### PATIENTS' BILL OF RIGHTS

Mr. KENNEDY. Mr. President, I see the Senator from California back on the floor prepared to offer her amendment on the pending legislation. It is an extremely important amendment.

I noted that she was here yesterday morning prepared to offer the amendment, and then in the midmorning, and then at noontime, and then in the early afternoon, midafternoon, and late afternoon.

I am very glad we are going to have a brief period of morning business. But, as one Senator, I hope this is really the last time we are going to have a period of morning business and that we can get on to the business and the substance of this legislation.

We went through all day yesterday with continuations of morning business, and we had some 16 Members—those who are cosponsors of the Patients' Bill of Rights—who came to the floor prepared to speak on the Patients' Bill of Rights, different features of it. Many of them—I think eight of them—are actually prepared to offer amendments but were unable to do so because we were in continued morning business. I see that the Senator from California is prepared to move ahead and move this whole process forward.

I think the American people want us to move ahead on this. I think it is enormously timely that we do, and particularly in the way the Senator from California intends to address the Senate. I know she will speak for herself in a few moments.

We can see what happened in the last few hours among the doctors in this Nation. The American Medical Association is voting to try to come together in a way to advance, one, the quality of health care for the American

consumer; and, two, to be able to deal with these economic pressures they are under from the HMOs, in order to give assurance to their patients that they are going to be able to receive the best in terms of health care.

It just underlines, once again, the importance of Senator FEINSTEIN's amendment in terms of what is going to be defined as medically necessary. That is at the heart of this whole issue on the Patients' Bill of Rights. I think we ought to be about the debate on that during the course of the day.

This is a very fundamental, basic difference. I have read carefully—and it didn't take a great deal of time—the comments of those who spoke yesterday in favor of what I call the "patients' bill of wrongs" being submitted by the other side, which was passed out of our Human Resource Committee. There was no real focus and attention on this fundamental and basic issue. We ought to be about it; we ought to debate it and vote on it and move ahead on other pieces of legislation.

I find that it appears with the proposal—I see the Senator on her feet at the present time—I listened with great interest to the proposal made by the Republican leadership suggesting how we proceed next week on the Patients' Bill of Rights.

The way I looked at their proposal that was going to be offered by the majority leader, it would effectively permit only one Democratic amendment per day and we would have only 4 days, because under the proposal they would have a first-degree amendment, a Republican amendment, and then you could have a second-degree Democratic amendment and a second-degree Republican. That would take 6 hours. Then you would have a first-degree Democrat amendment, a second-degree Republican amendment, a second-degree Democrat amendment. That is 6 more hours. That is 12 hours with one amendment.

That is not the Senate, Mr. President. I don't believe that offer deserves to be accepted. We were tied up in morning business for a full day because they did not want to vote on a single proposition of whether the insurance company accountants or the medical profession ought to make the medical decisions. That is a very basic and fundamental one. This body ought to make a judgment and decision on that issue.

I see the Senator from California on her feet now, and I hope that after she makes a presentation on this, we will be able to just have the opportunity to commend our colleagues to her position. I have reviewed both her statement and her amendment; it is an excellent one. With the acceptance of her amendment, it will mean that every insurance policy in this country, virtually, will establish a higher standard of treatment for the American patients, for every child, for every member of a family, and that will be the basic standard that will be used.

I don't believe that the American families ought to have any less than the best. The Senator from California has an amendment to address that issue. We should listen carefully to it, and then we should move to let the Senate make a judgment on this decision. I look forward to the discussion and debate, and hopefully we can have some resolution of it.

I thank the Chair and yield the floor. Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from California is recognized.

#### PATIENTS' BILL OF RIGHTS

Mrs. FEINSTEIN. Mr. President, I thank the Senator from Massachusetts for his remarks. I don't think anyone in the Senate has ever done more to advance the cause of responsible medical reform than Senator KENNEDY from the State of Massachusetts. He also has been here day after day, with comment after comment, in speech after speech, trying to urge this body to act.

My general style is probably not as forceful as that of the distinguished Senator from Massachusetts. But about this particular issue I am going to be persistent, and I am going to be here for as long as it takes, until there is an opportunity to have a vote on this amendment.

Today, this morning, another arrow in the quiver of reform was played out above the fold in the Washington Post—something, as a doctor's daughter and a doctor's wife for many years, I never thought I would see in the United States of America—and that is, the American Medical Association voting to unionize doctors. The subhead under the headline reads: "Group Acts in Response to Managed Care's Effect on Rights, Duties of Physicians."

I want to quote two brief things from the article:

In setting up what they are calling a "national negotiating organization," AMA officials contended that only through collective bargaining can doctors win back control over which drugs they may prescribe for patients and how much treatment they can provide.

Mr. President, it is a disturbing day when physicians have to unionize to be able to prescribe and treat patients as they see fit. I can't believe that this day has come in the United States of America.

Let me end on this subject, with one quote from the AMA president, Dr. Nancy Dickey. She said:

Traditional unions are there primarily to care for their employee's needs. We are looking for a vehicle that will allow us to carry out the covenant we have with our patients.

That is the reason I am proposing this amendment—or hope to propose the amendment. I hope to have an opportunity to offer an amendment that represents the heart of HMO reform.

This amendment will prevent managed care plans from arbitrarily interfering with or altering the physician's

decision of what is a medically necessary service. The term medically necessary, or appropriate, is defined as "a service or benefit which is consistent with generally accepted principles of professional medical practice." That is something none of us can be opposed to. If this amendment were in fact the law, it would not be necessary for the American Medical Association to vote to unionize physicians. Physicians would have that right guaranteed by this amendment. Let me prove that by reading the actual wording of the amendment:

A group health plan, or health insurance issuer, in connection with health insurance coverage, may not arbitrarily interfere with, or alter, the decision of the treating physician regarding the manner or setting in which particular services are delivered if the services are medically necessary or appropriate for treatment or diagnosis to the extent that such treatment or diagnosis is otherwise a covered benefit.

The amendment is saying that if an individual buys a policy which specifies treatment for certain illnesses, the physician will be free to treat that patient as medically appropriate with respect to both the treatment and the setting.

That is what physicians at the AMA meeting yesterday just voted, to unionize to be able to care for their patients. Why do they need to have a union to achieve something which is self-evident, which is a part of medical training, which is the history of medicine in the United States of America, and has been the history of medicine in this country, up to the growth of managed care, which again could change and alter that history rather dramatically?

The terms "manner" and "setting" mean the location of treatment and the duration of treatment. That means, whether the treatment is in the office or the hospital, the physician has the right to determine the type of treatment and the length of, for example, the hospital stay. The physician would have the right to determine these things.

Physicians today are going to unionize in order to get that basic right, a right which we, the Congress, the Senate of the United States, could, if we chose, give them legislatively.

The term "medically necessary or appropriate" is defined in the amendment as a service or benefit which is consistent with generally accepted medical practice—a very standard definition, a very well-accepted definition.

This amendment is intended to restore the physician to medical care. Very simply stated, I agree with the American College of Surgeons, which said:

Any health care system or plan that removes the surgeon [or doctor] and the patient from the medical decision-making process only undermines the quality of the patient's care and his or her health and well-being.

Our system today has done just that. And the action taken by doctors to unionize strongly suggests that.

Medical providers today are feeling kicked around, arm twisted, "incentivized," and compromised when they try to provide good care to sick people.

I am compelled to offer this amendment because I have no other choice. Yes, I want to pass an agriculture appropriations bill, but I have been trying for almost 3 years now to pass legislation like this to restore medical decisionmaking to medical professionals. As Congress dawdles, the complaints keep rising, people get poor care, and people die.

Let me talk a little bit about managed care.

Managed care is a growing form of health insurance in America. I support managed care. I believe it can in fact be a cost-effective way of delivering good health care to large numbers of people. But it can't do that if accountants and the "green eyeshade" personnel make the decision for the physician. The physician has to make the decision as to what is appropriate medical care.

Today over 160 million Americans—or 75 percent of the insured population—have managed care plans. My State of California—this is the reason I have decided to be so persistent—has the highest penetration of managed care of any state. Eighty-five percent of insured Californians are in some form of managed care.

As managed care has grown, so have the complaints. There seems to be a steady stream of them into my offices, and into other Congressional offices and in the media.

A Kaiser Family Foundation and Harvard University study found the following:

First, a majority—actually 59 percent of Americans—say managed care plans have made it harder for people who are sick to seek medical specialists.

Second, three out of five—61 percent—say managed care has reduced the amount of time doctors can spend with patients.

Third, a majority of people in managed care—55 percent—say they are worried that if they are sick, their health plan would be more concerned about saving money than about what is the best medical treatment.

In Sacramento, a survey of managed care enrollees found that of those consumers experiencing problems, the most common problems were:

One, delay, or denial of care, or payment, 42 percent;

Two, limited access to physicians, 32 percent, such as difficulty getting an appointment, or limited access to specialists;

Three, concerns about quality of care, 11 percent, including inappropriate treatment, facilities, or diagnosis.

As managed care has grown, the pressures on doctors and other professionals to control costs have come at the expense of people's health. In other