am not a Johnny-come-lately when it comes to our national defense.

As Chairman of the Appropriations Committee, I find it profoundly disturbing that the Department of Defense cannot account for the money that it spends, and does not know with any certainty what is in its inventory. These problems have been exposed in detail by the Department's own Inspector General, as well as the General Accounting Office. Ten years after Congress passed the Chief Financial Officers Act of 1990, the Department of Defense has still not been able to pass an audit of its books. The Pentagon's books are in such disarray that outside experts cannot even begin an audit, much less reach a conclusion on one!

Although it does not directly relate to this issue of national missile defense, I was shocked by a report issued by the General Accounting Office last week on the Department of Defense's use of emergency funds intended to buy spare parts in 1999. Out of $1.1 billion appropriated in the Emergency Supplemental Appropriations Act for Fiscal Year 1999 to buy urgently needed spare parts, the GAO reported that the Pentagon could not provide the financial information to show that 92 percent of those funds were used as intended. This is incredible. This Senate passed that legislation to provide that money for spare parts. That is what they said they needed it for. That is what we appropriated it for. Congress gave the Department of Defense over a billion dollars to buy spare parts, which we were told were urgently needed, and we cannot even see the receipt!

If the Department of Defense cannot track $1 billion that it spent on an urgent need, I don't know how it could spend tens of billions of dollars on a missile defense system with any confidence that it is being spent wisely.

As a member of the Armed Services Committee and the Administrative Co-Chairman of the National Security Working Group, along with my colleague, Senator COCHRAN, who was the author of the National Missile Defense Act of 1999, I understand that ballistic missiles are a threat to the United States. I voted for the National Missile Defense Act of 1999, which stated that it is the policy of the United States to deploy a national missile defense system as soon as it is technologically possible. Now, I still support that act. But I also understand that an effective national missile defense system cannot be established through intent alone. Someone has said that the road to Sheol is paved with good intentions. Good intentions are not enough. I think there might be a way toward an effective missile defense system, and it is based on common sense. Engage our friends, and listen to our critics. Learn from the past, and invest wisely. Test carefully, and assess constantly. But most of all, avoid haste. We cannot afford to embark on a folly that could, if improperly managed, damage our national security, while costing billions of dollars.

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

The PRESIDING OFFICER. Will the Senator from West Virginia withhold his request for a quorum?

Mr. BYRD. I withhold my suggestion.

BIPARTISAN PATIENT PROTECTION ACT—Continued

AMENDMENT NO. 810

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. I thank my good friend and colleague from West Virginia and thank the Chair. I also thank my good friend from Iowa who has agreed to let me speak for a few minutes and who is also helping with the easel. He is what you would call a full service Finance Committee ranking member.

I am here today to talk about the Gramm amendment to the McCain-Kennedy patient protection bill. I have been in this Chamber before to talk about this issue as it affects small businesses.

In my role as ranking member, and formerly as chairman, of the Small Business Committee, I have had the opportunity to hear from lots of small businesspeople, men and women from around the country. There are an awful lot of them from Missouri who have called me to express their concerns. Let me tell you they have some very real concerns about this McCain-Kennedy bill.

The particular issue before us today deals with whether or not employers should be able to be sued through new lawsuits permitted by the McCain-Kennedy patient protection bill which is supposed to be targeted against HMOs.

We keep hearing how they want to sue the HMOs. Our colleagues on the other side of the aisle seem to be of two minds on this issue. Some adamantly refuse to admit that their bill actually permits litigation against employers at all. They claim that only HMOs can be targeted. That is simply flat wrong. This has been pointed out numerous times in this Chamber by me and by my colleagues who have actually read the language from the McCain-Kennedy bill, which I have before me.

I encourage any American who has been confused by the claims and counterclaims on whether the McCain-Kennedy bill allows any suits against employers to get a copy of the legislation. Go to the bottom half of page 144 and read the truth for yourself. Page 144 has the good news that:

> Subject to subparagraph (B), paragraph (1)(A) does not authorize a cause of action against an employer or other plan sponsor maintaining the plan. . . .

That is the good news.

The bad news is that part (B) says: ''Notwithstanding subparagraph (A), a cause of action may arise against an employer or other plan sponsor'' under certain clauses and pages and exceptions; and it goes from the bottom of page 144 to pages 145, 146, 147, and 148. That is how you can be sued if you are an employer.

There are some on the other side of the aisle who admit their legislation allows trial attorneys to go after employers but claim these lawsuits are only permitted in narrow circumstances. I give those colleagues and friends credit for greater honesty, but I fault them, nevertheless, for bad analysis because the fact is, the so-called employer exemption from lawsuits in the McCain-Kennedy bill is an extremely complicated and confusing piece of legislative language that will inevitably subject large and small employers to lawsuits and the high cost of defending them.

Before I came to this body, I practiced law. I know what a gold mine of opportunity rests in this language. Oh, boy, if I were on the outside and this were the law, and I wanted to sue an employer, this would be an interesting but not difficult challenge.

We all know you really cannot protect anyone 100 percent from being sued. For better or for worse, any American, with just a little help from a clever attorney, or just an average attorney, can file a lawsuit against any person or any business. The case may be dismissed almost immediately, but they can still file it.

What this means is, if we want to protect employers from frivolous litigation—and this is what everybody says they want to do—we need to give employers protection that will help them get the frivolous lawsuits dismissed immediately, before the lawyers' fees really start to build up. To get these immediate dismissals, you really need clear, distinctive language that makes 100 percent clear what types of lawsuits are and are not allowed.

How does the Gramm amendment make that clear distinction? By saying that you cannot sue your employer, period.

How does the McCain-Kennedy bill try to make a clear distinction on which they say employers can rely? They have a basic guideline that says employers can't be sued, but then they have four entire pages of exceptions, definitions, and clarifications that substantially weaken and confuse that protection. In those four pages there are enough ambiguous words, phrases, and concepts to keep trial attorneys in business for years.

If a plaintiff's lawyer is clever enough—and whatever else I think about them, I know my friends in the trial bar are clever—they are going to find ways to bring lawsuits against employers. In their zeal to get at deep-pocket employers, trial lawyers are going to poke and prod at every word of these four pages looking for weaknesses. Many, or most, will be able to find something to convince a judge not to dismiss a case. The result: A raft of new lawsuits against employers, added expenses, and an enhanced fear of being sued.

That scares the devil out of employers all across the country, as it should,

because if there is one thing our legal system has shown employers, it is that their fear is justified; they are not paranoid; they really are coming after them.

The cost to defend a single lawsuit can easily extend into the tens or hundreds of thousands of dollars. Particularly for these small employers, these expenses are difficult, if not impossible, to bear and could put them out of business. Even if the employer has some type of insurance to cover this legal exposure, the cost of insurance can be a scary prospect in and of itself.

I mentioned before in this Chamber I have received hundreds of letters from small businesses in Missouri. The first issue that almost all of them bring up is whether they can be sued under the McCain-Kennedy bill. Let me read just a few points from a few of them. Simply put, this issue is their No. 1 concern when it comes to patient protection legislation.

Here is one from a lumber company:

> We are currently extending health insurance coverage to our 25 employees. We pay two-thirds of the premium; employees pay one-third. At our last renewal, we were faced with an 18-percent increase, some years in the past being even greater. Future increases will force us to continue to offer less coverage. If Senator KENNEDY's bill passes, this may just be the nail in the coffin. We are willing to suffer with higher prices to an extent, as long as they are fair and justified, but we are not willing to open ourselves up to the liability that this bill may subject us to.

Here is another one, a small business, a fabricator:

> We are a small company with less than 25 enrollees in our health plan. With the increase in health care costs, utilities, and supplies, we are not making much of a profit. And if this continues, we may not be able to stay in business. We employ between 50 and 75 employees. We also do not see how an employer can be held legally responsible for medical court cases. We will eventually be forced, by Mr. Kennedy's bill, to cancel our health plans because of the liability and cost.

In fact, the National Federation of Independent Businesses—one of the strong voices for America's small businesses—believes so strongly about this amendment that they are going to list it as a key vote: Are you with us or are you against us? Small businesses are going to know by how our colleagues vote on this amendment.

For those folks fortunate enough not to be familiar with the ways of Washington, that means that they believe the vote on this amendment will be one of the most important votes cast during the entire year. They intend to use it in their evaluation of Senators' voting records.

All this begs the question: If employers are so well protected by the McCain-Kennedy bill, why are they so scared? Why is NFIB placing such a level of importance on this vote? Why are small businesses in Missouri sending me these letters? Is it because they are not protected? The answer is, they are not well protected.

The McCain-Kennedy bill made a halfhearted try and failed. I related last week several times what the running score was of small businesses that said that they would be forced by this measure to get rid of health care coverage for their employees. Here is today's total: 1,751. That is just a small sample nationwide. These are the number of employees whose employers have written us since they saw the details of the McCain-Kennedy legislation to say they don't want to be involved in tort reform roulette on health care costs. If McCain-Kennedy passes unamended, if their exposure is as written in this compendium of exceptions, exclusions and qualifications, they will terminate their health care plans. Total number of employees covered to date: 1,751.

I suggest that is just a microcosm of small businesses across the country. I have talked to others who have not written in. In our country, most employers voluntarily offer health care coverage, and they are the source of health insurance for the majority of Americans. Overwhelmingly, Americans are employed and get their health care coverage from their employer. The quickest way to destroy the system we now have is to create an atmosphere where employers stop their voluntary willingness to offer coverage. Sure, it is an important benefit, but who wants to be hauled into court if one of their employees has a medical or health care complaint?

Right now we have 43 million Americans who are not covered by health insurance. We have debated many measures in the Senate to find out how to cover those employees. I was terribly disappointed that on a party-line vote last week, this body voted to reject my effort to give 100-percent deductibility for self-employed people. We have been fighting to get that done for a long time. This is a tax bill. It is going to be a tax bill. There is no question about that. That tax provision to get more people covered should have been included.

What we are talking about now is expanding significantly the number of uninsured Americans. Sixty percent of the 43 million who are not covered now are employees of small business. We don't want to add to that number and add to the 43 million. Given the lottery nature of our current legal system, I can't think of anything that would make the employers more fearful and more likely to drop coverage than to say: Hey, you are not authorized to file suit against your employer but notwithstanding subparagraph (A), cause of action may arise against an employer or other plan sponsor, et cetera, et cetera, page after page.

If we want to avoid American businesses dropping coverage on a wholesale basis, employers need to be protected from lawsuits. That is quite simply what the Gramm amendment does. We need to get good health care coverage for all Americans. Yes, we need to give them internal and external appeals. We need to make sure they do not get shortchanged. If they get denied coverage, they need to go to another doctor who is independent, who could order their HMO or their health plan to provide them coverage. What they don't need is to start suing their employers because employers will drop health care coverage like a bad habit, if they think they are going to be subjected to a whole range of lawsuits as a result of the dissatisfaction of an employee with health care coverage.

I hope our colleagues will take a look at the impact of this on small businesses and their employees and accept the Gramm amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, if I could enter into a colloquy with my friend from North Carolina, the manager of the bill, I have been on the floor now for a week relative to this legislation. It is interesting to see how the scapegoats come and go.

Does the Senator from North Carolina remember last week that the big boogeyman was the fact that this was a disguise to get socialized medicine, that what the intent really was was to have this onerous bill pass and everyone would drop their insurance and we would have socialized medicine? Does the Senator remember that?

Mr. EDWARDS. I do remember that.

Mr. REID. Does the Senator remember that they were talking about a States rights issue; that it was none of the business of the Congress; that all of these States were doing a good thing; let them do what they want with how they handle patients and doctors. Does the Senator remember that debate?

Mr. EDWARDS. I do remember it.

Mr. REID. There was a significant period of time last week when there was some discussion about this legislation allowing HMOs to be sued, as if that were some novel approach to the law, to the world. Does my colleague remember that, when it was a surprise that they read the bill and, lo and behold, HMOs could be sued? Does the Senator remember that discussion?

Mr. EDWARDS. I do.

Mr. REID. The assertion regarding socialized medicine is, for lack of a better description, kind of foolish. Regarding States rights, they learned very quickly that wasn't much of a winner. Then the fact that they were surprised about the lawsuits, of course, that was a surprise that they were surprised.

I also was here, as the Senator from North Carolina was, when they spent a great deal of time talking about this novel concept they came up with, that you should be able to deduct 100 percent of the cost of an employer's health insurance. What they failed to tell us is that is something we have been pushing for a long time. In fact, it was put in the tax bill of the former chairman of the committee who is now present. That was put in the tax bill. Of course, it was taken out in conference. My colleague remembers that. As a result of

the games being played, that amendment was defeated.

Today, starting the second week of this debate, I now see a new ploy; that is, they suddenly are saying that now you can file lawsuits—and we are OK with that—but what you are doing is, all the employers in America are going to be sued as a result of having health insurance for their employees, and they are going to drop all their insurance.

With this as a background, I want the Senator from North Carolina to comment about the latest direction; that is, that employers will be sued to death.

Prior to addressing that, I want the Senator to recognize that I have been here longer than the Senator from North Carolina. I have heard this NFIB argument for almost 20 years. If you do this, the NFIB is going to send out a note that you are a bad legislator and they should not vote for you.

In my approximately 20 years in the Congress—I could be mistaken because I am sure once in a while they do it just to look good—I have never known the NFIB to support a Democrat. So all these threats about ''you do this and we are not going to support your candidacy,'' the vast majority of the time, the NFIB is a front for the Republicans. I am saying that; the Senator does not have to agree with me. To this Senator, the threats we have heard today that ''the NFIB is not going to support you'' is no threat to me. They have never supported me, no matter what I did or didn't do.

I would like the Senator to respond to the several questions I have asked. But prior to responding, I have the greatest respect for the senior Senator from Texas. He is a fine man, a good legislator. He has a Ph.D. in economics. He taught economics. If he were here—he knows me well enough and I know him well enough—I would say that with his being in the Chamber. As to his reference to his friend Dicky Flatt, which he uses all the time, I think Dicky Flatt and others better be very careful of people such as my friend, the senior Senator from Texas, giving legal advice. He can stand here and give some good economic advice, but the legal advice we should look at very closely. I think Dicky Flatt should look at that.

I ask my friend from North Carolina, to whom I can't give sufficient superlatives as being more than renowned in the law, a person who has made a reputation around the country as being a good lawyer, to give some comment to the Senate and to those within the sound of our voices as to what he thinks about these continual statements made today—in fact, people are reading the same information. The same person wrote the same speech for several people. I would like the Senator to tell me and the rest of the Senate the fear that an employer who has health insurance for his employee should have as a result of this legislation.

Mr. EDWARDS. I will respond to the Senator's question. I say to my colleague from Iowa, who has been waiting for some time, that I will be brief and I will yield the floor to my friend because he has been waiting to speak.

First of all, the arguments being used serially, one after another, are all arguments that have been trotted out by the HMOs for years now. They are the arguments they make to avoid any kind of reform. They like it just the way it is now. They are different than every other business entity or individual in America, and they want to maintain the status quo. The Senator knows very well that they are spending millions of dollars on lobbyists, public relations, and on television to defeat any kind of HMO reform. So these arguments go to a really fundamental question: Are we going to move forward or are we going to stay where we are?

There is a consensus in this country among the American people, among the Members of this body, among the Members of the House of Representatives, and among virtually every health care group and consumer group in America, that this needs to be done—''this'' being The Bipartisan Patient Protection Act.

There is a reason for that consensus—because we need to do something about this issue that has lingered for so long. For every day that passes, while we engage in what sometimes is high rhetorical debate on the floor of the Senate, there are thousands of American citizens, children and families, who are being denied the care for which they have paid.

Now, it is all well and good for us to have an academic discussion in the Senate about this issue. But there are families and kids all over this country who are not getting the tests they need, not getting the treatment they need, not getting the medical care they need because this legislation has not been passed.

Now, having said that, let me respond specifically to the Senator's question. First, as to the employer liability issue, the Senator knows that JOHN MCCAIN and I worked for months on it. There was a bill in the House of Representatives—the Norwood-Dingell bill—which passed and provided somewhat broader exposure of employers to liability. Senator MCCAIN and I worked, because we are concerned about this issue and we want employers to be protected, to draft our bill with that goal in mind.

President Bush has issued a written principle which is almost identical to our bill. He says, as we say, that unless an employer actually makes a medical decision on an individual patient, they should be exempted from liability. We believe that is what our bill does. The Breaux-Frist bill—the other bill—has another model, what is called a ''designated decisionmaker.'' But it also holds employers, through the designated decisionmaker, responsible where they make individual medical decisions.

So what we have is our bill, the Norwood-Dingell bill that already passed the House, President Bush's principle, and the Breaux-Frist bill, all of which start with a very simple concept; that is, employers ought to be protected unless they step into the shoes of the HMO and make medical decisions.

The only different position is that of Senator GRAMM in his amendment. His position is inconsistent with all those positions, including the President's, inconsistent with the legislation that passed the House, inconsistent with the Breaux-Frist bill. His position is the extreme position. What we are working on as I speak—and we worked on it this past week and over the weekend, Republican and Democratic Senators both—is language that we believe will be appropriate and will help provide more protection for employers.

But what can't be left out of this discussion is the patients; you can't forget the patients. I listened to my friend from Missouri speak a few minutes ago. I didn't hear the words ''patient,'' ''employees,'' or ''families'' spoken by him. I think his concern about employers is to be respected, and that is the reason we want to work together on this issue. We have to always keep in mind, when we are trying to protect employers, that we also have the rights of employees and patients to take into account.

So the right approach is an approach that allows us to provide maximum protection for the employers, without completely ignoring the interests and, in fact, protecting the interests of the patients at the same time. We believe that is what we do. We believe that is what the President has suggested.

There are issues in this debate about which there is great disagreement, but this is not one of them. This is one where regarding the President in his principle, us, and the Breaux-Frist proposal, there are minor differences between them. The bottom line is that all of those start with a simple concept and principle. It is a matter of making sure the language works in an effective day-to-day way.

Mr. REID. I heard the Senator say right now the legislation, in his estimation, protects employers, but if there can be more refinement to that, he will be happy to work with whoever can give him that language; is that true?

Mr. EDWARDS. That is true. We will continue to work on it, going forward. We are continuing to work on it as we speak. If we can find a way to maximize protection for employers with appropriate language and, at the same time, not ignore the interests of the patients, we will do that. I believe that can be done. So do Senators on both sides of the aisle who are talking about this particular issue.

Mr. REID. If, however, we didn't change it in any manner, you could still rest well at night that you and Senator MCCAIN had worked very hard

to take care of this issue on employer liability.

Mr. EDWARDS. We have. We worked long and hard. I believe we have protected employers from many of the concerns that those across the aisle and on both sides of the aisle have raised. But I am the first to say this is an issue on which we should work together to make sure we have language that works to protect America's employers.

I yield to my friend from Tennessee.

The PRESIDING OFFICER (Mr. HOLLINGS). The Senator from Tennessee is recognized.

Mr. THOMPSON. Mr. President, the Senator from Iowa has graciously agreed to let me hold forth here for just a few minutes. If no one has an objection, I ask unanimous consent that he be recognized immediately after me. I don't expect to take more than 5 minutes.

Mr. REID. Reserving the right to object, I could not hear the Senator.

Mr. THOMPSON. I will speak about 5 minutes and then the Senator from Iowa will speak for himself on how long he wants.

Mr. GRASSLEY. I intended to speak as long as I wanted to speak just as everybody else has been doing all afternoon.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. THOMPSON. Mr. President, I have been listening to the debate, and it sounds to me as if we are making progress with regard to this employer issue. We started out without a recognition that this bill provided substantial exposure to employers. The statements that were made by the sponsors of the bill were that they really didn't intend to hold employers liable, except under very limited circumstances. Now, apparently, they agree that perhaps there was more exposure there than was originally intended.

So, as I understand it, some discussions are taking place now to, hopefully, bridge the difference and provide additional protection for employers because what we are doing—what I understand the purpose of the legislation is—is to provide some judicial access, judicial relief against health care plans and against HMOs, and that the thrust of this legislation was not to hold employers liable because employers don't even have to provide these plans if they don't want to.

While it is all well and good to suggest that we give people new remedies and rights, we have to balance that out with the realization that it is going to have some repercussions.

If we go too far and do too much to penalize employers, they are going to walk away from health care coverage. Instead, as pitiful as some of these stories are that we have heard over the last several days about what has been done to individual patients, I hope we do not come back in a couple of years and have to listen to people who have no insurance at all because of legislation we passed driving employers—and small employers—out of the health care business. That is a real possibility, and nobody wants that. We need to be careful.

I suggest that if we really want to carve employers out of the lawsuit business, if we did not mean to cover employers, all we need to do is say so. All we need to do is provide an exemption for employers the same way we provide exemptions for doctors and the same way we provide exemptions for treating hospitals. We provide blanket exemptions for them, but we have to go through all these various pages of rigmarole and definition to try to figure out when an employer who is providing this health care coverage can be sued and when he cannot be sued.

The law of Texas has been upheld. The President's name has been invoked. The law of Texas has been used as an example. The law of Texas exempts employers from their plan.

The concern is there is a group of employers who are basically self-insured who handle these claims on the front end themselves. They do not hire this out. They do it themselves. I believe if you talk to professionals in the industry, they will say that some of the best plans with some of the most comprehensive coverage of any of the plans out there are these self-insured plans. One of the reasons may be that they cut out the middleman. They do not have an HMO to deal with at that stage of the game, and they provide good, comprehensive coverage for their employees.

By definition, they are making decisions on the front end. By definition, under this bill, from the day it is passed, they will have exposure. One might argue that is a good thing or one might argue that is not a good thing, but there is no question with regard to those plans, some of the better plans out there—because employers decided to provide these plans, they wanted to cover their employees, they wanted to do it themselves—that they will be exposed.

One has to ask oneself, what are they going to do the day after this legislation is passed? Are they going to continue to hold themselves for this kind of additional liability? Are they going to contract it out to a third person and pay the additional freight to get them to assume the liability, driving up costs all along the way? I do not know what they will do. I know what they will not do. They will not stand pat.

The things we do in this Congress have an effect on the lives of the American people, whether it be raising taxes, lowering taxes, or whatever. There will be some repercussions in terms of the behavior of these employers. I hope it is not to wind up with less coverage and fewer of these good plans.

One says: They are not going to have anybody to sue if you do not have HMOs and the employers are involved on the front end of it. This bill has set up an elaborate external review entity.

My colleagues say we do not talk enough about patients. This legislation sets up a review entity that allows an independent qualified individual or group of individuals to make decisions with regard to whether or not that employee is being treated fairly. That is a strong move in the direction for patient protections. If we stopped right there and did not do anything else, that would be a major move in this legislation, away from the simple ERISA coverage we have right now.

This bill spends 10, 12 pages setting up this external review process and the external review entity on how they have to be qualified, how they have to be independent, how we have the Secretary looking over their shoulder, all of which is designed to protect the patient.

Under this system, if the entity rules against coverage, then they can go to court and sue, or if he rules for coverage, it goes to another independent individual who is the independent medical reviewer. So there is another level of independent protection for the employee.

It is not as if they are out there hopeless and helpless and totally at the mercy of the employer. The employer may have had some discretion on the front end for sure and made some decisions for sure, but then he goes through this independent appeals process where people who have no relationship with the employer make the decisions as to whether or not there is coverage.

We have exempted doctors. We have exempted hospitals. HMOs are not different in this country from many other entities and entities that have been created in this bill. We exempt States from certain lawsuits. We exempt the Federal Government from certain lawsuits.

The Senator from North Carolina and I are exempted from the things we say in this Chamber. We are protected because there are tradeoffs. Everybody knows that. We make decisions because of public policy reasons to make tradeoffs. If we want to encourage certain conduct, we are willing to make tradeoffs the other way.

It is unfair, when we are in the context of a particular area, legislation dealing with health care, to pick and choose as to among whom we are going to make those tradeoffs, especially if we are giving exemptions to the people who are providing health care—doctors and hospitals—and we do not give exemptions for the people who are providing the health coverage, the employers.

That is the gist of what we are dealing with, and hopefully we can work out some agreement.

My bottom line is, if you do not want to cover employers, and if you believe we may be in danger of causing some good folks to say it is not worth the additional headache, it is not worth the additional exposure, it is not worth the

additional expense to set up different entities to protect ourselves, if we are concerned about that, we need to take that into consideration with any resolution, not to mention the exposure this bill has under other provisions of ERISA.

We have not even talked about that. At least I have not. I have not heard any discussion about that. Employers have exposure under COBRA, under HIPAA, under other areas of ERISA that have nothing to do with health coverage. They have employer exposure if they make any mistakes in dealing with that.

Remember we debated Kennedy-Kassebaum, and we decided people needed to have more portability with their insurance. We decided the fair thing to do was to give them more portability for their insurance and included a penalty of $100 a day plus injunctive relief for an employer who did not behave himself. We debated this liability issue then, and we decided not to do it.

Now what we are doing parenthetically in this HMO bill is bringing back Kennedy-Kassebaum and bringing back COBRA and saying in addition to these penalties we put on the employers when we considered that, we are now going to open that up to litigation and lawsuits. That is a major step, and it should be done only with maximum consideration, and it must be considered in the context of any treatment of employer liability in any compromise we might fashion.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I thank the Senator from Tennessee for what he just said. It was very good for me to let him respond to the other people who have spoken. I particularly suggest to the Senator from Tennessee that there is probably not as much concern on the part of the proponents of this legislation as to whether or not some of the self-employed plans will be abandoned if this bill passes because the Washington bureaucrat has an answer to that problem.

That problem is, we will do what President Clinton suggested in 1993 in his health care plan. We will mandate that every employer has to have insurance for their employee. Just mandate, don't worry about whether or not they can afford to do it. Just pass a Washington mandate that you have to offer this type of insurance.

However, 42 million people in America today do not have health insurance. That number will increase if this bill passes as it currently reads. There will be things done in this bill that will not cause that to happen, if people on the other side of the aisle are willing to compromise. However, if they don't compromise, for these 56 million people who are in self-insured plans, if some of those are abandoned by employers because they don't want the threat of a lawsuit hanging over their head, that number will be increased.

That was suggested in 1993. That was not well received.

It has been suggested after Senator BOND spoke that he never mentioned the word ''patient,'' as if he has no concern about patients being treated fairly and right. That is what Senator BOND's speech was all about. He was concerned that if this legislation passes as it is written, that employers that have self-insured plans—that don't have to offer those plans if they don't want to, but they do offer them because they want to have a good fringe benefit package for their employees—if they drop those for their employees, there are employees who will become patients some day who will not have coverage.

This bill is all about concern for patients. It is not about concern for employers. It is concern for employers that want to offer plans in a self-insured fashion, that they will be encouraged to do it as they have already done for 50-some million employees, and continue, and keep the plans viable.

Why would a family-owned ma-and-pa's plastic corporation, or a ma-and-pa's family-owned machine shop providing self-employed plans for employees, why would they jeopardize the continued existence of the family-owned business if they could be sued under this legislation? What they are going to do is protect what they worked hard for: building up a business, employing people, being the backbone of their local community. That is what the ma-and-pa plastic shop and the ma-and-pa machine shop is all about. They have created this business. Maybe it was created by a grandma and grandpa or mom and dad. It could be in its third generation. This is a family-held business that provides jobs, perhaps for dozens or hundreds of people. They want to provide fringe benefits for their employees, of which health insurance is the most important fringe benefit. They offer it in a self-insured fashion because that is the best way for them to do it. Why would we want to jeopardize it?

Senator BOND was followed by the remarks of the Senator from Tennessee, that this is what this legislation is all about, making sure employees have the fringe benefits of health insurance, with all Members imploring we want to do something for the 42 million people in America who don't have it. If we want to do something for the 42 million people who do not have insurance, and pass legislation as we did with tax credits to incentivize them to buy health insurance, why would we want to put in jeopardy the 50-some million people who already have it through self-insured plans?

It is talking out of both sides of Congress's mouth. On the one hand, we are concerned about 52 million people. We have legislation introduced to do something else about it; on the other hand, we are dealing with a piece of legislation that could put in jeopardy the health care plans of 50-some million people who already have what we think the other 42 million people ought to be encouraged to have.

It is concern over employees having health insurance, and giving those people, if they become patients, the treatment they deserve.

I don't hear concern about patients getting treatment. I hear concern about lawyers getting tribute. We should be concerned about the patient and protecting the self-employed health insurance plans that 50-some million people have as part of that process.

I hope we will consider the speeches by the Senator from Missouri, the Senator from Tennessee, to be speeches concerned about the employees and concerned about those people who become patients getting treatment. That is exactly to what they are speaking. I don't know how anybody could miss that point.

I didn't come to the floor to speak about that aspect of this bill. I came to the floor to speak about a motion filed by my friend, Senator FRIST, on Friday, to commit the bill before the Senate, the Kennedy-McCain bill, to the Health, Education, Labor, and Pensions Committee on one hand and the Finance Committee on the other hand, and to do it with specific instructions from the entire Senate that this bill be reported back to the Senate within 14 days. I come to this conclusion because I am troubled that the Kennedy-McCain bill has bypassed these relevant committees and has been brought directly to the floor without one hearing, without one markup, and most importantly, without the public input into this particular bill that every bill ought to have.

First, I strongly believe patients' protections are critical to every hard-working American who relies on the managed care system. We need a strong and reliable patients' rights bill, and I am supportive of this effort 100 percent. What we don't need is a bill such as the Kennedy-McCain bill that exposes employers to unlimited liability and either eliminates that insurance or dramatically drives up the cost of that health insurance or perhaps being cut back or eliminated. Instead, I believe we should protect patients by ensuring access to needed treatment and specialists, by making sure each patient gets a review of insurance claims that may be denied, and above all, by ensuring that Americans who rely on their employers for health care can still get this covered. I am confident we can reach these goals. However, the very fact that our leadership brought the Kennedy-McCain legislation directly to the floor, without proper committee action, violates the core of the Senate process.

I know my colleagues on the other side will waste no time in accusing me of delaying this bill. But the truth is, had the relevant committees been given the opportunity to consider Kennedy-McCain legislation in the first place, I would not be raising these objections. By bringing this bill directly

to the floor, the message seems to be very loud and clear that the new chairmen—meaning the people who just have become chairmen because of the Democrat majority in the Senate, and under new leadership—are somehow merely speed bumps on the road to the floor.

During my tenure as Finance chairman, Senator after Senator urged the committee process be upheld regarding tax legislation. I listened and I acted. I resisted strong pressures to bypass the Finance Committee as we considered the greatest tax relief bill in a generation. I forged a bipartisan coalition and a consensus, which I believe made it a much better bill. Ultimately, we were able to craft a bill that benefitted from the support of a dozen Members from the Democrat side.

The Finance Committee has proven it can operate in a bipartisan fashion and craft good legislation in a timely manner. We are committed under this motion to report legislation out of the Finance Committee in 14 days. The fact that the chairmanship of the committee has changed I do not believe will in any way affect our ability to work in a good, bipartisan manner. So I stand before the Senate as someone who has seen the importance of the committee process.

The Kennedy-McCain legislation treads on the Finance Committee jurisdiction in ways that are by no means trivial, so I will explain. The Kennedy-McCain bill reduces Federal revenues by $22.6 billion, something that should only be done if that motion comes from the Senate Finance Committee. Nearly one-third of this revenue loss is offset by changes in programs within the jurisdiction of the Finance Committee. Section 502 of the bill before us extends customs user fees generating $7 billion in revenue over 8 years.

You may recall when Congress first authorized these customs user fees, the avowed purpose was to help finance the cost of customs commercial operations and improvements. If these fees are to be extended—and I emphasize ''if''—it should be done in the context of a customs reauthorization bill. This is clearly an issue under the jurisdiction of the Finance Committee.

Most of my colleagues know firsthand the financial pressures put on the Customs Service. From Montana to Delaware to Massachusetts, Texas and California, there is a dire need for funds to modernize the Customs Service. Yet the Kennedy-McCain legislation diverts money intended for customs and uses it to pay for this bill. This is not what Congress intended when these customs fees were increased.

Before authorizing the collection of $7 billion in customs user fees, it seems to me the full Finance Committee should have an opportunity to carefully review, carefully analyze, and of course debate the implications of this move on the future of the Customs Service and customs modernization.

Anybody who has been through customs knows how much time is wasted there, how much gets by the customs officials because they do not have the electronic and technical equipment that is necessary to do their job right, in a fashion that does not inhibit the free and easy transiting of American citizens into and out of our country.

In addition, section 503 of the Kennedy-McCain bill delays payments to Medicare providers, which generate $235 million to help offset the losses of this bill.

No. 1, customs fees; No. 2, delaying payments to Medicare providers to the tune of $235 million.

Let me remind my colleagues, when they hold their town meetings, invariably they have to have people from doctors' offices, from hospital organizations, and from nursing homes already complaining, why doesn't the Federal Government pay its bills on time? Why are they a cash cow, an operating fund for the Federal Government while they are borrowing money at the local bank to keep their operation going because the Federal Government does not pay its bills on time?

It is ironic that while many of us are spending significant amounts of our time working to improve Medicare's effectiveness and efficiency, this bill actually takes steps to exacerbate the frustrations so many providers already experience with delayed payments in Medicare today. So, as you can see, the provisions of this bill go a long way to undermine the Finance Committee's jurisdiction, not only on customs but also in the area of Medicare.

In this first action by new leadership, the committee system and the committee jurisdiction are being tossed aside. I have heard once or twice from the other side that the justification of this behavior is based on the patients' rights debates in 1999, 2 years ago. There is continued talk about how the 1999 patients' rights bills were rammed through this Senate by Republicans.

I want to say that is simply not the case. In 1999, the patients' rights legislation underwent a series of hearings in the Health, Education, and Labor Committee, and ultimately there were 3 days of markup. Let me repeat: 3 days of markup in the Health, Education, Labor, and Pensions Committee. Only after the bill was reported out of committee was it then brought up.

Let me hear no discussion on this point. There is no justification for the conduct we are having on this bill. It is a fact that the Kennedy-McCain bill before us today has never undergone the committee process that the 1999 Patients' Bill of Rights did.

Finally, let me repeat that for those who argue that this is just a delaying tactic, they are simply wrong. The motion to commit instructs the Health, Education, Labor, and Pensions Committee on the one hand and the Finance Committee on the other to report this legislation within 14 days. I repeat, if this bill had been handled properly through the committee in the first place, this motion would not have been necessary.

This motion is not about delaying, it is about ensuring that we have a good patients' rights bill with bipartisan support that is subject to the benefits of the committee process and that the jurisdictions of the Health, Education, Labor, and Pensions, and the Finance Committees are respected. In other words, it pursues a point of view I tried to raise so much when we had the tax bill on the floor in late May. As I managed that bill, I said I hoped the work of Senator BAUCUS, on the part of Democrats, and myself on the part of Republicans, would bring a bipartisan bill before this committee that would serve as somewhat of an example of not only what can be done in an evenly divided Senate to promote good public policy but to promote good public policy in a divided body. Obviously, it must be done in a bipartisan way.

We showed that it could be done in the largest tax bill to pass this body in 20 years. If we did it on taxes, surely we can do it on a Patients' Bill of Rights. I say that not just for the Finance Committee. It is my belief the Health, Education, Labor, and Pensions Committee can do that as well on their part, serving 100 Senators rather than having just a handful of people in this body decide the committee system ought to be thrust aside in the case of a Patients' Bill of Rights, and bringing a bill directly to the floor of the Senate.

I have talked a lot about jurisdiction, but I want to talk about why I am raising these jurisdiction issues because that is a very important point.

For me, the question isn't about inside baseball kind of topic like jurisdiction, which is necessarily important. But it is about two deeper issues that are even bigger than this bill.

I know the public watching this debate, as we are told, is pretty disturbed when they only hear about Members of the Senate talking about the intra-institutional issues. That is what I have been talking about today to some extent. But on the other hand, I know the people of this country are interested in making sure that we protect patients' rights when they are up against the insurance company and feel hopeless about the insurance company not giving them the proper treatment which they are entitled to. The proper treatment the doctor-patient relationship demands. People want to know that what we are doing is improving their life.

So I spend a little bit of time on intra-institutional procedure to say that having this bill go through the Health, Education, Labor, and Pensions Committee on the one hand, and the Finance Committee on the other hand, has something to do with drawing up a piece of legislation that will get these patients the protections to which they are entitled.

What I am talking about can be summed up in two related questions.

The first is: Why are we here? The second is: What is my specific role with respect to the people I serve in my State of Iowa and each Senator in their respective States in the larger national interest of seeing that patients are protected when they are up against an insurance company?

The first question gets at our role as Senators with respect not only to this bill but any legislation. The second refers to our role as committee Members.

So the first question: Why are we here?

Just like the other 99 Members of this body, I wake up every morning and thank the people of my State for the privilege of representing them here in the Senate. Every action I take is an effort to improve the lives of folks back home. Many times I improve it by reducing the role of the Federal Government in their lives. As a conservative, that is generally my preference. On the other hand, there are times that Federal legislation is needed to expand the Federal role to help on a particular problem. This is an example—the Patients' Bill of Rights.

With respect to any legislation but not just this one, if I believe it helps folks back home, I am going to push as hard as I can to see that the legislation becomes law. There is no more satisfying event than seeing the fruits of our labor revealed in ways that changes the lives of real folks back home.

When I approach an idea and I think it is a good idea, my goal is to get it across the goal line. That is true with respect to this bill, the Patients' Bill of Rights.

I think at this particular point in history the American people want results, and particularly on this issue. They want less partisanship, more action, and more thoughtful debate. People in Iowa expect Republicans and Democrats to work together, and to work together in conjunction with the President of the United States to get things done. They expect us as their Senators to do the same thing.

Iowans expect us to refrain from playing partisan politics and to be serious legislators.

I offer that as friendly political advice to many colleagues, particularly those on the other side of the aisle who seem to be visiting Iowa frequently these days. In fact, a surprising large number of Democrat Senators are coming to Iowa.

I approach the tax cut bill as a serious legislative effort. My goal was to work with Republicans and Democrats to get a bill out of the Finance Committee. With Senator BAUCUS' support I did so. That bill improved President Bush's basic proposal.

With respect to the particular policy areas that is the focus of the Patients' Bill of Rights, I start off with a view of how I can make good public policy become law. That particular policy is the arena of Senator KENNEDY on the one hand, and Senator GREGG on the other in the Health, Education, Labor, and Pensions Committee.

If my motion is agreed to, it is up to Senators KENNEDY and GREGG to use the Health, Education, Labor, and Pensions Committee to process the bulk of this legislation through their committee. That is their call.

This legislation faces a potential Presidential veto. That potential Presidential veto doesn't need to be there. It doesn't need to be hanging over our head as a cloud as we work on legislation.

That is where the committee process is very important because maybe the product of the Health, Education, Labor, and Pensions Committee markup would not face a potential Presidential veto. Maybe some of the ambiguities that we have heard debated on the floor of the Senate this afternoon would be cleared up.

Does anyone really think that by following regular order and going through the committee process the bill before us would be in worse shape? Would we have better known the administration's position if it had been in committee? Would we be sitting here wondering where this bill might be going, as we have heard countless numbers of Senators talk about how we can work out a compromise?

Would we be hearing something more compelling from the bill's advocates other than that anyone who opposes the bill is delaying this bill?

I guess one could argue that there is not much use in delaying a bill that the President is going to veto; that we ought to just quickly pass it.

With the proper preparation and the proper compromise—and the committee system is the place to do that—we could avoid a veto, and we should work to avoid a veto.

You can understand that the Finance Committee knows how to do this. Senator BAUCUS and I put a bill out, and we defeated all of the amendments to destroy that bill—close to 50—over the course of 3 days on the floor of this Senate. So it can be done right in committee.

I would like to go back to the question of why we are here in this particular shape.

I tell the folks in Iowa who sent me here that I am trying to get a Patients' Bill of Rights that we will have signed; in other words, that doesn't have a potential veto hanging over its head as the bill we are debating today does. We would get a bill that would become law and provide them with real protections; most importantly, a bill to guarantee treatment for patients, not tribute for attorneys.

In my view, bad process has impaired what could otherwise be a good product, a bipartisan, broadly supported Patients' Bill of Rights.

But, once again, my motion defers the exact language of the bill to the Members of the Health, Education, Labor, and Pensions Committee to resolve these issues. That is the place it should be done.

My second question: What is my specific role as a committee member?

My role is to best use my position as a senior Republican on the Finance Committee to protect and to promote policies that help Iowans and the Nation at large. I have a responsibility to advance and to protect policy interests within the jurisdiction of the Finance Committee.

There are policy implications in this legislation that are within the jurisdiction of my committee, the Finance Committee. These policies deal with three major subjects of the Finance Committee: trade, Medicare, and tax.

It is my responsibility to Iowans and also to my Finance Committee members and to Members of the Senate as a body to be vigilant on these Finance Committee matters. I cannot let these things slip by, nor should I let them slip by. That would be very easy to do. But it would also be very irresponsible.

My motion provides the Finance Committee with the opportunity to do its job on trade, Medicare, and healthcare-related tax issues. This bill affects each of these to some extent.

So I note that I am in some pretty good company when it comes to the value of the committee process.

I would like to refer to a couple quotes that illustrate the importance of my point that we should not bypass the relevant committees of jurisdiction. These quotes come from Members who are very critical of the way the Senate acted by bypassing the Budget Committee on the budget resolution process a couple months ago.

I remind those Senators of some of their comments about the importance of going through the committee process in the Senate. These comments, as I said, were related to the budget. Now let me quote the new chairman of the Budget Committee, Senator CONRAD. This is a quote from a couple months ago:

> I think it would be a profound mistake for us to miss the chance to have the Budget Committee do what it was designed to do, which is to make the work of the larger body easier because of the concentration of efforts of the members of the committee on the responsibility they have.

I quote the distinguished Senator from West Virginia, the now-chairman of the Senate Appropriations Committee. He always shows great eloquence and devotion to this institution in his comments:

> Why have we seen fit in our constitutional system to have committees? Why? If we are going to have committees, why don't we have markups on bills and let Republicans and Democrats hammer it out, hammer out the measure on the anvil of free debate? Why does any chairman want to say to the committee, I am not going to have a markup, period?

These comments are relevant no matter whether Democrats or Republicans are in the majority in this body. Now, in a sense, since the changes of 3 weeks ago on the chairmanships and the majority of this body, the shoe is on the other foot. I will be curious to

see whether these Members, and others who were so critical of the budget resolution process, will stick to the same rationale now that the committee process is being short-circuited for a measure they might be supporting.

I bring up these comments because they reflect a well-founded sentiment of two very serious legislators whom I respect, Senator BYRD and Senator CONRAD. The committees are kind of like laboratories or, as Senator BYRD said, like anvils. They are a place to test ideas. They are a necessary part of serious—and I underline the word ''serious''—legislating.

Senator CONRAD indicated that there is a concentration of member knowledge and expertise in each of these committees. Is it exhaustive? Absolutely not. Am I saying that a bill cannot be improved with amendments on the floor? Of course, no legislation is perfect from that standpoint. But my point is, the legislative product, especially on something as important as health care, should start in the relevant committee.

So my motion would allow the Finance Committee to assert its proper role.

Let's turn to the specific Finance Committee matters that are implicated with this legislation and, hence, the reason for my motion to commit. The first is trade. As I said previously, the customs user fees have been extended to offset the cost of the Patients' Bill of Rights. We are talking about money that was raised by the Senate Finance Committee. Customs fees—getting in and out of the country, getting your baggage inspected, getting your boxes inspected—that money was raised to help the Customs Service and particularly for their modernization. Now they are talking about taking some of that money and putting it over here to finance a Patients' Bill of Rights. So should customs people be concerned? Should the Senate Finance Committee be concerned because we have jurisdiction over that legislation? Should passengers and travelers in and out of the United States be concerned when they are in long lines to go through customs? Of course they should be concerned.

The Finance Committee authorizes and oversees the Customs Service. Customs may not be as politically compelling right now as a Patients' Bill of Rights, but it is very important to all of our constituents. Millions of us, and our goods, come through customs. Customs also protects our people from the entry of illegal products. For instance, customs checks for illegal drugs. Also, customs protects our farmers and consumers from diseased plants and animals.

Just think of the ground zero attitude that is taken by customs today to make sure that the BSE disease, the mad cow disease, prevalent in England and Europe does not come into the United States.

We need to have a customs operation that protects America. It is to be done at the point of entry. The amount of money we spend on that, and the technology our customs employees have, has something to do with whether or not they can do their job right and protect us. The quality of the Customs Service affects us all. So those of us on the Finance Committee do not approach customs matters haphazardly.

As those of you who have traveled recently know, customs systems modernization is a problem we have to tackle. If we are to extend the fee, we should modernize the Customs Service. Customs fees should not be used to finance a Patients' Bill of Rights.

The Health, Education, Labor, and Pensions Committee has had no hearings on Customs fees. There is a reason for that. The committee does not have jurisdiction over the Customs Service. Yet here we are with a bill that has not even been through the Health, Education, Labor, and Pensions Committee, and that bill is offset by a revenue source from another committee, our Finance Committee. Any Finance Committee member should be disturbed with this usurpation of our jurisdiction. Any Finance Committee member who supports this action has ceded away his or her role with respect to an important Finance Committee matter.

The bottom line is, the Finance Committee, including all 20 of its members, has a duty to our constituents, and all of America, to make sure that the Customs Service isn't dealt with in a faulty manner. To the degree that we ignore this duty, we are being negligent. Again, that is the main reason for my motion: To let the committee members do our job.

There is a second Finance Committee policy item covered by my motion. This legislation moves the payment date for certain Medicare providers by just one day. No big deal? Put it in its context. Medicare reform is something we are talking about right now in the Finance Committee. It is an important topic, particularly because we want to give a prescription drug program to seniors under Medicare. Payment structure and dates are important questions that should be considered in the context of Medicare policy, not as some sort of an offset—which is the word we use—for unrelated legislation, because, in fact, this is an offset for an unrelated subject, the Patients' Bill of Rights.

We ought not to mess with Medicare this way. This bill, pulled from the calendar by the majority leader, gets around Senate rule XV. That rule provides a point of order if one committee treads on the territory of another committee. The reason for the rule is to allow committees, such as the Finance Committee, with the expertise on a subject, such as Medicare, to develop the policy first.

Why would Senate leaders, who expect the Finance Committee, in a bipartisan way, to report out a prescription drug bill for senior citizens connected with the Medicare Program, and, hopefully, with some dramatic improvements in Medicare, expect us to do that but not ask our advice on changing the payment date for Medicare?

We ought to develop it within a policy context by the people on the committee who know how to do it and do it right. Then again, as with trade, my motion preserves the right of the Finance Committee to deal with Medicare. It would allow Finance Committee members to review the change in Medicare provider payment dates and make judgments of whether such a date change is sensible or not.

As I said before, all of us have heard complaints from doctors, hospitals, and nursing homes that the Federal Government never makes Medicare payments timely. Our health providers already feel as though they are financing the Federal Government because of these late payments. This bill exacerbates that problem by creating further delays. The Finance Committee understands this problem. We will do it right if it needs to be done. My motion simply lets the Finance Committee members do the job they were appointed to do by the 100 Members of the Senate.

Now I turn to the third Finance Committee policy area implicated by this legislation, and that is the tax policy area. There are no Tax Code changes in this bill. The history of this legislation is an important element. The history of this legislation is that an important element is greater health care affordability and access. That objective has, in past legislation, been met through tax incentives.

This bill's principal sponsor, for instance, the Senator from Arizona, Mr. MCCAIN, recognized the importance of these tax incentives in the debate, as you heard him speak eloquently over the last several days. I also happen to believe that tax incentives for health care access and affordability are a very important part of health care reform. They are the basis for helping 42 million Americans who do not have health insurance today to get some health insurance. To this end, I have, for instance, proposed changes in the tax treatment of long-term care insurance and expenses.

Some might ask: Why, if I support health care-related tax cuts, did I oppose Senator HUTCHINSON's amendment on self-employed insurance? Well, it is a very good question, one I should be responsive to and answer.

The answer is, most obviously, that Senators HUTCHINSON and BOND have an excellent proposal, one I strongly support as a policy of their amendment. But I opposed the amendment last week because the underlying bill is not a Finance Committee bill. In this case, the underlying bill is not a tax bill. So the third reason for my motion is to provide the Finance Committee with its rightful opportunity, through its tax-writing powers, to add a health care-related tax cut title to this legislation.

If this bill had gone through our committee, that would have been done. Or if it hadn't gone through our committee but we had had time, our committee would have voted out such an amendment, I am sure. There is no doubt that Senator HUTCHINSON's amendment, along with a number of other good health care-related tax cuts, would be on the floor right now being debated as part of this package.

Once again, my motion let's us do this legislation the right way, by letting the Finance Committee members do their job. From that standpoint, again, I stress the bipartisanship of the Senate Finance Committee.

At my urging, Chairman BAUCUS agreed to consider a package of health care-related tax cuts in an upcoming Finance Committee markup. So even if my motion fails, we will be back on the Senate floor in the near future with a Finance Committee package of health care-related tax incentives.

In explaining the reason behind my motion, I talked about what the Finance Committee might or might not do if this motion is adopted. Just as importantly, I believe there are some serious negative implications if my motion is defeated in terms of how the Senate does the people's business. Let me turn to a couple hypotheticals to illustrate the problem my motion gets at. These hypotheticals, hopefully, will disturb all Members.

Turn the clock back a couple months and hypothesize that Senator LOTT, with my cooperation, were to move a version of the Finance Committee's education tax relief proposal. Also, let me say that the revenue loss from those tax cuts were offset by a change to a HELP Committee program, something like student loans. In other words, I am saying let's just suppose hypothetically that Senator LOTT wanted some proposals from our committee to bring to the Senate floor and we were going to offset them with programs under the jurisdiction of the HELP Committee.

Under this scenario, obviously, people on that committee could be very angry. They would have every right to be angry because that kind of maneuver on my part, as a member of the Finance Committee, would be wrong. They would have a right, then, in the Health, Education, Labor, and Pensions Committee, to be outraged. The Finance Committee would have no business in a bill pulled off the calendar such as this one of undoing a student loan policy under the jurisdiction of another committee. It would be wrong from two points, both substantive and procedural.

What has happened here is just as bad. The Finance Committee members who support the process that has brought this bill before us should take a ''beware'' position. Supporting the process means they support disenfranchising their own committee. By contrast, anyone who supports my motion recognizes the legitimacy of the committee system.

I have one last hypothetical. This time let's talk about another sponsor of this bill. Let's go back to Mr. MCCAIN, the good Senator from Arizona, and his Commerce Committee. Under this hypothetical scenario, Senator DASCHLE, with Senator BAUCUS's cooperation, would bring a bill to create a special form of tax credit bond for Amtrak. That issue has been before us before. A part of that legislation pulled from the calendar, such as this bill, would suspend the Amtrak reforms. That is within the jurisdiction of Senator MCCAIN's Commerce Committee or, as I could say, the Presiding Officer now, the Senator from South Carolina.

I hope these Senators would be angry and rightfully so. I would expect them to protect a policy important to the Commerce Committee. Amtrak reform is that policy and that subject. These Senators would not want an alteration of the Amtrak reforms railroaded through the Senate on an unrelated bill drafted by a committee other than their own committee, the Commerce Committee, I would suspect.

In both of these hypotheticals, the rights of committee members would be violated. These cases are no different than the case before us, the case of jurisdiction and sources of revenue from the Finance Committee being robbed without the consideration of the Finance Committee to fund a piece of legislation, the Patients' Bill of Rights, coming out of the Health, Education, Labor, and Pensions Committee.

The two hypotheticals are disturbing because both involve dubious procedural and substantive policy decisions. Both hypotheticals short circuit important policy decisions and discussions.

A faulty process usually leads to faulty substance. So I have taken a long time to tell you what my motion is all about. It corrects the faulty process that has ensnared this Patients' Bill of Rights, which should otherwise move to the floor only after debate in the committee. And if it had gone through the committees, I believe it would move through the floor proceedings very expeditiously.

Mr. THOMPSON. Will the Senator yield for a question?

Mr. GRASSLEY. Yes.

Mr. THOMPSON. Let me make sure I understand the Senator. This bill that we have been considering has not gone through the committee process this year; is that correct?

Mr. GRASSLEY. That is correct.

Mr. THOMPSON. The Senator mentioned the prerogative of the committee. Having been a chairman, I understand what he is talking about. From the standpoint of patients and the Patients' Bill of Rights, which we have been here discussing today and Friday in terms of who was covered and who wasn't covered, when employers had liability and when they did not, are these the kinds of things that get hashed out in committee?

Mr. GRASSLEY. Obviously. From the standpoint of the Health, Education, Labor, and Pensions Committee, these things were debated and hashed out in 1999 before the bill came to the Senate floor.

Mr. THOMPSON. But not this year.

Mr. GRASSLEY. Not this year.

Mr. THOMPSON. In 1999, were there any liability provisions in that bill? I don't believe there were any liability provisions in that bill.

Mr. GRASSLEY. Right, because I think there was due consideration to the tradeoff between the people who don't have insurance now—42 million people—and the people who do have insurance through self-employed plans, and that there was within the committee a real concern about whether or not those employers might drop their insurance—not that we are concerned about the employer, but we are concerned about the employee if they are not going to have health insurance.

Mr. THOMPSON. What I am getting at is, is it not true that the liability parts of these bills have not been referred to the Judiciary Committee?

Mr. GRASSLEY. That is absolutely right. I thought the Senator was talking about the Health, Education, Labor, and Pensions Committee. These would also be within their jurisdiction.

Mr. THOMPSON. Not only has the Finance Committee not had a chance to consider their portion, the Judiciary Committee has not had the opportunity to consider the liability portion, which is so controversial. We are hashing out right now what this thick bill means regarding liability. It has never been in the appropriate committee to go through the natural, normal committee process on a bill of this importance; is that correct?

Mr. GRASSLEY. Yes. I am a member of the Judiciary Committee, and we would look at these things and give them the due consideration they ought to have. I know the Senator from Tennessee has served on the Judiciary Committee and he knows that is a very important part of our work.

I thank the Senator from Tennessee for bringing those points to us because he reminds me that not only has it not been considered by the Health, Education, Labor, and Pensions Committee, which I have been talking about, and the Finance Committee, because I am a member and the senior Republican on that committee, but also a third committee should have considered perhaps the most controversial part of this legislation before us, and that has not had the due consideration that important changes in law and liability ought to have in this Chamber.

I am just about done. I have spoken now for a long time on my motion to commit to the respective committees. I guess I am being reminded my motion to commit is to the Health, Education, Labor, and Pensions Committee on the one hand and to the Finance Committee on the other. Maybe my motion

should be broadened—although I am not going to do that at this point—to the point of the Judiciary Committee taking a look-see at the liability provisions as well.

A vote for the motion to commit would put this bill on the right track. It lets members of these committees do the job that we were sent here to do. The Health, Education, Labor, and Pensions Committee and the Finance Committee have a great track record in this Congress. They will continue to do so. Taking this bill through the relevant committees will only improve it and ultimately make it a better law, and one that is not in any way subject to a potential—I predict, not subject to a potential veto threat, as the legislation now is.

After all, isn't getting the job done, getting a good Patients' Bill of Rights, what the people really want—a good law that is produced in a proper way, a bill that will guarantee treatment for patients, not a tribute for lawyers?

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. EDWARDS. Mr. President, let me say a few words about the bill and tell a story about a patient in North Carolina, and we will have an amendment to offer. First of all, the entire purpose of this legislation is to change the law so that the law is on the side of patients and doctors instead of being on the side of the big HMOs, where it has been for many years. We want health care decisions made by families who are affected by them, and by doctors and nurses who have the education and training to make those decisions. It is just that simple.

That is the reason we create the rights among all Americans with health insurance or HMO coverage to have more control over their health care decisions. That is what this is about—having those rights be enforceable because if they are not enforceable, they don't mean anything. That is why we have specifically provided for access to specialists by families; access to clinical trials, if they need that; and being able to go to the emergency room directly without having to call an HMO or a 1–800 number before going to the emergency room—that is the last thing in the world any family ought to have to worry about before going to the emergency room—making sure a woman can see an OB/GYN as a primary care provider.

These rights are aimed at giving patients and families more control over health care decisions. We have all heard the horror stories of legitimate claims being denied by HMOs. That is what this bill is aimed at—putting the law on the side of the patients and on the side of the doctors.

In addition to these substantive rights, we have provisions to make those rights enforceable, so that they mean something. We have an internal review process. First of all, the HMO decides in the first instance whether they are going to cover a claim. If that is unsuccessful, then we have an internal review process within the HMO to get that decision reversed. So if a child is denied the care that child needs, then the family has somewhere to go. These families who are up against big insurance companies, big HMOs, big bureaucracies, under present law they can't do anything. I say this to my colleagues who have been here.

Some say we need to spend more time on this issue. This issue has been around for years now. Every day that we fail to enact legislation and have it signed by the President, there are thousands of people in this country who are being denied the care they need. This is an issue that we need to do something about and stop talking about. It should not be a political issue.

Senator MCCAIN and I have bipartisan support, consensus support for our bill here in the Senate and in the House of Representatives. We have virtually every health care group and consumer group in America, including the American Medical Association, supporting our legislation. These people deal with these issues every day. Doctors get to see what is happening to their patients, and there are bureaucrats sitting behind desks 200 miles away, never having seen their patient, telling them what their patient needs. We have families all over this country who know that their child needs a test, but some bureaucrat five States away, sitting behind a desk somewhere, says they are not going to pay for it.

That is what this legislation is about—so that when people have health insurance and they have HMO coverage, it means something. If they get rejected arbitrarily and are treated unfairly and improperly by a big HMO, they would have the power, finally, to do something about it.

That is why we have an internal review process—to reverse the decision within the HMO—and then if that does not work, we have an independent third party review, a panel of doctors, who can come in and say, that is wrong—the doctor was right, the HMO was wrong—and order the treatment be provided.

None of these things exists today. Today, if a doctor orders a test for a 5-year-old child with cancer and if an HMO says, ''We are not paying for it,'' they are stuck. There is no internal review process; there is no external review process.

What chance does that family have against a huge insurance company? That is what this bill is about. It is about a very simple idea: that HMOs and insurance companies ought to be treated as everybody else; more importantly, putting the law finally back on the side of patients, families, and doctors so they can do something about a wrongful decision by an HMO or an insurance company. That is what this debate is about.

The HMOs have been trotting out every conceivable obstacle to something happening. Anybody who turns their television on will see the ads they are running right now, all these scare tactics and old rhetoric. They have been using it for years. They just want to do everything they can to keep their special status, their privileged status. They like things the way they are. They do not want patients and families to have any power.

We are going to do something about it. I will tell you something else: The families, the children, the patients do not have lobbyists in Washington; they do not have millions of dollars to buy ads on television. They are counting on us to represent them. They are counting on us to do something for them. That is what this debate boils down to: You are either on the side of maintaining the big HMO special status or you are on the side of letting families, doctors, trained people, make health care decisions.

It is not an accident that the American Medical Association, hundreds of health care groups, doctors groups, and consumer groups support our bill. It is not an accident that most of the Senate supports our bill. It is not an accident that most of the House of Representatives supports our bill.

There is a consensus in this country that something needs to be done. What we have to make sure that we get past all the old rhetoric, all the old scare tactics, all the propaganda that is put out by the HMOs. They have huge resources and their voice is heard loudly and clearly in this debate.

Our responsibility is to make sure the voices of the families of this country who do not have big money, who do not have anybody lobbying for them in Washington, are being heard. That is what this is about. Stalemate and nothing occurring is exactly what the HMOs want. That is the easiest result. We have to overcome that. We have to overcome their rhetoric. We have to overcome these obstacles because we are fighting for the children and families of this country who need to make their own health care decisions.

Today I want to talk about one such family. This is a young woman from Wilmington, NC. Her photograph with her husband is behind me. Her name is Terri Seargent. She suffers from a fatal genetic disorder known as alpha one. Alpha one keeps Terri's liver and lungs from working properly. Her body is not able to fight off viruses or pollutants in the air, and if it is left untreated, alpha one eventually destroys the lungs and causes the patient to die. Terri is still fighting this disease, but she is at the point where she only has 43 percent lung capacity.

The problem is Terri is not just fighting this serious disease; she is also fighting her HMO. Ever since she was diagnosed with alpha one, she has been treated by specialists who put her on medication to keep her lungs working as well as they can, to keep her from getting worse. With that medication, she is able to lead a fairly normal life even though she has a serious problem.

She continues to work. She switched jobs, so she has a new HMO, a new health plan. Her HMO first would not let her see the specialist she had been seeing. Second, they would not pay for her medication. They told her she ought to switch to a generic drug because it was cheaper, but then they would not pay for the generic drug.

Here is a young woman who has a very serious medical problem; she is continuing to fight through it courageously to go to work and do everything she can to be productive for herself and her family, and her HMO will not let her see a specialist and will not pay for her medicine. Her medication costs $4,000 a month. It is expensive, but it is critical to the quality of her life and being a contributing member of her family.

What good is her health insurance—she has been paying premiums for years now—what good is that if, when it actually comes time that she needs this medication to allow her to continue to live and stay as healthy as she can and continue to work, the insurance company will not pay for these prescription drugs she desperately needs?

Unfortunately, Terri's case is one in a long list of what we hear every day. When I have townhall meetings or when I am standing on a street corner talking with people, over and over they come up to me and say: You won't believe what the insurance company did to me; you won't believe what the HMO did to my child.

These people need a chance; they need a fighting chance, and that is all we are trying to do, to level the playing field. Let's give these families and young women such as Terri who have serious diseases a chance when their insurance company or HMO says: You are out of luck; we are not paying for it. When a child with cancer needs a test or specialized care and the HMO or insurance company says, ''We're not paying for it,'' even though they have been paying premiums for years, all we are trying to do is give that family a chance. It gets to be pretty simple.

In many cases, it is an individual, a child, a family against a big insurance company, the same big insurance companies that are spending millions of dollars on lobbyists and television ads right now to make sure people such as Terri cannot take them on. That is what this fight is about. It gets to be about a very simple problem.

I have worked with my colleagues on this issue all the time I have been in the Senate—some worked on it very hard before I came to the Senate. I believe when we finish this debate—hopefully this week, but if not this week, for whatever period of time it takes—that we will finally be able to say the big HMOs and all their money and all their power have been overcome and doctors, patients, and families in America finally have a chance.

Mr. REID. Will my friend yield for a question?

Mr. EDWARDS. Yes.

Mr. REID. The Senator has done a great job of explaining how important this bill is to patients, but it is also important to doctors. If the Senator will allow me to read a letter I received from a Las Vegas physician, this physician is formerly head of the State medical society and is chief of staff to the largest hospital in Nevada, about an 800-bed hospital. This letter is addressed to me.

After the first paragraph saying hello to me, he said:

As you have heard from so many Nevadans over the past several years, we need a mechanism where patients have options where care is denied. The following case is a clear illustration.

On April 20th 1999, Joseph Greuble died at the age of 47 from malnutrition. Joseph's malnutrition was a direct complication of his life long battle with Crohns Disease. Joseph's gastrointestinal problem was quite complex. His disease was complicated by ulcerations, fistulae, bleeding, obstruction, electrolyte disturbances, seizures, and chronic pain, and Joseph required multiple operations. Continuity of care is most important when dealing with an incurable, chronic, debilitating disease. In Joseph's case, the system's failure to provide continuity of care proved tragic and fatal.

I served as Joseph's personal physician for 11 years. As Joseph's conditioned worsened he was no longer able to live independently, and he moved into his mother's small apartment in Las Vegas. His mother would accompany him to my office for all of Joseph's visits and as a result, I came to know his mother Marion quite well.

For over a decade, I performed needed physical examinations, arranged for appropriate diagnostic studies, wrote Joseph's prescriptions, and attended to him in the hospital whenever he required admission due to complications of his disease. One of Joseph's most pressing needs was for nutritional support. Joseph had become malnourished as a complication of his Crohns Disease, and required TPN (intravenous nutrition). Joseph's weight had fallen to just over 110 pounds, and a 5'10'' tall Joseph needed the TPN to maintain his weight and prevent death due to malnutrition.

In January of 1999, Joseph was told by his HMO that I could not longer treat him. Appeals by both myself and Joseph to have this decision reversed were denied. My offer to see Joseph free of charge was rejected by the HMO, as I still would not have been permitted to write his prescriptions, direct his nutritional support, order any diagnostic testing or request needed consultations.

While I do not have any of the medical records of Joseph's treatment for the three months after he left my care, Joseph's mother informs me that his TPN had been discontinued, that his malnutrition worsened, his weight dropping to less than 100 pounds. Joseph, malnourished and unable to fight off infection, subsequently developed pneumonia, sepsis, and died.

I have received permission from Mrs. Grouble to share this story. Morion hopes that sharing her son's story will help achieve the needed legislation to prevent this from happening in the future. Holding health plans accountable when they harm patients is not about suing insurance companies and driving up the cost of health care, it is about stopping abuses and bringing compassion back to medicine. Until the health plans are accountable, people like Joseph and his family will continue to suffer.

I say to my friend from North Carolina, this is his bill before the national legislature. This legislation, the Senator would agree, would help patients, but also would help physicians such as my friend, Dr. Nemec, prescribe and give appropriate care to patients. Is that a fair statement?

Mr. EDWARDS. That is absolutely a fair statement. When I have town hall meetings in North Carolina, we often have physicians show up and share horror stories, including ordering care for a patient, with some clerk sitting behind a desk 300 miles away reversing it and overruling a doctor with many years of education and training because they thought they knew better; there was no way they would pay for the particular care.

Mr. REID. Dr. Nemec stated this is one of many cases. He could write me letters on case after case, but he wanted me to indicate he feels this is just about the straw that breaks the camel's back. A man 5 foot 10, weighing less than 100 pounds, and they prevented him from eating, in effect: You are going to die anyway; what is an extra few months or a year.

I want the Senator from North Carolina to know how much I and the people of Nevada appreciate the work the Senator is doing, spending weeks of his time working with Senator MCCAIN, coming up with legislation that allows the Frank Nemecs of the world to give proper care to patients and will allow people such as this lovely woman, pictured behind me, to know when she pays for her insurance for years, when it comes time she needs help, that help will be there.

I want the Senator to know how much I appreciate what is being done. Not only do I appreciate it but so do the people of the State of Nevada. Hundreds of organizations all over the country have contacted us. I have read into the RECORD already, and I will continue reading when we have time on the floor, the names of the entities that support the work done by the Senator from North Carolina. The Senator has been here a short period of time. The impact he has made and the impact he will make adding his name to this legislation will give people hope for generations to come. I appreciate the Senator's work.

Mr. EDWARDS. I thank the Senator for his comments.

I point out, as the Senator well knows, the American Medical Association strongly supports our legislation. Having met with them many times about this issue, they want their doctors to be able to provide the quality care they need to provide to their patients. It is a simple thing from their perspective. For health care providers, doctors and nurses, this is not a money issue. This is not an issue of what their earnings or salaries will be. This is purely an issue of whether they are going to be able to provide the care they have been educated and trained and have spent their life preparing to provide. That is what this is about. They are committed to doing something.

Every day their members all over this country see in their offices patients who need treatment, who need care, who are being arbitrarily denied by people far away who have never seen them, who have no idea what they need.

The horror stories go on and on. We have a young man in North Carolina who is severely sick. They quit paying for his oxygen. We had a young boy with cerebral palsy who needed physical therapy and other therapies on a daily basis and they said it would not do any good; they were not paying. The stories go on and on and on.

With respect to our colleagues on both sides of the aisle, we will work our way through the intricacies of this legislation, whether the issue of exhaustion of administrative remedies, legal terms that may not mean a lot to the American people, we will work our way through those issues and find a bipartisan way to get that done.

What we shouldn't do is leave the Senate without having done something about this issue. The issue has been around for years and has been fought vigorously by the HMOs. We have a responsibility to empower the families of this country to have more control over their health care decisions. That is what this debate is about. Hopefully, by the time we finish this debate, whether this week or next week or the following week, however long it takes—and I believe Senator DASCHLE indicated he is willing to stay as long as we have to—we will be able to walk out of here and be proud of what we have done in giving families, doctors, and patients more control over their health care decisions and the power to do something when they have been treated improperly. That is what this is about.

AMENDMENT NO. 812

Mr. President, pursuant to the previous order, I call up the amendment at the desk by Senator MCCAIN and myself.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. EDWARDS] (for Mr. MCCAIN (for himself and Mr. EDWARDS)) proposes an amendment numbered 812.

Mr. EDWARDS. I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To express the Sense of the Senate with regard to the selection of independent review organizations)

At the appropriate place, insert the following:

SEC. . SENSE OF THE SENATE REGARDING FAIR REVIEW PROCESS

(a) FINDINGS.—The Senate finds the following:

(1) A fair, timely, impartial independent external appeals process is essential to any meaningful program of patient protection.

(2) The independence and objectivity of the review organization and review process must be ensured.

(3) It is incompatible with a fair and independent appeals process to allow a health maintenance organization to select the review organization that is entrusted with providing a neutral and unbiased medical review.

(4) The American Arbitration Association and arbitration standards adopted under chapter 44 of title 28, United States Code (28 U.S.C. 651 et seq.) both prohibit, as inherently unfair, the right of one party to a dispute to choose the judge in that dispute.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) every patient who is denied care by a health maintenance organization or other health insurance company should be entitled to a fair, speedy, impartial appeal to a review organization that has not been selected by the health plan;

(2) the States should be empowered to maintain and develop the appropriate process for selection of the independent external review entity;

(3) a child battling a rare cancer whose health maintenance organization has denied a covered treatment recommended by its physician should be entitled to a fair and impartial external appeal to a review organization that has not been chosen by the organization or plan that has denied the care; and

(4) patient protection legislation should not pre-empt existing State laws in States where there already are strong laws in place regarding the selection of independent review organizations.

Mr. EDWARDS. We have talked about the need for an independent review once there is an internal review and the HMO or insurance company denies the claim, to be able to go to a truly independent panel to get the case decided and the decision reversed if a wrongful decision has been made. This sense-of-the-Senate amendment simply provides we all believe that review panel needs to be truly independent in that the HMO and the insurance company should not be able to appoint the members of that panel nor have control over who goes on that panel.

We will debate this amendment tomorrow, but its underlying purpose is to support the notion that I think a majority of the Senate, maybe the vast majority, supports, which is if you are going to have an independent review by a panel of health care providers or doctors, that panel needs to be truly independent, not connected to the HMO, not connected to the insurance company, and also not connected to the patient or the doctor involved, so you have a fair and impartial group to decide whether the claim or treatment should be paid.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I was listening to the description of the sense of the Senate and I wish to compliment my colleague from North Carolina for introducing it. It is extremely important in the administrative process that the procedures we set up are guaranteed to be qualified and guaranteed to be independent. This bill goes a very long way towards doing that. Obviously, I have some problems with this bill. With regard to the provision setting forth these independent entities, the qualified external review entity is established. That means when we have these cases where there is an issue as to whether or not there is coverage, it is the independent person who decides.

We hear about a lot of terrible cases. We get letters from people. We talk to people when we go back home. We hear about people who are sick; in some cases there is absolutely nothing anybody can do, and certainly not us. We hear about people who have terrible accidents. We hear about people who are victims of crimes. We hear about a lot of misfortune. But, in the health care area, we have a system in this country where people can get insured for a lot of things. The deal is, your employer provides this for you. The deal is, your wages are affected by it, of course. The deal is, we are going to provide you insurance to cover certain things in exchange for a premium that the employer is going to pay.

If you cover absolutely anything, and you have a contract—which has never been drafted—that says whatever happens to you, however you get sick, however much it costs, however onerous your injuries, we are going to cover you, no questions asked—the premium for that would be astronomical. Nobody could afford that. It is unfortunate. It doesn't make that person any less sick. It doesn't make that person any less deserving. But that is just the way it is.

We got into managed care because we, in this body, encouraged the creation of these HMOs. The reason for that wasn't because we liked HMOs. The reason was that health care costs were becoming astronomical and people were losing their health care. As tragic as these stories are, they would have been just as tragic had their employers never bought the health insurance. There would not be any dispute over whether or not there was coverage. This would not even be a policy to start with. That would not help these poor people.

So we have a system where certain things are covered for a certain premium. In a free market, those things work out. If somebody is messing up on one side, the other side will take care of it. That is the way the system works. As I say, if you are going to have a system where the Federal Government says that, regardless of whatever the claim is, it has to be paid, you can have a system like that. Nobody has suggested that. I wonder why no one has suggested that. Our hearts go out to people because of these stories. Our hearts go out for all these sick people. Why don't we just say the Federal Government will see to it, either directly out of the Federal Treasury or we will make an insurance company take care of whoever is sick for whatever reason? It is a nationalized health care system. You can debate that. You can argue that. Some people would argue on behalf of that.

Nobody is suggesting that. Why not? Because we do not want to take care of

these people? Of course not. It is because we know the effects of that. Because for everything we do, for which we can make a case, to help people and give rights and give benefits and make other parts of our society give third parties of our society certain rights and benefits so the Federal Government doesn't have to do it—we make other citizens, other companies, do it for us—we can do all that, but there are always effects from that. We were elected to look at all that and try to balance it and try to come up with something that is reasonable. Not something that will come up and cover every hypothetical case that may ever come about, because that cannot be done, but something that will reasonably balance the coverage we want people to have, I want my family to have, something the average person can afford, something the average small employer can afford. Otherwise, they are not going to buy any insurance at all.

The point I am getting to is that there are some cases, where coverage is at issue, in which everybody is operating in good faith. It is not a matter of the big guy and little guy and the big guy is always wrong and the little guy ought to be paid. It is a matter of reasonable people sitting down and having a consideration, discussion, and sometimes a disagreement as to whether or not a particular procedure is medically appropriate.

Honest doctors disagree about that all the time, whether or not a particular procedure is experimental or not. If a policy covered all kinds of experimental things that we did not think would help you—there is a 99-percent chance it is not going to help you any, but it is experimental; we can spend $1 million to see what it is; policies just don't cover that—prices would be astronomical. Nobody could afford that. So you get into the question, Is it medically called for? Is it an experimental thing?

Honest people can disagree about things such as that. We do it all the time. We are talking about lawsuits, and that is what happens in lawsuits. You would not have any lawsuits in the medical area, in the malpractice area, unless you had doctors on both sides of the cases taking different views of these matters. We have to resolve these matters. We cannot just predetermine that because a case is meritorious and our heart bleeds for an individual case, all of it is covered any time for anything. Nobody could afford it. It is a practical, hard part of life with which we have to deal. And we are doing a disservice to our constituents if we do not remind them that there are tradeoffs and there is a bigger picture with which you have to deal.

Here is where we are going. We are getting down to the fact that, as I said, we have in some cases a dispute as to whether or not something is medically called for. What this bill does, and what this resolution supplements, is that it says when you have a situation such as that, let's set up an independent person, an independent entity. In the bill it is called a qualified external review entity. It is external because it is not a part of any employer's process; it is not a part of the employer's deal. The employers do not control this.

The bill takes several pages setting up, I think very skillfully, an independent entity that is highly qualified, that is very independent, that is monitored by the Federal Government to make sure they take a look at that issue to see whether or not there is coverage on an individual incident.

Once again, if you were going to say on the front end everybody who needs coverage has to be covered, regardless of whether or not it is in the insurance policy or anything else, you would not need this external review and your premiums would go through the ceiling and everybody would be calling for nationalizing the health care system in this country. But we are not doing that.

This bill calls for this external review process. That entity determines whether or not this is a medically reviewable decision or not. That entity determines whether or not there is coverage. If that entity decides that it is a medically reviewable matter, there is coverage, it goes to another independent level. And this bill sets up an independent medical review. This first reviewer doesn't have to be a doctor, necessarily. But on the second review it has to be a doctor. He is independent. He has nothing to do with the employer. He is qualified. He is supervised and overseen by the Federal Government. He takes a look at it and he makes a decision.

So far so good. Again, this is a reasonable response to these sad, sad stories that we know people tell and we all hear about from time to time. If you are not going to say: Cover everything all the time and we are going to, depending on how sick a person is, determine coverage—if you are not going to do that, you have to have some way of reasonably and fairly deciding what is right. This bill sets up two levels of independent review. I think that is an appropriate way to balance the need to cover people for what they contract for, for what coverage is for—for which you are paying a premium commensurate with the coverage, on the one hand, and a need to make sure there is at the end of the day some coverage that is affordable for somebody so we do not add to the 40 million people who have no insurance at all.

So far, so good.

The problem I have is not with the bill I just described. The problem I have is not with this resolution which reinforces the idea that we need independent review. The problem I have is that you can go through that entire process and, if a claimant is turned down, they can ignore that entire process and still sue in State court, they can still sue in Federal court, and they can still sue in any jurisdiction where the defendant has a place of business or is doing business for unlimited damages. They can still sue an employer who gave them the insurance.

That is what I have trouble with—not that we are setting up an independent review process. It is that we are not honoring the independent review process. We are saying we are going to set it up. But if it turns out one way, we are going to adhere to it. If the claimant wins, then it is binding on the employer. But if these independent entities decide that the claimant does not win, because it is one of those 99 percent deals, and it is an experimental thing: we just do not cover that; our heart goes out to you, but you just didn't pay for that much—if they decide that, then it is as if all of that independent stuff doesn't count. Here is where the lawsuits start.

That is the problem I have with this bill.

We must recognize that there are tradeoffs for everything we do in this field. It is easy to give new rights, and establish new rights, either out of the Treasury of the Federal Government or making some company pay for something else. But it has an effect on people's conduct. People do not just sit still. If you triple somebody's taxes, it is going to affect their behavior. If you cut their taxes in half, it is going to affect their behavior. If you place new liabilities on employers—some of them are small employers trying to furnish decent health care packages to their employees—they do not have to. But if you make things tough enough on them, they are just going to say: We are either going to drop coverage or we are going to give you some money. You go get your own health insurance and I don't have any liability. And that employee may or may not take that money and buy health insurance; he can do whatever he wants to with it.

What we do affects people's behavior. It is not enough to talk about sad story after sad story and say that is fact. We all agree to that. All of us are looking for a way to balance the approach so people can be properly covered to the extent possible where folks can still afford coverage in this country. Health care prices are already going up at double-digit rates before this bill is passed. If we make the lawsuit liability so great that people can't afford coverage, it is going to go up even higher.

We already have 40 million people in this country who have no insurance at all. Our job is to try to come up with a balanced approach so that we don't add to those 40 million people. We can't just sit out here and talk about one sad story after another without considering the effect of the public policy we are putting into place.

We had before this body, before I got here, when President Clinton was President, the Clinton health care plan. It had noble motives, too. We heard about people who needed help and needed coverage, and so forth, at

that time. The whole Nation did. This body considered that bill. This body decided not to go in that direction because in many people's minds it was a nationalizing of our health care system; that as much as we have instances sometimes where things fall through the cracks, on the whole, people do not fly to England in order to get their medical coverage. The rich people of the world fly here. We have the best overall medical system in the world. We didn't want to nationalize our health care system. We turned that down. It wasn't because our heart didn't go out. It wasn't because there were some pitiful stories out there where people needed more help than they were getting. But it was, on balance, because we didn't believe it would be good for those same people if we nationalized our health care system.

I do not know if we have changed our minds about that or not. I don't think so. But that is what we are doing here with this bill the way it is now drafted. We are nationalizing our health care system in a significant respect by other means. We are doing it by an unfunded mandate on corporations. The Government is not sending people checks for their health care, but they are requiring other people to. We can't think we can do things such as that without having an effect on people's conduct.

Health care costs got out of hand in this country. We responded with a managed care response to it and tried to make that balance to provide enough care that would cover people in most cases but would not be so costly that it would drive people out of the system. It didn't always work. There were some excesses. Some of these HMOs did some bad things. States got into the act. My State of Tennessee covers more things than the McCain-Kennedy bill does in many respects—it is not as if the States are not addressing these issues—and in response to that, health care costs went back up a little bit. We can live with that. But now we are coming along and laying a whole new Federal layer on top of that, double-digit increases in health care costs being present today. And we have no idea what that is going to do to costs when we are saying we are going from a system where there is no redress, right past the system of independent review, which would be a major beneficial change where independent doctors would be deciding the right to unlimited lawsuits.

We have no idea what that is going to mean to the cost of health care in this country. If we think employers are going to sit still for that, that small employers are not going to change their conduct, that prices are going to remain the same and that these HMOs are not going to protect themselves in terms of price increases to cover their new exposure, we are fooling ourselves.

I am not saying we shouldn't respond to current circumstances. I am just saying we are hearing too much of this side of the story and nothing about the other. We are doing the American people a disservice. It doesn't take a lot for Members of this body to grant new rights and extend our sympathy. Sometimes it takes a little more to say that is a relevant part of this discussion. But let's talk about the effects of what we are about to do.

I hope we don't have this debate 2 years from now and we have these same sad stories coming in about my problem wasn't that we got into a dispute over coverage and they were not covering it, but they cut me off. My problem was I didn't have insurance to start with because my employer couldn't afford it.

I commend the Senator for offering the sense of the Senate. I think these independent entities ought to be strong. We have set them up now in this bill. My problem is we don't use them. They can be circumvented without exhausting the administrative remedies. It goes straight to court. Or we can go through and use them, but if you get an adverse decision and the best independent minds look at this and say, sorry, but there is no coverage, it doesn't matter; it is as if they didn't exist. You can then begin a whole realm of lawsuits against HMOs, against employers in some cases, and even against these independent entities that have made the determination. Both the external reviewer and the doctor can be sued because they decided against coverage.

There is in this bill a higher threshold of proof against them to prove they are guilty of gross misconduct. But when we use these independent entities that we are bragging about and we are talking about how strong and important they are, let's use them. Let's not just use them as a starting place and a debating point and go through a year or two of that and a decision that everybody admits was objective and untainted, and then totally treat it as if it didn't exist because we want to open the door to unlimited lawsuits for unlimited amounts for everybody in sight. That is not helping those poor people. That is not going to help those poor people who need medical attention and medical coverage.

They have exempted doctors and lawyers. A lot of doctors support the bill because when they get sued, they want the HMO also to be right there beside them. I understand how that works. So the doctors support them. The doctors were exempted. The doctors are exempted in this bill, and so are the hospitals. People who are giving the health care have been exempted. But the people who are furnishing the health care, the employers, have not been exempted. It doesn't seem right to me.

I yield the floor.

The PRESIDING OFFICER (Ms. STABENOW). Who yields time?

The Senator from Montana.

Mr. BURNS. I thank the Chair.

Madam President, I know there are a lot of folks who want to go home about now. I have listened to this debate on the television with a great deal of interest. We have heard all kinds of examples of bad things that can happen to people. Of course, we could talk about those kinds of things in any field because there are certain circumstances where you could sometimes find victims of circumstance and sometimes find victims of greed.

We have also heard that our health care system is very complicated. I will tell you, I do not think our system is complicated. I think we are moving a piece of legislation that is going to complicate it.

Since the introduction of Medicare and Medicaid, it has grown more complicated all the time. If one thinks HMOs are hard to deal with, I am wondering if anybody has had the opportunity to deal with HCFA lately. Just try to get some things done for an elderly mother or father. I do not see anything in the three proposals right now that deals with the real and perceived problems with private insurance plans or HMOs.

We have advertising that is on every radio station in this town. They have lots of facts, some of which are a little misleading. Patients' rights are assured to those who are covered by HMOs and insurance plans now, but it seems to me where the dispute begins is either the insured did not understand what he or she was buying or what the specific coverages were to which they thought they are entitled.

I am not going to stand here and defend the HMOs or the insurance companies, but what has happened to the industry is making them more cautious about the kinds of contracts they issue. And again, with the consumer, as in all areas of the American way, the buyer has to be concerned. It has always been that way. But as plans were gamed and abused, insurance companies and HMOs became more precise in the offering of their coverages; in other words, the fine print became even finer and smaller. Patients have rights, but not for compensation for specific health care problems that are clearly exempted from coverage.

So what I am saying is, when you are buying something, buyer beware. Again, with regard to this problem of companies being driven to that kind of a situation, how far they can go, and how far they will go, we do not know. We do not know how much they can stand.

A Patients' Bill of Rights is nothing new for me. In 1994, along with my distinguished colleague from Minnesota, Senator WELLSTONE, we had a Patient Protection Act. The goal of that bill was to assure fairness and choice to patients and providers under managed care health benefit plans.

I still believe it is essential we ensure that managed care techniques and procedures protect patients and guarantee the integrity of the patient-physician

relationship. Let me repeat that. We have to guarantee that the integrity of the relationship between the physician and the patient is protected.

I am not without a physician in my family, and we talk quite frequently of these and other issues related to the Patients' Bill of Rights and the problems she faces as she attempts to administer quality and necessary medical care to her patients. It is an area in which I am particularly interested.

I believe all Americans should have access to quality, affordable health care and to be able to select the health care plans of their choice. I support legislation that requires HMOs to be more responsive and accountable to their patients. We must ensure choice, quality, and access at all times.

I think it is fair to state we have reached general agreement over many of the consumer protection aspects of all three of these bills that have been presented to the Senate.

Doctors must be able to discuss the full range of treatment options to their patients. I continue to believe that gag clauses in health care provider contracts attack the heart of the doctor-patient relationship, and they eat into the most important factor in the healing process, and that is trust.

In addition, customers should be fully informed about the financial arrangements, if any, between their doctors and the insurers. Patients in need of emergency care must be free to go to the emergency room to receive the care they need, uninhibited.

Customers must be fully informed about the costs and limits of the coverage they buy, they should have complete information about treatment options, a complete list of the benefits and costs of each plan, a full choice of doctors, and access to specialists.

Finally, patients who are denied care, or receive word that their plan will not pay, must have a right—and they have the right—to a fair, binding, and timely appeals process.

A great deal of debate has and will likely continue to center around this appeals process and how it is structured and having access to the courts. I believe access to the courts should be the last resort. First we should structure a fair, timely, credible, and independent appeals process.

Independent, qualified reviewers should be able to draw upon the broadest and best possible medical guidelines when determining the care patients need that is covered under the contract. Physicians should be able to set the timeframe within which the treatment should be provided. When this process fails or is exhausted, then we should turn to the courts. In the cases where an HMO defies an order of the independent reviewers to provide a benefit—or acts in bad faith to delay making the necessary treatment available—I believe the HMO should be held liable. After all, no American should be denied access to our court and justice system, as it is a constitutional right.

On the other hand, we cannot let the practice of medicine be governed by the fear of lawsuits and, of course, trial lawyers. This will surely add to the cost of care. I am afraid that as the cost of obtaining care increases, so too will the number of uninsured. That is what I have heard most in my State of Montana. That is a price that no one can afford, especially small business. We do not have big companies in the State of Montana. We are a State with a lot of small businesses. Those employers are telling us to be very careful of the action we are taking.

Any bill that passes this Congress cannot contain provisions which would make the employers liable when they have nothing to do with the decision made by their provider of medical coverage. I will tell you, trial lawyers are very imaginative. When they sue, no one is exempt. So our language has to be specific. I was struck that even though it has been shown in this Chamber that the legislation we are considering has that concern—where they say it doesn't say one thing, but there it is in black and white—nobody has offered to change it and make it palatable to either side.

Any such provision is extremely dangerous for any employer, whether it be a small Montana business with two employees or a larger employer such as a hospital or doctor's office or clinic.

There are many native people who do not understand how imaginatively and broadly trial lawyers can interpret statutory provisions to include businesses as defendants in lawsuits when it was not the intention of the drafters of this legislation. To be very specific, I want to make sure that the innocent small businesses that are trying to provide much needed health care for their employees do not find themselves in court for their good intentions. I have always heard the old saying that no good deed shall go unpunished.

Twenty percent of Montanans currently lack health coverage. I don't want to see that number rise either. We cannot add to that number. I cannot support provisions which would threaten to do so. As a practical matter, it seems unreasonable to potentially give one or two people and their lawyers millions of dollars in punitive damages and as a consequence destroy thousands the ability to obtain health insurance coverage. It just doesn't make a lot of sense.

For many the greatest obstacle we face in health care today in this country is the cost of insurance, It is not that we don't want it; we can't afford it. What is driving those costs? It is not the person who tries to take care of themselves. It is the coverage of some extraneous programs or plans that drives the cost.

Since way back in 1993 and 1994, we have been talking about health care. We want three things when it comes to health care in this country: We want top quality, which we have; we want it fast; we want it low cost. If one would think just for a little bit, we can only have two of the three.

I believe we ought to start looking at the best way we can control costs and make health care more accessible and affordable to those who need it.

My primary and overriding concern is that any Patients' Bill of Rights is indeed in the best interest of all my folks in Montana and all Americans. I am deeply concerned about those thousands of hard-working folks who are self-employed or employed by small businesses throughout my wonderful State. These people desperately need our protection. I do not want to act in haste or irresponsibly, jeopardizing their present health coverage by higher premium costs.

I, therefore, will support a bill that will assure the maximum patient protection to all and ensure that patients get the health care they need when they need it.

I absolutely agree that a real Patients' Bill of Rights needs to be enacted as soon as possible. These are complex issues. We have come a long way. I am confident we will be able to arrive at a fair and reasonable bill in the very near future.

We have to look at just exactly what we can do because in this piece of legislation, there could be and probably will be some unintended consequences, as there always is when we pass major legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, we have heard a number of statements over the past week about what is wrong with this legislation that is now before the Senate.

One of the arguments that has been made is that the real purpose behind this legislation is to create socialized medicine in America, that that is the whole purpose. That is why this bipartisan bill was introduced, so that we would have socialized medicine in America. The purpose was to drive all the employers out of insuring their employees.

That argument didn't last very long because it was so fallacious on its face.

Then there was a statement that this was all about lawyers, that there would be thousands of new lawsuits. Well, we looked at a couple of States where they have something comparable to what we want to pass.

Senator MILLER from Georgia came to the floor and said: I don't know what they are talking about. In Georgia, since we have had a Patients' Bill of Rights, there has not been a single lawsuit filed.

In Texas the law has been in effect for over 4 years, even though Governor Bush—now President Bush—vetoed that. In 4 years there have been 17 lawsuits. So they dropped that debate. I will no longer debate that issue.

Then they spent some time on States rights: What was being attempted in this bipartisan legislation is to take

away the rights of States to settle their own problems. Example after example was brought to the attention of the Senate that was simply not true, but they wouldn't let up on that. They said: Well, we think all lawsuits in this matter should be filed in Federal court.

We knew that wasn't the right way to go because people should be able to go to court in the place where they live. Again, Senator MILLER from Georgia laid that out very clearly. Why should someone have to travel hundreds and hundreds of miles to file a lawsuit when they can do it in their own community?

Senator ZELL MILLER of Georgia really put this debate on the right track. After Senator MILLER spoke, they dropped that ''let's use the Federal court for all of our litigation.''

This boils down to a very simple proposition. Why should HMOs be treated differently than anyone else in America except foreign diplomats? As a result of our Constitution, foreign diplomats cannot be sued. HMOs are not in our Constitution. They should be treated no differently than anyone else. Why in America should there be the abnormal situation that the only people who can't be sued are foreign diplomats and HMOs?

There are a number of suggestions floating around here. In fact, one of the sponsors, Senator FRIST of Tennessee, said:

The Patients' Bill of Rights leans toward protecting trial lawyers, not toward protecting patients.

President Bush said, when he was running for President:

If I am the President, people will be able to take their HMO insurance company to court.

He said this on October 17 of last year.

Fact: As a candidate George Bush promised voters their insurance companies would be held accountable.

Fact: George Bush took credit for a law that allowed Texans to sue their insurance companies in State court even through he vetoed that. Now his administration is saying that holding HMOs accountable in State court is a terrible idea. He can't have it both ways.

Another of the fixes on this legislation that is being passed around, again, by the Senator from Tennessee, Mr. FRIST: ''You sue employers under this bill.''

What the President has said in February of this year: ''Only employers who retain responsibility for and make final medical decisions shall be subject to suit.''

That sounds reasonable. That is what the McCain-Edwards bill does.

Fact: The McCain-Edwards legislation does not authorize a cause of action against an employer. In short, employers are protected from lawsuits relating to harm caused by an insurance company.

Another fix, again by the Senator who is sponsoring the other bill, Mr. FRIST. His statement: ''Their bill will drive people to the ranks of the uninsured.''

That is the socialized medicine argument. Here is what the Census Bureau said: ''After Texas enacted a patients right law, the number of uninsured in the State actually decreased.''

This is the U.S. Census Bureau.

Fact: 2 years after the State of Texas gave Texans the right to sue HMOs in State court, the ranks of the uninsured in the State of Texas actually decreased.

George W. Bush, in October of 2000:

I support a National Patients' Bill of Rights and I want all people covered.

One of the fictions stated here by my colleague, the Republican whip, the Senator from Oklahoma, was:

The United States will be considering a bill which could preempt some of the good work States have done in the States to protect patients.

That is fiction. Here are the facts: The McCain-Edwards legislation provides a Federal floor for patient protections, not a ceiling. Stronger unrelated patient protections enacted by the States would remain untouched by this bill.

The other argument they have used—and I touched on this before—is that this is so expensive and how could you possibly ask people to pay for this exorbitant cost that is going to be created by this legislation? The Congressional Budget Office says:

Real patient protection costs about 37 cents more than the GOP-backed Frist legislation.

Not hundreds of thousands or millions or billions but 37 cents.

Senator FRIST:

We know this is going to drive up the cost of health care premiums.

He is right, 37 cents. But last year—the facts are that last year insurers increased premiums by an average of 8.3 percent, 10 times the 1-year cost of this legislation. So it is no wonder that 85 percent of the American public support the Patients' Bill of rights. That is why in a movie—when you hear HMO in a movie, people sneer and shout out in derision.

The Patients' Bill of rights is something we must do. The majority leader has said we are going to finish this legislation before we have the Fourth of July break. Why? Because as the Senator from North Carolina indicated, every day that goes by, there is more grief and pain to patients and doctors because the doctors can't render the care they believe is appropriate for patients. Every day we wait is a day people will be harmed as a result of our not passing this legislation.

Madam President, I read into the RECORD hundreds of names of organizations that support this legislation. The time is late and I am not going to do that tonight. From time to time, I am going to read the names of organizations supporting this legislation. I already read in the names of hundreds. I would start tonight with the D's. It would take a long time because the organizations that support this legislation that have the name ''family'' connected with them goes for five pages.

Literally, our bipartisan Patients' Bill of Rights is supported by hundreds and hundreds of organizations. I hope we—and I am confident that we can as legislators, Democrats and Republicans—pass this legislation soon because the sooner we do it, the better off America is.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam 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. REID. Madam President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein for up to 5 minutes each.

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

AGENT ORANGE ACT OF 1991

Mr. DASCHLE. Madam President, I would like to call attention to the introduction of S. 1091, our bipartisan legislation to update and expand the Agent Orange Act of 1991.

These changes, and my other ongoing Agent Orange work, are necessitated by our imperfect understanding of how dioxin affects the human body.

As many of my colleagues know, dioxin is the toxic ingredient in Agent Orange, 11 million gallons of which were sprayed over Vietnam during the war. Dioxin ranks with plutonium as one of the most toxic substances known to man, and this country dropped more on Vietnam than has ever been released into the environment, anywhere in the world. S. 1091 is another effort, more than 25 years after the war's end, to deal with the wounds of, and determine the extent of the injury to, our own soldiers.

As an example of how our knowledge of dioxin is evolving, I would point to a provision in S. 1091 that would remove all deadlines for veterans to claim disability benefits for respiratory cancer. This provision stems from a recent report by the National Academy of Sciences, which pointed out that there is no scientific basis for the deadline contained in current law—a deadline that effectively blocks benefits for a veteran whose cancer develops 30 years after Agent Orange exposure. The Academy finds no evidence that the risk diminishes with the passage of time.

And as scientists learn more about Agent Orange, we must continue to ensure that veterans benefits are updated accordingly. The current mechanism