

their health information when it stripped away key privacy protections established during the Clinton Administration. By modifying the Privacy Rule finalized in December 2000, HHS eliminated your right to decide whether your medical information can be shared for the purpose of health care treatment, payment, and so-called "health care operations." These modifications took effect on October 15th.

In the case of treatment, payment and health care operations, the Bush Administration's modifications permit your medical secrets to be used and disclosed to doctors, pharmacists, health insurers, and others without your prior consent.

While treatment and payment are terms that consumers understand and associate with health care, "health care operations" is a category tied closely to commerce, not patient care. In fact, the Bush Administration modifications make clear that health care operations is a vast category that has more to do with business mergers than better medicines:

According to Section 164.501 of the Bush modifications, health care operations means: "The sale, transfer, merger, or consolidation of all or part of the covered entity with another covered entity, or an entity that following such activity will become a covered entity and due diligence related to such activity."

It is understood that this category includes business planning, underwriting, fundraising, and other activities. This means that your private health information can be used without your permission to serve the commercial interests of health care companies, including during transactions such as the sale of an HMO. The Clinton Administration's definition of health care operations not only was narrower, but it also required patient consent before personal health information could be used and disclosed for this purpose.

The Stop Taking Our Health Privacy, or "STOHP", Act puts patients' privacy first by closing massive "privacy peepholes" that HHS opened in these three key areas:

1. Consent: The STOHP Act restores the right of patients to decide whether or not to permit the use and disclosure of their personal health information for purposes of health care treatment, payment and "health care operations." The STOHP Act includes common-sense exceptions to the consent requirement for such purposes as filling a prescription and making referrals. In August, HHS eliminated patient consent in these three important cases, denying patients the fundamental right to decide for themselves whether to share their private health information.

2. Marketing: The STOHP Act ensures that pharmacists do not become secret agents for drug companies. When you receive treatment recommendations from your pharmacist, you should not have to wonder who stands to benefit more: you or the pharmacist or drug company. Our bill would reverse the change that HHS made to the marketing definition, which allows health providers to send unsolicited health recommendations to patients that are paid for by drug companies but do not inform patients of the pharmacist's financial incentives or provide patients the opportunity to opt-out of receiving such communications in the future.

3. Disclosures to FDA-regulated entities like drug companies: The STOHP Act narrows the purposes for which personal medical information can be used or disclosed to these entities

without patient consent. Our bill limits non-consensual disclosure to these entities for the purpose of strict public health priorities such as drug recalls. The August modifications created a broader exemption that allows non-consensual disclosure of patient information to drug companies for a wide range of activities, which may include marketing campaigns.

I am pleased to be joined by my colleagues Representatives DINGELL, WAXMAN, BERMAN and CAPUANO as we introduce the Stop Taking Our Health Privacy Act of 2002.

Today we take steps to apply age-old principles of medical privacy to the realities of the information age. Today we seek to restore longstanding patient protections, ensure the confidentiality of the physician-patient relationship, and rebuild patient trust in the health care system, all of which are essential for the delivery of quality, thorough health care.

REGARDING H.R. 5646, THE STOP TAKING OUR HEALTH PRIVACY ACT OF 2002

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 16, 2002

Mr. WAXMAN. Mr. Speaker, Americans are deeply concerned with ensuring the privacy of their health information. Every day, in fact, the need for medical privacy protections grows more urgent. Advances in information systems are increasing the possibilities for accessing health information, and genetic developments are increasing capabilities to screen for sensitive information regarding an individual's susceptibility to certain conditions or diseases.

Unfortunately, the Bush Administration recently took a major step backward in providing medical privacy protections to American consumers. In August 2002, the Administration opened up large loopholes in medical privacy protection with changes to the Federal medical privacy rule that had been finalized in December 2000 by the Clinton Administration.

The medical privacy rule was the culmination of many years of hearings, study, and analysis in which the Administration, members of Congress, and a multitude of interested parties participated. The rule established a sound foundation for addressing the complex issues relating to medical records privacy.

But the Bush Administration's August 2002 changes undermined the privacy protection provided by the rule. The changes eliminated the rule's requirement that individuals must give consent before their personal health information can be used for treatment, payment, and a broad category of activities called "health care operations."

The Bush Administration also decreased privacy protections relating to marketing activities by removing privacy protections for activities that most consumers consider to be marketing.

Further, in a so-called "public health" provision, the Bush Administration created a broad exemption that allows disclosures of health information without patient consent to drug companies and other entities regulated by the FDA for a wide range of purposes. The December 2000 rule, in contrast, allowed such disclosures only for a narrowly defined list of health-related activities such as reporting adverse events associated with drugs.

Because of the damage the Bush Administration did to medical privacy in August 2002, I am joining Representative ED MARKEY, Representative JOHN DINGELL, and others in introducing H.R. 5646, the Stop Taking Our Health Privacy Act of 2002. This bill would: (1) reinstate the December 2000 rule's patient consent requirement for treatment, payment, and health care operations while ensuring that this requirement does not undermine essential health care activities such as filling prescriptions and making referrals; (2) strike the Bush Administration's definition of "marketing," thereby ensuring that the rule's privacy protections apply to activities consumers consider marketing; and (3) eliminate the broad exemption the Bush Administration created that would have allowed disclosure without consent to drug companies, while ensuring that disclosures essential for public health purposes are allowed.

This bill is necessary to restore Federal medical privacy protections that were taken away by the Bush Administration. At the least, Congress should ensure that Americans have at least the same medical privacy protections that were established in the December 2000 rule.

Congress of course must go beyond remedying the damage done by the Bush Administration. In large part due to statutory restrictions on the authority of the Secretary of Health and Human Services, gaps in medical privacy protection remained after the December 2000 rule. We need to ensure that all entities that maintain an individual's health records take appropriate steps to protect the privacy of that information. We also need to provide protections against discrimination by employers and health insurers based on an individual's genetic information—protections that are increasingly important as we continue to gain understanding of the human genome.

I will continue to work to enact comprehensive protections regarding the disclosure and use of individuals' personal health information.

AUTHORIZATION FOR USE OF MILITARY FORCE AGAINST IRAQ RESOLUTION OF 2002

SPEECH OF

HON. XAVIER BECERRA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 2002

Mr. BECERRA. Mr. Speaker, any nation engaged in a program of building weapons of mass destruction presents a danger to international peace and stability. Any leader who flouts the rule of law is a menace to liberty and democracy.

Over the past couple of months the President has attempted to lay out the case for aggression against Iraq. I agree with the President that the actions of Saddam Hussein in his defiance and deception of the international community reveal a "history of aggression."

In my mind, the President has made a strong case that Iraq must disarm, pursuant to the United Nations resolutions enacted following the close of the Persian Gulf War. But the President did not convince me that we should go to war and go it alone. Nor has he made the case that we should change our longstanding policy and defy international law and commit to a first strike.

The threat posed by Iraq is a threat which confronts the entire world, not just America. The voice of the community of civilized nations and the legitimacy to act on their collective word reside in the United Nations. It is through U.N. resolutions, crafted in substantial measure by the U.S., that we have the license to compel Iraq's compliance. And it should be through the U.N. that we should seek to enforce such compliance.

This resolution before us gives the President authorization to send American troops into Iraq to strike unilaterally and, indeed, to strike first when he deems it appropriate. Congress has never before granted this extraordinary power to any previous President. We can address the threat posed by Saddam Hussein without expanding Presidential authority beyond constitutional standards.

The Framers of our Constitution wisely assigned the power to commit America to war not to the President but to the people's democratic representatives in Congress. Our Founding Fathers knew from experience and we should remember today that a declaration of war is the ultimate act of humankind. It presumes to endow the declarant with the right to kill. In many instances, it amounts to a sentence of death, not just for the guilty but for the innocent as well, whether civilian or soldier.

The President should approach Congress and ask for a declaration of war when and only when he determines that war is unavoidable. The resolution before us leaves the question of war open-ended by both expressing support for diplomacy and authorizing the President to use force when he feels it is the correct course of action. Yet, in his own words, President Bush indicated that war is not unavoidable. So why, then, is he insisting on being given now, today, the power to go to war?

We are the lone superpower economically and militarily in the world. Our words have meaning, our actions have consequences beyond what we can see.

The implications of a unilateral first strike authorization for war are chilling. A unilateral attack could lead the world into another dangerous era of polarization and create worldwide instability. It would also set a dangerous precedent that could have a devastating impact on international norms.

Consider India and Pakistan, Armenia and Azerbaijan, Russia and Chechnya, Cyprus, Taiwan, Colombia, Northern Ireland, Central Africa. How might the people or the government in any of these countries which are engaged in or at the brink of hostilities interpret this resolution today? Why should not other countries adopt the President's unilateral and first strike policy to address conflicts or threats?

Would not a unilateral attack galvanize other potential enemies around the globe to strike at the United States and our interests? In our efforts to focus on what the President described as a "grave and gathering danger" ten thousand miles away in Iraq, let us not lose sight of the dangers which are grave and present,

not gathering but present, here at home: the al Qaeda plots targeting our airports, our water treatment facilities, our nuclear power plants, our agricultural crops.

Just this Tuesday, CIA Director George Tenet told Congress that Saddam Hussein, if provoked by fears that an attack by the United States was imminent, might help Islamic extremists launch an attack on the United States with weapons of mass destruction. We must consider how our actions may impact on the safety of the American people. The answer may not always be what we expect.

We must also ask: will the death and destruction it takes to eliminate a sovereign, albeit rogue, government (what the President has labeled "regime change") lead to goodwill by the Iraqi people toward America and Americans?

Well, let us look at the record. During the Persian Gulf War of 1991, we dropped some 250,000 bombs, many of them "smart" bombs, over a 6-week period on Iraqi forces. That is close to 6,000 bombs per day. We deployed over 500,000 troops. The war cost over \$80 billion. None of that money was spent on reconstruction in Kuwait, and certainly not in Iraq. And all of this is what it took simply to expel Saddam Hussein from tiny Kuwait, which has one-tenth the population and one twenty-fourth the landmass of Iraq.

Today we are told that it would cost the U.S. \$200 billion or more if we were to go to war with Iraq. That does not include any costs for reconstruction of post-war Iraq. No matter how "smart" or "surgical," bombs will kill civilian non-combatants—children, mothers, the elderly. Two billion dollars in bombs, death and destruction does not sound like the wisest prescription for engendering Iraqi goodwill.

I am eerily reminded of the infamous quote by an American military officer in the Vietnam War that "we had to destroy the village to save it." Are we contending today that we need to destroy Iraq to save it?

And what is our, and for that matter the world's, recent record on supporting postwar reconstruction? Ask the people of Bosnia and of Kosovo, and now ask the Afghans.

Certainly there are situations where the United States must prepare or be prepared to act alone. I voted in September 2001 to give the President that power to punish those who attacked this nation on 9/11. But the question is, are we at the point on the question of Iraq to go to war without international support? Because that is precisely what the resolution before Congress would authorize the President to do.

Mr. Speaker, the President was clear in his speech to the nation on October 7. There is no doubt that Saddam Hussein is leading Iraq down a dangerous course. That is why the world should come together to confront this destabilizing situation and the United States should do all it can to encourage that effort. It is time for us to recognize that if we do this, we do it together.

The President raised an additional point in his remarks of October 7, and that is that con-

fronting the threat of Iraq is crucial to winning the war on terror. Indeed disarming Iraq and neutralizing Saddam Hussein's ability to share weapons of mass destruction with those who would do us harm is critical. However, should the President take us to war against Iraq, we will find ourselves fighting battles on three fronts: in Iraq, in Afghanistan and other terrorist "hot spots" where elements of al Qaeda and evidence related to 9/11 leads us, and finally, here at home. Do we have the resources to carry such a heavy commitment? Does Iraq divert us from winning the fight against terrorism and securing for the American people the safety they seek at home?

Today, as we speak, in the neighborhoods immediately surrounding our nation's Capitol, parents are deciding whether to send their children to school. A calculating, cold-blooded murderer who has already killed 9 people and wounded 2 others in 2 weeks is roaming the streets. One of his victims, a 13-year-old boy, lies in critical condition from a bullet which savaged his abdomen. We must be equally committed to act to safeguard Americans from threats within our borders as we are from threats beyond our borders.

Mr. Speaker, there are few votes as solemn and challenging to each of us and our democracy as a vote to declare war against another people. Can I look at my Maker, my family and the good people who elected me to speak for them and say: this is the cause for which I will cast my vote to sacrifice American lives? . . . the lives of innocent non-combatants? Is this truly the time to ask for the ultimate sacrifice from our men and women in uniform? In Bosnia and Kosovo, I could answer yes. Genocide was being committed as we breathed. On September 11, 2001, and indeed on December 7, 1941, America suffered premeditated, cold-blooded attacks which took thousands of mothers, sons, brothers and sisters from us. We needed to search for justice. But Mr. Speaker, I cannot with clear conscience answer the same way in regards to this resolution. That is why I cast a "no" vote. I urge my President and my country to move deliberatively and in concert with our partners in the community of nations as we address the threat that is Iraq.

ACCESS TO QUALITY HOSPITAL CARE

HON. TED STRICKLAND

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 16, 2002

Mr. STRICKLAND. Mr. Speaker, I come to the floor today to call for action on legislation to ensure that my constituents will continue to have access to quality hospital care. Unfortunately, hospital reimbursements and payments under Medicare and Medicaid are at risk because, despite strong bipartisan support on these specific issues, Congress has failed to