

**PHOTOCOPY
PRESERVATION**

THE WHITE HOUSE

WASHINGTON

October 7, 1999

Dear Mr. Leader:

I am writing in response to your request about my current position on H.R. 2723, the Norwood-Dingell Bipartisan Consensus Managed Care Improvement Act of 1999, particularly with regard to the financing of this important and long-overdue legislation.

First, I share your deep concerns about and disappointment with the partisan manner in which the Republican Leadership has stacked the process against the Norwood-Dingell patients' protections bill. It is extremely troubling that the Leadership refused the House the ability to vote on a bipartisan-supported amendment to ensure that H.R. 2723 would be explicitly financed. It is certainly worth noting that it appears that one of the reasons they denied this request is that it would underscore the fact that all of the Republican Leadership alternatives have no financing and rely on funding from the Social Security surplus.

Notwithstanding the Leadership's refusal to allow for offsets to be used to finance H.R. 2723, I remain strongly supportive of the important patient protections in the bill. I therefore believe the House should vote for this legislation -- and against any and all substitutes -- so as to keep the hope of this necessary legislation being enacted. I cannot support a bill that is a Patients' Bill of Rights in name only.

While I endorse this legislation without reservation, I want to assure you that I will not sign it unless its costs are fully offset by the conference committee.

I hope this information is helpful. I look forward to working with you and the bipartisan majority of the Congress who wish to vote for a strong, enforceable, and paid for Patients' Bill of Rights.

Sincerely,



The Honorable Richard A. Gephardt
Democratic Leader
House of Representatives
Washington, D.C. 20515



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 7, 1999
(House)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 2723 - Bipartisan Consensus Managed Care Improvement Act of 1999

(Reps. Norwood (R) GA and Dingell (D) MI and 132 cosponsors)

The President strongly supports the enactment of H.R. 2723, the Bipartisan Consensus Managed Care Improvement Act of 1999. This bipartisan legislation would provide new patient protections to all Americans in all health plans, and hold health plans accountable when their actions cause harm to patients.

Since 1997, when he received the report of his Quality Commission, the President has been calling on the Congress to pass a strong, enforceable, and bipartisan Patients' Bill of Rights. In the absence of congressional action, the President directed the Federal health plans, covering over 85 million Americans, to implement the patient protections recommended by the Commission. Many States have also passed legislation providing important protections to their residents, including requiring new protections for patients in emergency situations, establishing access to independent external appeals processes, and ensuring access to specialists.

While these actions are important, the limits on State jurisdiction and Federal regulatory authority make it impossible to ensure that all Americans in all health plans have the protections they need. States do not have the authority to regulate self-insured plans, leaving almost 50 million people unprotected nationwide. Moreover, current enforcement limitations under Federal law frequently preempt State law even for those plans regulated by the States.

Adoption of any substitute amendment other than Norwood-Dingell will demonstrate that this Congress is not serious about responding to the public's need for protection in the Nation's ever-changing health care delivery system. The President is strongly committed to working with Members of both parties to pass a meaningful Patients' Bill of Rights this year; he is equally committed, however, to vetoing any legislation that is a Patients' Bill of Rights in name only.

On August 5, 1999, the President commended Representatives Norwood, Dingell, and Ganske for their leadership in introducing a strong, enforceable Patients' Bill of Rights. He endorsed H.R. 2723 because it provides meaningful patient protections, such as the right to emergency care wherever and whenever a medical emergency arises; the right to access the health care specialists that a patient needs; the right to ensure care is not disrupted during treatment; the right to an unbiased internal appeals process and an independent external appeals process that allows patients to get the care they were promised; and the right to hold health plans accountable for actions that harm patients.

The Administration strongly opposes the amendments in the nature of a substitute to H.R. 2723. These amendments that were made in order by the Rules Committee would weaken key provisions of the bill and are designed solely to undermine the enforcement provisions contained in H.R. 2723. If these substitute amendments are adopted and presented to the President, his senior advisors would recommend that he veto the bill.

The Boehner amendment scheduled to be offered today provides clearly inadequate protections and does not even extend those protections to all Americans in all plans. Since the limited protections only apply to employer sponsored plans, at least 15 million Americans would not be covered under this legislation. Moreover, the patient protections fall short in numerous areas, including: no requirement to assure access to specialists when a plan's provider network is inadequate; allows plans to provide excessive financial incentives to providers to limit medically necessary care; and requires parents of newborns to receive prior approval before receiving emergency care. Finally, there are absolutely no individual remedies that can be accessed through the courts to hold plans accountable for actions that have harmed patients.

While the Coburn/Shadegg amendment offers some additional protections, such provisions are far too weak. The legislation is unacceptably flawed in numerous areas, including:

Newborns would not be provided the same access to emergency care protections as provided to adults. Parents would need to receive prior approval to be sure they can be reimbursed for emergency care services for their children.

No protections against plans limiting access to necessary medications. This bill allows plans to deny coverage of prescription drugs that are not part of the plan's drug formulary even when prescribed by health care providers and determined to be medically necessary.

An external review process that is biased against low-income patients. All patients, even if they are unable to afford it, must pay a \$25 filing fee to have their case considered by an external review entity. If the patient cannot pay the filing fee, the appeals entity will not hear their case.

Meaningless information disclosure requirements that leave patients in the dark about their rights. Plans are not required to inform enrollees of their limited new rights. Moreover, plans may meet their information disclosure requirements by providing patients with technical billing and diagnostic codes, which are intended for use by health care professionals, not patients.

A flawed enforcement provision that severely limits patients ability to hold plans accountable. Under the Coburn/Shadegg amendment, the roadblocks to accessing court based remedies include:

- Imposing a health care cost cap that must be exceeded to sue or even appeal a harmful plan decision. Under this provision, a woman who was denied a mammography and subsequently had her cancer spread would not be able to sue the plan let alone appeal the original denial of service.

- Requiring patients who have already been harmed to exhaust all levels of appeals before seeking redress. Under this provision, a patient who by any definition has been injured as a result of a plan decision must go through an unnecessarily time consuming appeals process even though the outcome is clear.
- Requiring time consuming and burdensome certification in order for a patient injured by a plan decision to file a case. This requirement may be without precedent, and it certainly implements an extraordinary hurdle for enrollees seeking redress.

Enacting meaningful Patients' Bill of Rights legislation is long overdue. The President strongly urges the House to pass a "clean" H.R. 2723, which enjoys broad bipartisan support, and give all Americans the health care protections they need and deserve.

As the President has already indicated in a letter, the Administration remains very concerned about the Rule that was approved for H.R. 2723 because it prohibited the consideration of revenue measures in support of H.R. 2723, many of which were passed by the House in other legislation.
