August 2, 2001

Mr. PAUL. Mr. Chairman, I appreciate the opportunity to explain why I oppose all versions of the Patients' Bill of Rights. Once again Congress is staging a phony debate over which form of statism to embrace, instead of asking the fundamental question over whether Congress should be interfering in this area at all, much less examine how previous interferences in the health care market created the problems which these proposals claim to address.

The proper way to examine health care issues is to apply the same economic and constitutional principles that one would apply to every other issue. As an M.D., I know that when I advise on medical legislation that I may be tempted to allow my emotional experience as a physician to influence my views. But, nevertheless, I am acting in the role as legislator and politician.

The M.D. degree grants no wisdom as to the correct solution to our managed-care mess. The most efficient manner to deliver medical services, as it is with all goods and services, is through the free market. Economic principles determine efficiencies of markets, even the health care market, not our emotional experiences dealing with managed care.

The fundamental economic principle is that true competition assures that the consumer gets the best deal at the best price possible by putting pressure on the providers. This principle applies equally to health care as it does to other goods and services. However, over the past fifty years, Congress has systematically destroyed the market in health care. HMOs themselves are the result of conscious government policy aimed at correcting distortions in the health care market caused by Congress. The story behind the creation of the HMOs is a classic illustration of how the unintended consequences of government policies provide a justification for further expansions of government power. During the early seventies, Congress embraced HMOs in order to address concerns about rapidly escalating health care costs.

However, it was previous Congressional action which caused health care costs to spiral by

removing control over the health care dollar from consumers and thus eliminating any incentive for consumers to pay attention to prices when selecting health care. Because the consumer had the incentive to monitor health care prices stripped away and because politicians were unwilling to either give up power by giving individuals control over their health care or take responsibility for rationing care, a third way to control costs had to be created. Thus, the Nixon Administration, working with advocates of nationalized medicine, crafted legislation providing federal subsidies to HMOs and preempting state laws forbidding physicians to sign contracts to deny care to their patients. This legislation also mandated that health plans offer an HMO option in addition to traditional fee-for-service coverage. Federal subsidies, preemption of state law, and mandates on private business hardly sound like the workings of the free market. Instead, HMOs are the result of the same Nixon-era corporatist, big government mindset that produced wage-and-price controls.

I am sure many of my colleagues will think it ironic that many of the supporters of Nixon's plan to foist HMOs on the American public are today among the biggest supporters of the ``patients' rights'' legislation. However, this is not really surprising because both the legislation creating HMOs and the Patients' Bill of Rights reflect the belief that individuals are incapable of providing for their own health care needs and therefore government must control health care. The only real difference between our system of medicine and the Canadian ``single payer'' system is that in America, Congress contracted out the job of rationing health care resources to the HMOs.

No one can take a back seat to me regarding the disdain I hold for the HMO's role in managed care. This entire unnecessary level of corporatism that rakes off profits and undermines care is a creature of government interference in health care. These non-market institutions and government could have only gained control over medical care through a collusion of organized medicine, politicians, and the HMO profiteers in an effort to provide universal health care. No one suggests that we should have universal food, housing, TV, computer and automobile programs; and yet, many of the poor to much better getting these services through the marketplace as prices are driven down through competition.

We all should become suspicious when it is declared we need a new Bill of Rights, such as a Taxpayers' Bill of Rights, or now a Patients' Bill of Rights. Why do more Members not ask why the original Bill of Rights is not adequate in protecting all rights and enabling the market to provide all services? In fact, if Congress respected the Constitution we would not even be debating this bill, and we would have never passed any of the special-interest legislation that created and empowered the HMOs in the first place!

Mr. Chairman, the legislation before us is flawed not only in its effect but in the very premise

that individuals have a federally-enforceable ``right'' to health care. Mixing the concept of rights with the delivery of services is dangerous. The whole notion that patient's ``rights'' can be enhanced by more edicts by the federal government is preposterous.

Disregard for constitutional limitations on government, ignorance of the basic principles of economics combined with the power of special interests influencing government policy has brought us this managed-care monster. If we pursue a course of more government management in an effort to balance things, we are destined to make the system much worse. If government mismanagement in an area that the government should not be managing at all is the problem, another level of bureaucracy, no matter how well intended, will not be helpful. The law of unintended consequences will prevail and the principle of government control over providing a service will be further entrenched in the Nation's psyche. The choice in actually is government-provided medical care and its inevitable mismanagement or medical care provided by a market economy.

Many members of Congress have convinced themselves that they can support a ``watered-down'' Patients' Bill of Rights which will allow them to appease the supporters of nationalized medicine without creating the negative consequences of the unmodified Patients' Bill of Rights, while even some supporters of the most extreme versions of this legislation say they will oppose any further steps to increase the power of government over health care. These well-intentioned members ignore the economic fact that partial government involvement is not possible. It inevitably leads to total government control. A vote for any version of a Patients' Bill of Rights is a 100 percent endorsement of the principle of government management of the health care system.

Those who doubt they are endorsing government control of medicine by voting for a modified Patients' Bill of Rights should consider that even after this legislation is ``watered-down'' it will still give the federal government the power to control the procedures for resolving disputes for every health plan in the country, as well as mandating a laundry list of services that health plans must offer to their patients. The new and improved Patients' Bill of Rights will still drive up the costs of health care, causing many to lose their insurance and lead to yet more cries for government control of health care to address the unintended consequences of this legislation.

Of course, the real power over health care will lie with the unelected bureaucrats who will implement and interpret these broad and vague mandates. Federal bureaucrats already have too much power over health care. Today, physicians struggle with over 132,000 pages of Medicare regulations. To put that in perspective, I ask my colleagues to consider that the IRS code is ``mere'' 17,000 pages. Many physicians pay attorneys as much as $7,000 for a

compliance plan to guard against mistakes in filing government forms, a wise investment considering even an innocent mistake can result in fines of up to $25,000. In case doctors are not terrorized enough by the federal bureaucracy, HCFA has requested authority to carry guns on their audits!

In addition to the Medicare regulations, doctors must contend with FDA regulations (which delay the arrival and raise the costs of new drugs), insurance company paperwork, and the increasing criminalization of medicine through legislation such as the Health Insurance Portability Act (HIPPA) and the medical privacy regulations which could criminalize conversations between doctors and nurses.

Instead of this phony argument between those who believe their form of nationalized medicine is best for patients and those whose only objection to nationalized medicine is its effect on entrenched corporate interests, we ought to consider getting rid of the laws that created this medical management crisis. The ERISA law requiring businesses to provide particular programs for their employees should be repealed. The tax codes should give equal tax treatment to everyone whether working for a large corporation, small business, or self employed. Standards should be set by insurance companies, doctors, patients, and HMOs working out differences through voluntary contracts. For years it was known that some insurance policies excluded certain care. This was known up front and was considered an acceptable practice since it allowed certain patients to receive discounts. The federal government should defer to state governments to deal with the litigation crisis and the need for contract legislation between patients and medical providers. Health care providers should be free to combine their efforts to negotiate effectively with HMOs and insurance companies without running afoul of federal anti-trust laws--or being subject to regulation by the National Labor Relations Board (NLRB).

Of course, in a truly free market, HMOs and pre-paid care could and would exist--there would be no prohibition against it. The Kaiser system was not exactly a creature of the government as it the current unnatural HMO-government-created chaos we have today.

Congress should also remove all federally-imposed roadblocks to making pharmaceuticals available to physicians and patients. Government regulations are a major reason why many Americans find it difficult to afford prescription medicines. It is time to end the days when Americans suffer because the Food and Drug Administration (FDA) prevented them from getting access to medicines that where available and affordable in other parts of the world!

While none of the proposed ``Patients' Bill of Rights'' addresses the root cause of the problems in our nation's health care system, the amendment offered by the gentleman from Kentucky does expend individual control over health care by making Medical Savings Accounts (MSAs) available to everyone. This is the most important thing Congress can do to get market forces operating immediately and improve health care. When MSAs make patient motivation to save and shop a major force to reduce cost, physicians would once again negotiate fees downward with patients--unlike today where the reimbursement is never too high and hospital and MD bills are always at the maximum levels allowed. MSAs would help satisfy the American's people's desire to control their own health care and provide incentives for consumers to take more responsibility for their care.

There is nothing wrong with charity hospitals and possibly the churches once again providing care for the needy rather than through government paid programs which only maximizes costs. States can continue to introduce competition by allowing various trained individuals to provide the services that once were only provided by licensed MDs. We don't have to continue down the path of socialized medical care, especially in America where free markets have provided so much for so many.

In conclusion, Mr. Chairman, I urge my colleagues to reject the phony Patients' Bill of Rights which will only increase the power of the federal government, cause more Americans to lose their health care or receive substandard care, and thus set the groundwork for the next round of federal intervention. Instead. I ask my colleagues to embrace an agenda of returning control over health care to the American people by putting control over the health care dollar back into the hands of the individual and repealing those laws and regulations which distort the health care market. We should have more faith in freedom and more fear of the politicians and bureaucrats who think all can be made well by simply passing a Patients' Bill of Rights.