

S. 2151 would amend the Controlled Substances Act to allow the Drug Enforcement Agency to deny DEA registration of providers determined to have assisted in causing or participating in a physician-assisted suicide. The advocates of this legislation say that good physicians would have no problem with this legislation.

The record shows otherwise. The record shows that more than 50 medical groups, including physicians, nurses, pharmacists, and hospice programs—a variety of medical groups—believe this legislation would have a chilling effect on pain management programs, on hospice care services, and on comfort care. I want my colleagues to understand that. More than 50 medical groups in our country believe this legislation will have a chilling effect on our ability to make sure that our citizens can get good pain management services, hospice programs and comfort care.

What is especially striking is that even Americans who are opposed to Oregon's law and are opposed to assisted suicide do not want to see the U.S. Congress overturn this law. Pain management, palliative care, and hospice services are still evolving fields. Not enough has been done to comfort patients in these tragic situations, and Americans know that in the current regulatory environment there can be a chilling effect on the pain management services by laws such as the one proposed in S. 2151. This legislation also runs counter to the recent Supreme Court decision on physician-assisted suicide that encourages the States to continue to debate this question.

Mr. President, this bill is not going to stop assisted suicide. What it is going to do is set up new roadblocks to ensuring that there are good pain management programs in our country. This bill is going to harm pain management for millions of Americans, turn the resources of the Drug Enforcement Agency from looking at drug diversion and drug trafficking to reviewing the intent of physicians and pharmacists as they try to alleviate the pain of their patients. That is not what the DEA was set up to do. It was not set up to deal with overseeing hospice programs, and the like.

If Congress tramples on the twice-expressed popular will of the people of Oregon, it is going to feed the fires of cynicism and frustration about Government across our land.

Mr. President, I will conclude with this. We all know that so often in coffee shops, churches, grange halls and senior centers, we hear Americans say: You know, our vote doesn't matter. After we vote, those politicians are going to say we really don't get it, the citizens don't understand. So we will just vote again; we will just vote, vote and vote until we set aside what their judgment has been.

I am here to say that I don't think the U.S. Congress knows better than those voters in Coos Bay and Bend and

La Grande. I don't think the U.S. Congress, meeting here in Washington, DC, is better equipped than the citizens of my State to make a moral decision about what is acceptable medical practice in Oregon. This Congress should not try to settle this issue in a hasty debate in the last hours of the U.S. Congress.

I have informed the minority leader that I will have a hold on this legislation. Senator GRASSLEY and I have, for some time, been encouraging Senators to announce publicly their intentions with respect to holds. I have done that in a letter to Senator DASCHLE. I will make that letter a part of the RECORD. I am going to insist on my rights as a Senator, representing thousands and thousands of Oregonians who have weighed in on this issue, that this Senate is going to have a real debate on this legislation before there is a vote on it. I am going to assure that there is such a debate, even if I must filibuster to assure that this occurs.

I ask unanimous consent that my letter to Senator DASCHLE be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,

Washington, DC, September 23, 1998.

Hon. TOM DASCHLE,

Minority Leader,

U.S. Capitol, Washington, DC.

DEAR SENATOR DASCHLE: I previously wrote you requesting I be consulted should S. 2151 or any other legislation concerning physician assisted suicide come to the Senate floor for consideration.

I am now writing to clearly state that I will object to any motion to proceed should S. 2151 or any legislation containing provisions over-riding Oregon's physician assisted suicide law come to the Senate floor.

Should you have any questions, please feel free to contact Stephanie Kennan of my staff at 4-6070.

Sincerely,

RON WYDEN.

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. GRAMS. I ask unanimous consent to speak as in morning business for up to 5 minutes.

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

(The remarks of Mr. GRAMS pertaining to the introduction of S. 2517 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

WENDELL H. FORD NATIONAL AIR TRANSPORTATION SYSTEM IMPROVEMENT OF 1998

The Senate continued with the consideration of the bill.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, for the benefit of our colleagues, we are rapidly reaching the point where we only have a couple more amendments which will require debate and votes.

I urge those who have amendments to come to the floor so that we can get moving on those.

We will be able, I think, to conclude the amending process before 6 o'clock this evening.

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

The PRESIDING OFFICER (Mr. GRAMS). Without objection, it is so ordered.

PATIENTS' BILL OF RIGHTS

Mr. KENNEDY. Mr. President, I want to point out once again to the Senate that we have been in a quorum call for about a half hour, and we are waiting to conclude the FAA legislation. As I understand, it has been tentatively agreed to be concluded later in the afternoon sometime—5 or 6 o'clock this evening—and we can anticipate perhaps one or two more votes.

But I want to bring to the attention of the Senate again that we could be using this time to debate the Patients' Bill of Rights. We have by now seen the majority leader's priorities—the FAA bill, which is important to a number of communities, including my own State of Massachusetts is not a matter of insignificance—but we have had the salting legislation, we have had other pieces of legislation that have been advanced, and still the Republican leadership refuses to call up or permit our debate here on issues relating to the quality of health of some 140 million Americans, those Americans that are covered in various HMOs.

In my own State of Massachusetts, we have some of the very best in terms of HMOs. The HMO program really took off, expanded, and we now find many high-quality HMOs. But in my State, and across the country, HMOs too often are making judgments and decisions based upon what insurance company accountants say, not what members of the medical profession recommend.

I heard the President of the United States speak eloquently about his strong support for the Patients' Bill of Rights just a few days ago. And he made a point which I think is worth underlining here in the U.S. Senate this afternoon. He said that no one in these HMOs ever loses their job when they deny a procedure that a patient's doctor requests, because these HMOs are organized so that there are several different levels of approval required to receive medical care.

The deep concern that many of us have is that these decisions be made at the ground level—by doctors and other trained medical professionals—so that American families receive the care that they need.

And if decisions are going to be made that are in the interests of the profit of the HMO and not the health of the patient, and as a result of those decisions that that individual is killed or permanently disabled, there ought to be some form of remedy. That is a key part in our Patients' Bill of Rights.

Why should we say that there is only going to be one industry in America that is going to be free from accountability to the American citizens? Why should they be the only one? They are, today, effectively the only one.

Under existing law, the health insurance industry is the only industry in America where, if there is negligence resulting in the loss of life or serious bodily injury, they are essentially free of accountability. That is wrong. Most Americans believe that is wrong, and it is wrong.

Accountability is an essential part of our Patients' Bill of Rights. Medical decisions should be made by medical professionals and not by accountants. And if a negligent decision was made, there should be accountability. Or what will happen to the family of the patient who died because an HMO refused to pay for a medical test? What will happen to the education of the children of the patient who is permanently disabled because she could not receive care at the closest emergency room?

Our Republican friends say that is too bad, we don't want to change that provision. Why can't we debate that? Why are we taking time in a quorum, or the time used yesterday waiting for amendments to the FAA bill? We understand that there is no long list of speakers to come to the floor even this afternoon. Why aren't we debating managed care reform here on the floor this afternoon? Why aren't we able to make some decision that affects millions of families today, across this country, on the issues of accountability?

It isn't just accountability. Another very important provision in our Patients' Bill of Rights would require HMOs to pay for routine medical costs associated with clinical trials for their patients. We know—I know from personal experience—the importance of clinical trials. These trials don't, in fact, add any substantial additional cost to the HMO, because most of the patient's expenses are covered by the trial protocol—the grant for that particular trial. There are very small additional expenses—very, very small additional expenses.

And clinical trials are enormously important. They are enormously important for children who have cancer and other serious and dread diseases. My own son was involved in an NIH clinical trial when he had osteosarcoma. Only 22 children had been in that clinical trial prior to my son. He lost his leg to cancer. But his chances of surviving were 15-18 percent before he entered that clinical trial. And he survived, as about 85 percent of

the children who got into that clinical trial did. Now the treatment used in that trial is a generally accepted procedure for children who have osteosarcoma, bone sarcoma.

The idea of denying children the opportunity to enter clinical trials is outrageous. What are we supposed to say to a parent? "Yes, we know your child has osteosarcoma. We know there is a clinical trial that could save his life. But we are not going to permit you to enlist your child in that clinical trial?"

That is happening in the United States today in HMOs. These families say, "My goodness, what will I do?" They appeal the decision, they wait, they go to desperate lengths requiring tremendous courage, and finally they get in the clinical trial weeks or months later. But it is too late; that tumor that was a fraction of a centimeter has enlarged. There can be no treatment now.

Denying our citizens an opportunity to participate in the greatest advances that are taking place in the medical profession is effectively a death sentence.

We have made great advances in the war on cancer, especially in children's diseases. And I don't know what we would have done if we didn't have clinical trials for these children, and for patients with other diseases. We now have some very important opportunities for treatments of breast cancer, colon cancer, ovarian cancer, cancer of the stomach, and colorectal cancer.

Diseases like breast cancer are becoming more and more of a challenge. Yet we are experiencing these breakthrough therapies that can make an enormous difference in saving the lives of our fellow citizens.

I seriously believe that the next millennium will be the millennium of the life sciences, breakthroughs in terms of medicine. It will offer enormous opportunities. The opportunities of mapping the human genome alone—which our good friend, the Senator from Iowa, Senator HARKIN, has been such a leader on here in the U.S. Senate—are just mind boggling.

But we also have the opportunity now to make a difference in people's lives—to make sure that, when medical professionals recommend that patients enroll in clinical trials, these decisions are not overruled by insurance company accountants. That decision effectively denies them the opportunity to save their lives or to get the best in terms of medicine.

Every single day we have examples of this type of situation. I will mention one, Diane Bergin. I have Diane Bergin's testimony from a forum that was held on the Patients' Bill of Rights. We talk about the Patients' Bill of Rights as a piece of legislation, but it is really an issue of lifesaving protections. That is what the legislation is really about, lifesaving protections, and we do it in a number of different ways.

Mr. President, this is Diane Bergin's comment:

My name is Diane Bergin and I was diagnosed with ovarian cancer two years ago. I had always been very healthy—so the news was particularly devastating. The only time I had been in the hospital was when I had my three children. My primary care physician referred me to a specialist at Georgetown, where I eventually had my surgery and received standard chemotherapy treatment. For three months, everything looked good. At my next checkup, however, the cancer had come back.

My physician recommended that I consider getting a bone marrow transplant. Before I could get treated, however, I had to go through a round of medical testing to see if I was a good candidate for a transplant. All through the testing I kept hoping that I would qualify. I worked hard to keep my spirits up and be optimistic. But in addition to worrying about whether I would qualify for a transplant, I also had to worry over whether my insurance would cover the procedure. It felt like the insurance company held the balance of my life in their hands. I had no guarantee that if I qualified, I would be covered.

My husband and family couldn't have been any more supportive. They told me to count on getting the transplant and that they would somehow find a way to pay for it. In my heart I couldn't accept that I would impoverish my family to have a chance at prolonging my life.

Fortunately we weren't asked to make that decision. My insurer finally sent me a letter approving my treatment.

Again I improved immediately after the transplant, but six weeks later I was not so lucky. I was sent to another specialist in Philadelphia who put me on tamoxifen. This was the only drug I could tolerate because my condition was so fragile after the transplant and there was some hope it would help me. Unfortunately I didn't improve.

It was then that my physician suggested that I enroll in a clinical trial for a new treatment at the Lombardi Cancer Center. Even though I had been on an emotional roller coaster waiting for my insurer to approve other treatments, I never thought my insurer wouldn't pay now.

But on the Friday before I was to start my treatment, I was called and told that my request had been rejected. I was devastated and didn't know how I could get through the weekend with my husband and son out of town. It struck me how arbitrary the insurance system was. They were acting as judge and jury on what medical care I could receive even though my doctors recommended this care. The denial felt like a death sentence—that I wouldn't have any more chances to fight for my very survival.

I refused to accept that I couldn't get this treatment that I so desperately needed. I objected and started my appeal. When my family returned, they joined in the fight. Fortunately, my son works at the Cancer Center and is very involved in the clinical trial program there. With all our efforts, and the aggressive appeal by my clinical team at Lombardi, my insurer finally agreed to pay the routine costs of my care. I'm in the midst of that trial right now.

I don't know if this trial will help me. And I don't know what will happen if I should need to seek treatment through another clinical trial. I anticipate another fight, only next time I may not be so lucky.

I wanted to come today to tell my story because I believe that no one facing a serious illness should be denied access to care because that treatment is being provided through a clinical trial. Sometimes, it is the only hope we have. And the benefit to me, whether short or long term, will surely help those women who come after me, seeking a

cure—a chance to prolong their life for just a little while, just so that they can attend a graduation, or a wedding, or the birth of a grandchild.

I strongly support, and my family is right there with me, requiring insurers to pay for the routine costs of care that are part of an approved clinical trial. I think the cures of the future depend on it.

Mr. President, letters signed by scores of groups supporting the right to get into clinical trials, and we have letters signed by scores of groups regarding access to specialists, such as pediatric oncologists.

In our legislation, we also have provisions for guaranteeing that a child can see a specialist if that child has a serious illness. That is not in the Republican program. We in the Senate ought to be able to debate the merits of this provision.

But the bottom line, at the end of the day, is what the additional costs are going to be. We ought to be able to debate these, as well. You will find out that the cost of our protections is approximately \$2 per worker per month. I think most workers would be glad to pay that additional \$2 a month for the kind of protections we are talking about here in terms of clinical trials and specialists for members of their family. Why not give us an opportunity to debate that? Why not call the roll on those particular provisions?

We need to have a debate on the situation we see taking place around this country, where if you are a member of an HMO, your ambulance will drive by the nearest hospital and go to another hospital on the other side of town just because they are a member of that HMO. They will drive right by it. If a family goes to the closer hospital, the HMO will charge the family for the emergency care, which perhaps saved their child's life. We ought to be able to debate that. Why are we being shut out and denied? Why are we continuing in these quorum calls that last the course of the afternoon? Why didn't we take time yesterday and why aren't we taking time this afternoon to move ahead on this kind of legislation?

Mr. President, many of the guarantees that have been included in the Patients' Bill of Rights are guarantees that were unanimously recommended by the bipartisan President's Commission on Quality Care. In fairness, I will say that the Commission didn't recommend that these recommendations necessarily be put in legislation. But if all of the HMOs had just accepted those requirements, then we would not be needing this legislation. The problem is that the good ones have it, but the others don't.

So we are saying that we want to make sure that the protections are going to be across the board. If all of the HMOs complied with the legislation, we would not need it.

But these are very sensible and responsible recommendations. Half of them have been recommended by the President's Commission, half of them by the American Association of Health

Plans. We have more than half of them that are already in existence included in form of Medicare, and 32 million Americans get those protections. So they are working in the Medicare, but they are not available for other Americans. Other protections in our bill were recommended by the National Association of Insurance Commissioners—again, a bipartisan group of insurance commissioners representing the States who have a pretty good understanding and awareness of what is needed.

There is not one of our recommendations—not one of them—that has not been recommended by one of those four organizations or groups. Not one.

Mr. President, what I am saying is that these protections have been well thought out. They are reasonable, they are sensible, they are responsible, and they will make a significant difference in terms of protecting the health care of the American people. Now, Mr. President, it is time to give us an opportunity to debate those and act on them.

I will wind up with these final comments. We have every professional medical organization, every nursing organization, every consumer group in the country supporting our Patients' Bill of Rights. Not one is supporting the Republican proposal. Not one. No matter how many staffers go out and search, they can't find one.

The doctors and the medical profession understand the importance of this, as well as the parents. Every children's group, every disability group, every women's group, every one of those groups support this because this is the way to protect children, the disabled, women, and families.

With all respect to the importance of the legislation that we are currently considering, we have few days left to debate the Patients' Bill of Rights. We continue to implore the Republican leadership to bring up this legislation and permit the Senate to work its will so that we can do something to protect the American consumer in health care.

Mr. President, I see my friend and colleague from Arizona on the floor. I yield the floor.

Mr. MCCAIN. Mr. President, I thank the Senator from Massachusetts for shortening, somewhat, his statement today. I appreciate it, because I know the obvious passion with which he addresses the issue.

WENDELL H. FORD NATIONAL AIR TRANSPORTATION SYSTEM IMPROVEMENT ACT OF 1998

The Senate continued with the consideration of the bill.

AMENDMENT NO. 3631

(Purpose: To express the sense of the Senate that the Secretary of Transportation should ensure the enforcement of the rights of the United States under the air service agreement between the United States and the United Kingdom known as the "Bermuda II Agreement")

Mr. MCCAIN. Mr. President, I have an amendment at the desk for Mr.

FAIRCLOTH, Mr. HOLLINGS and Mr. HELMS.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona (Mr. MCCAIN), for Mr. FAIRCLOTH, for himself, Mr. HOLLINGS, and Mr. HELMS, proposes an amendment numbered 3631.

Mr. MCCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. FAIRCLOTH. Mr. President, this Sense of the Senate resolution puts the Senate on record about a transportation issue in the largest city in my State.

The failure of this Administration to stand up for American carriers under our air services agreements with foreign governments is a serious issue. The unwillingness of this Administration to stand up for American interests undercuts our international position in critical negotiations and promotes intransigence amongst other parties to these negotiations.

Specifically, Mr. President, this Administration has not fought to enforce the rights of American citizens, American communities, and American air carriers.

Under the existing air services agreement between the United States and the United Kingdom, the so-called Bermuda II agreement, the United States has the right to designate a U.S. flag carrier to serve the Charlotte-London route.

On February 20, 1998, the U.S. Department of Transportation awarded this route to US Airways. US Airways announced its plans to launch nonstop service on May 7, 1998 and to compete with British Airways' monopoly on this route.

With its network at Charlotte, US Airways was prepared to offer convenient one-stop service to the United Kingdom from dozens of cities in North Carolina, South Carolina, and the surrounding area.

However, the government of the United Kingdom failed to provide US Airways with commercially viable landing and take-off rights at Gatwick Airport, London's secondary airport.

The Bermuda II agreement prohibits US Airways from serving Heathrow Airport at all. Only two U.S. carriers are allowed to serve Heathrow. I want to remind my colleagues that the British are blocking access not to the primary airport, Heathrow, but even to the secondary airport, Gatwick.

Yes, Mr. President, the British Government refused to facilitate access to its secondary airport for a competitor to the British Airways monopoly on the Charlotte-London route.

US Airways tried to obtain landing and take-off rights at Gatwick airport. The British refuse to budge. As a result, US Airways was forced to cancel its Charlotte-London service for the