

Congress of the United States
Washington, DC 20515

May 23, 2000

The Honorable Don Nickles
United States Senate
Room 133 Hart Senate Office Building
Washington, D.C. 20510

Dear Don:

Last Thursday the members of the managed care reform conference committee discussed for the first time since the conference began the issues of scope and liability. Even though there was no discussion or offer of any alternative to the House bill, the discussion was helpful because it was the first time you expressed to us your concerns on these subjects.

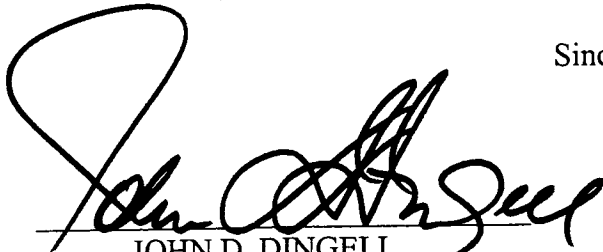
Since there has been no progress since that meeting, and we have received no offer of an alternative to the House bill, we are offering a proposal on behalf of all Democratic conferees today that is an attempt to respond to the three specific concerns you raised: the liability of employers, how best to cover all Americans, and exhaustion of appeals. We request a meeting to discuss our proposal on Wednesday, during which we hope that you will be able to accept these suggestions or respond with a proposal of your own that can form the basis for expedited negotiations.

As always, these proposals depend on agreement on a complete package, and the conference has yet to reach agreement on the majority of provisions in the House and Senate bills to prohibit specific managed care abuses.

At our White House meeting May 11, President Clinton expressed his strong hope that the conferees would be able to reach at least conceptual agreement on the issues of scope, liability, and external appeals before the Memorial Day recess. Given the limited time remaining in this Congress, prompt action is essential if this important legislation is to be enacted this year.

Thank you for consideration of these proposals.

Sincerely,


JOHN D. DINGELL


EDWARD M. KENNEDY

enclosure

cc: All House and Senate Conferees

DEMOCRATIC OFFER
May 23, 2000

LIABILITY

Modify House Bill as follows:

(1) Responsibility of the employer. Clarify that an employer may only be sued if the employer makes a decision denying a specific claim for benefits and that decision results in the injury or death of the patient.

(2) Exhaustion of internal and external appeals.

- For externally appealable decisions, the plan could request the completion of the external appeals process concurrent with court proceedings, even if exhaustion was futile, to determine how an external appeals entity would have ruled on the appeal. Results of the external appeal process could be used as evidence in court.
- Modify exhaustion language by inserting language to the effect that the injury must be one in which provision of the benefit at this time would have no effect.

SCOPE

Agreement on scope would provide that provisions of legislation apply to all individuals covered by House Bill. Democrats would consider proposals to:

(1) Clarify method for determining whether or not a competing state law is as protective of beneficiaries as the Federal law. Some deference could be given to states in cases of ambiguity.

(2) Provide for an alternative enforcement mechanism in the event that State laws or enforcement do not meet the standards of the act.

EXTERNAL APPEALS

(1) Choice of entity. Return to tentative agreement to accept House language with no accompanying report language.

(2) State autonomy. Accept paragraph "D", p. 169 of House language, regarding state choice of entities. General language regarding Federal preemption apply to state external appeals programs, as modified by that paragraph. Nothing in the external appeal section shall be construed to modify ERISA preemption under current law.

(3) Ability of external appeal entity to affirm, deny, or modify. We would suggest changing this to allow the external appeal entity to affirm or deny, in whole or in part.

(4) Other outstanding concerns. Staff will resolve a number of other outstanding concerns, including agreement on legislative language, time frames on appeals, utilization review, internal appeals process and other relevant issues.