



American Academy of Family Physicians
2021 Massachusetts Avenue, N.W., Washington, DC 20036-1011

March 9, 2001

Representative Greg Ganske
U.S. House of Representatives
Washington, D.C. 20510

Dear Congressman Ganske:

On behalf of the 93,100 members of the American Academy of Family Physicians, I would like to thank you for introducing H.R. 526, The Bipartisan Patient Protection Act of 2001. The Academy hopes that the 107th Congress will pass legislation that ensures the rights of patients. As you know, the debate over managed care reform remains a critical priority for the nation's family physicians who deal daily with the consequences when their patients cannot access needed medical care. The Academy supports H.R. 526 and looks forward to its passage in the 107th Congress. Below are the principles the Academy sees as important in any managed care reform proposal:

- **Reforms need to cover all health care plans; not just self-funded plans**
Patient protections should protect all patients.
- **Gag clause protections need to be extended to all physicians**
Unfettered medical communication is undeniably in the best interest of patients--all patients. Any final bill needs specific language stipulating that any provision of a contract between a health plan and a physician that restricts physician-patient communication is null and void.
- **Physician advocacy must be protected**
Managed care reform must include provisions to prevent retaliation by a health plan toward physicians who advocate on behalf of their patients within the health plan, or before an external review entity. Family physicians, as primary care physicians, play a pivotal role in ensuring that their patients get access to the care they need. Health plans should not have the power to threaten or retaliate against physicians who help their patients get the care they need.
- **Independent external review standards must be truly independent**
Managed care reform must contain a fair, independent standard of external review by an outside entity. It makes no sense to pay an outside reviewer to use the same standard of care used by some health plans, which may limit care to the lowest cost option that does not endanger the life of the patient. Our patients deserve better.
- **Patients need the right to legal recourse against managed care plans under state law when plans' negligent medical decisions result in death or injury**
Managed care reform must allow patients to seek recovery in state courts against health plans when they have been injured by the plans' negligent medical decisions.

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States historically have had the authority to regulate the practice of medicine, and they should retain their jurisdiction when plans make medical decisions that harm or kill patients.

- **Patients need the right to access federal courts when they have jurisdiction over plan administration or benefit decisions**
Under ERISA, federal courts have the authority to oversee the proper administration of plan benefits. ERISA, however, does not allow for adequate remedies when enrollees are harmed or killed because plans have failed to comply with their own plan contracts. ERISA needs to be modified to allow injured patients to seek recovery in federal court for improper coverage denials that do not involve medical decisions. Meaningful liability caps in federal court will ensure that health plans recognize their responsibility to ensure that patients have timely access to needed medical care.
- **Basic information about benefits and physicians need to be made available**
Patients deserve enough information to make informed decisions.
- **Prudent layperson standard for seeking emergency medical care**
When a reasonable person feels their health would be endangered without emergency medical care, they need to have that right assured without having to wait for prior approval in critical situations. This requirement already exists for Medicare beneficiaries in the *Balanced Budget Act of 1997*.
- **Allowances for non-formulary drugs**
Health plans need to have a process whereby patients can access medically required prescription drugs that are not on a health plan's formulary.
- **Patients need access to primary care physicians and other specialists**
Managed care reform must allow patients to seek care from the appropriate specialist, including both family physicians and obstetricians/gynecologists for women's health, as well as both family physicians and pediatricians for children's care. Primary care physicians should provide acute care and preventive care for the entire person, and other specialists should provide ongoing care for particular conditions or disease.

It is time to see these principles not just articulated in legislation, but enacted into federal law.

Sincerely,



Bruce Bagley, M.D.
Chair, Board of Directors