



April 17, 2009

The Honorable Edward M. Kennedy  
United States Senate  
Washington, DC 20510

Dear Senator Kennedy,

Now that the Easter recess is over and the debate on health care reform will intensify, your influence could well determine the future of American health care.

Your long and steady struggle to make health care an American right has produced strong if incomplete victories since 1970, including the passage of landmark federal laws: COBRA, the Health Insurance Portability and Accountability Act, and the Children's Health Insurance Program, to name a few.

As you know well from these focused victories, sometimes compromise works. That appeared to be the case in 1973 after your Universal Health Insurance Act was deep-sixed by the American Medical Association and its allies. You dialed back your ambition and gained enactment of the Health Maintenance Organization ("HMO") Act as a strategy to control rising health care costs while guaranteeing full health care to HMO subscribers.

At the time, you said in Congress, "I have strongly advocated passage of legislation to assist the development of health maintenance organizations as a viable and competitive alternative to fee-for-service practice. ... I believe that the HMO is the best idea put forth so far for containing costs and improving the organization and the delivery of health-care services ... ."

President Nixon echoed your enthusiasm in his bill signing statement: "[The HMO Act] . . . will build on the partnership that exists between the Federal and private sector by allowing both the provider and the consumer of health services to exercise the widest possible freedom of choice."

Yet the HMO compromise, under business pressures, ultimately did not transform health care or control costs. The same is poised to happen again if insurance companies succeed in eliminating or crippling a "public option" to their for-profit business model, or mandating that Americans buy private health insurance policies.

The change you could not have anticipated in 1973 was the wholesale shift of HMOs, and later PPOs, from non-profit patient protector to for-profit denizens of Wall Street. In 1992 you acknowledged the devastating effect of this shift, and blamed insurers directly, in a speech to the Health Insurance Association of America:

"Your private sector role has unquestionably made the crisis worse. ... The message sent out by too many of your member companies is unmistakably clear: don't insure anyone unless you think they won't get sick. And if you make a

mistake, do your best to walk away from it. Do all you can do to stop Congress from acting.”

Your effort in the early 1990s to correct the unanticipated effects of HMO profiteering by increasing competition between HMOs was undercut by another business development: 400 managed care mergers since 1994.

Skyrocketing health care costs have once again propelled health care reform to the top of the national agenda. And once again, you are at the fulcrum point of the debate.

Health insurance today is a big business dominated by a small group of large companies that are virtually unregulated in what they can charge. Health insurers and HMOs' extreme market control has translated to unimaginable power over the American consumer. Premiums have skyrocketed, increasing over 87 percent during the past six years, greatly outpacing worker earnings and the cost of providing care. Coverage continues to shrink and deductibles steadily rise.

Once again Americans need a “competitive alternative” to the status quo. But experience shows that no business model for health insurance can succeed on its own in creating competition, cutting overhead or curbing overall medical costs. You indicated your distrust in the industry's ability to reform itself at the first in a series of hearings you held as a prelude to the HMO Act in 1971:

“We cannot expect those with a vested interest in the system as it currently exists to support the reforms which are so badly needed. ... The insurance industry has been content to pass the skyrocketing costs of medical care onto the consumer, without ever attempting to effectively to control those costs.”

This time around, the chief focus of contention is whether there should be a robust, widely available “public option” for health insurance, most often expressed as opening Medicare to more individuals and even employers. As this option would bypass health insurers, it is being described by erstwhile champions of the free market as “unfair competition.”

Yet a true public option is far more in the spirit of the free market than any reform that preserves the oligopoly of private, for-profit health insurance. It would allow Americans to keep their employer-provided or individually-purchased health insurance policies if they chose, or buy into the public program. Such a solution would do what President Nixon lauded in the HMO Act: “build on the partnership that exists between the Federal and private sector,” though it would also force private insurers and HMOs to become more efficient to stay in the market.

By almost every measure, Medicare is cheaper and more effective than private plans. For example, Medicare spends 2% of revenue on overhead; private insurers typically spend 25% to 27% for overhead and profit. Large-scale polls find substantially greater patient satisfaction with Medicare as well. A January 2009 poll also found that 65% of voters support giving every American of any age the option of joining Medicare, and 60% are willing to pay more in payroll deductions for this option.

Competition with a low-overhead public alternative to health insurance provided by Medicare will force private insurers to prove that they can be cost-effective while offering

similarly comprehensive coverage. A level playing field between private insurers and the public option—requiring all players to guarantee access at a fair price—would significantly reduce costs and increase access to health care.

While you could not have anticipated in 1973 that HMOs would transform themselves from a low-cost organizer of health care benefits to a for-profit waste-enhancing gatekeeper to health care, surely you and your colleagues can see that again trusting private markets will again lead to failure, especially on controlling costs.

Merely requiring Americans to buy individual insurance policies or face fines and other reprisals when they file their income taxes will lead to middle-class revolt. The so-called “mandatory purchase” requirement for health insurance, the insurance industry’s preferred solution, would be akin to the hunter handing Red Riding Hood over to the wolf.

The right to health care you have championed is not the same as the requirement to buy a private insurance policy. The individual market is a disaster for consumers: denials of care when sickness strikes and health care is needed the most, double and triple digit premium increases, shrinking benefits and fine print that strips coverage to the bone. Its ever-higher deductibles are nearly as efficient as lack of insurance in preventing patients from seeking needed care.

Don’t let the institution of the United States Senate use your name and credibility for something that goes against the principles you fought for your entire life.

Massachusetts’ embrace of the mandatory purchase regime—while refusing to regulate health insurance overhead and profit, provide an option to the private market or guarantee minimum benefits—led to the inevitable proliferation of high-cost, low-benefit insurance. Under such an approach, patients might be technically “insured” but will not receive the coverage needed when they get sick.

Elements of the Massachusetts law, including guaranteed access, community rating and subsidies to lower-income communities, provide models for national reform. However, the mandatory purchase requirement is not a national model in part because Massachusetts had relatively few uninsured to begin with, and most insurers in the state are nonprofits. Almost every other state is dominated by inefficient, for-profit insurers and currently lacks adequate laws to protect patients against price discrimination. Even the self-described “non-profit” insurers can’t resist profiting at the expense of patients under a mandatory purchase regime. Blue Cross Blue Shield of Massachusetts now pays its CEO a salary of \$3.5 million (plus unreported bonuses), even as consumers were required to pay more for their Blue Cross health plans under Massachusetts’ mandatory health insurance law.

Compromise is still necessary in government. But today, unlike in the early 1970s, the compromise under discussion is not between having government provide health care for all or preserving a place for private insurance. It’s between handing private insurers the whole market or giving government a chance to compete. What industry calls compromise—the mandatory purchase requirement—is really capitulation to its demands for a captive market and a taxpayer-funded bailout.

You have had more experience than anyone else in Congress with the insurance industry's broken assurances. They will not change their world. You have to change it for them, and a true public option to for-profit insurance is the only sure way to do it.

Sincerely,



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