

Mental Health Liaison Group

April 30, 2001

Honorable Bill Frist, M.D.
United States Senate
Washington, DC 20510

Dear Dr. Frist:

As members of the mental health advocacy community, we are writing to express our concern about the draft version of the Patients' Bill of Rights Plus Act, the text of which was circulated last month as a Frist-Jeffords-Breaux proposal.

The definition of "substantial harm" in Section 141(a) of your draft bill fails to include mental injury and provides a remedy only in the most limited instance in which a failure to treat a mental illness actually results in physical harm. That definition is: "...loss of life, loss or significant impairment of limb or bodily function, significant disfigurement, or severe and chronic physical pain, and includes a physical injury arising out of a failure to treat a mental illness or disease." Under this very restrictive definition, substantial deterioration of depression, for example, as a result of denial of treatment would apparently NOT constitute substantial harm unless it resulted in an attempted suicide (and then only if that involved physical injury).

While the debate continues about the extent to which managed care reform legislation should give patients access to the courts, the bill would effectively deny all but the most limited number of persons with mental disorders the ability to seek managed care legal accountability, despite the extremely serious consequences that may result from failure to treat these disorders. For example, if an individual's depression worsens to the point that he or she cannot work or is suicidal, a real injury would have been suffered for which there would be no access to the legal system.

If your draft bill continues to use this substantial harm definition, we urge that you add to it language specifically including mental injury. This positive change was made by Representative John Shadegg in his bill, H.R. 5628, Common Sense Patients' Bill of Rights, introduced in October 2000. This is also what was proposed by Representative Nancy Johnson in the managed care conference discussions last summer.

Both the original Goss-Coburn-Shadegg managed care amendment rejected by the House in October 1999 and the Nickles amendment passed by the Senate in June 2000 reflected the same omission of mental injury. Some at that time made the argument that the term bodily injury includes mental injury. But "bodily" or "physical" injury is commonly and legally understood to mean only physical injury, an injury separate and distinct from mental or psychological injury. Therefore that definition of substantial harm unreasonably discriminates and excludes patients from the right to seek judicial remedies for a wide array of potentially life threatening and severely disabling mental injuries related to the negligent provision of their benefits. In order to avoid excluding mental injury, the legislative language must include it.

National organizations representing consumers, family members, advocates, professionals and providers
c/o Peter Newbould, American Psychological Association, 750 First Street, NE, Washington, DC 20002

Senator Bill Frist
April 30, 2001

We are also concerned that the placement of dollar caps on noneconomic damages may so restrict the remedies available to consumers, especially women not in the work force and children, that health plans may have little incentive to provide clinically necessary care.

We would welcome the opportunity to work with you to significantly strengthen these and other consumer protections contained in the draft Patients' Bill of Rights Plus Act as the Congressional debate continues. Thank you for consideration of our views.

Sincerely,

Alliance for Children and Families
American Academy of Child and Adolescent Psychiatry
American Association for Geriatric Psychiatry
American Association for Marriage and Family Therapy
American Association for Psychosocial Rehabilitation
American Association of Children's Residential Centers
American Association of Pastoral Counselors
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National Association for Rural Mental Health
National Association of Anorexia Nervosa and Associated Disorders -- ANAD
National Association of County Behavioral Health Directors
National Association of Mental Health Planning & Advisory Councils
National Association of Protection and Advocacy Systems
National Association of Psychiatric Treatment Centers for Children
National Association of School Psychologists
National Association of Social Workers
National Council for Community Behavioral Healthcare
National Depressive and Manic-Depressive Association
National Mental Health Association
Tourette Syndrome Association

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Honorable James M. Jeffords, Chairman
Committee on Health, Education, Labor & Pensions
United States Senate
Washington, DC 20510

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Honorable John B. Breaux
United States Senate
Washington, DC 20510

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