July 12, 1999

The Honorable Mike DeWine
United States Senate
140 Russell Senate Office Building
Washington, DC 20510

Dear Senator DeWine:

The undersigned organizations are pleased that the Senate has agreed to begin debate on patient protection legislation. Bipartisan enactment of comprehensive legislation in this area is urgently needed.

Although the Committee on Health, Education, Labor and Pensions recently reported S. 326, we understand that the Senate will consider the "Patients' Bill of Rights Act of 1999," S. 1344, as the starting point for debate.

We urge you to consider our major areas of concern with any patients' rights legislation and to support only legislation that includes the elements discussed bel ow. Although S. 326 purports to contain some of the elements discussed below, we are concerned that provisions in that bill fall short of truly protecting patients. Accordingly, we urge you to review carefully patient protection legislation, particularly with regard to the areas discussed below, and support legislation that includes the elements discussed below.

Grievances and Appeals

Grievance and appeals systems must have a binding external appeals mechanism. We support timely, independent, binding review as a method of resolving patients' disputes with health plans. External review entities and reviewers are not "independent" if they are beholden to the plans. Further, prior authorization must not be required for the provision of covered emergency services, and review and notification timelines for coverage denials involving non-emergent care must not favor the health plans at patients' expense. **External review that could take up to 65 days**, or even longer, if the plan does not submit timely information to the external review entity, does not qualify as an appropriate review process.

In any appeals process, any review of physician determinations must be made only by physicians (medical doctors or doctors of osteopathy) of the same specialty and licensed in the same state as the treating physician. Similarly, determinations made by dentists should only be reviewed by other qualified dentists. In order to avoid bias, except where the review entity is a state agency, a health plan should not assign more than a certain percentage of its requests for external review to a particular review entity. In addition, a review process will not be meaningful without strict timelines that ensure patient appeals are handled in a timely fashion.

We urge you to support patients' rights legislation that establishes fair and equitable grievance and independent appeals procedures in accordance with the above requirements.

Medical Necessity

Permitting arbitrary health plan definitions of medical necessity to control all coverage determinations and allowing health plan bureaucrats, rather than properly qualified, licensed physicians or dentists, to make medical necessity decisions should be prohibited. Rather, plan determinations of medical necessity should be based on generally accepted standards of medical practice that a prudent physician or dentist would make.

An essential element of any sound external appeals process is how "medical necessity" will be determined. We strongly believe that medical necessity should be determined using a prudent physician standard in accordance with generally accepted standards of medical practice. We are not advocating that every conceivable medical service for every patient in every instance be covered. Nor are we saying that every physician decision be upheld. On the contrary, we are principally concerned that some health plans have sought to manipulate the definition of medical necessity to deny patient care by arbitrarily linking it to lowest cost measures without considering the individual patient's medical condition. Permitting plans and issuers arbitrarily to define medical necessity would continue to lead to abuses that ultimately harm patients.

We urge you to support patients' rights legislation that requires medical necessity decisions to be made in accordance with generally accepted standards of medical practice.

Emergency Care

No one should have to take precious time to call a health plan before seeking emergency care. Timely emergency care can make the difference between life or death, prevention of disability or disfigurement. We need to hold managed care plans accountable for the care they deliver and the decisions they make. We need a law to guarantee that every insured American who believes that he or she is suffering from an emergency medical condition has the right to seek emergency care from the nearest emergency department without first preauthorizing or precertifying the care with their health plan. Managed care plans also should be prohibited from denying claims for emergency care after the fact. Any provisions that provide those covered by private managed care plans with less protection than the "prudent layperson" standards that Congress provided to Medicare and Medicaid patients as part of the "Balanced Budget Act of 1997" should not be enacted.

We urge you to support legislation that establishes a true "prudent layperson" standard for emergency medical care.

Accountability

The inequity that results from health plans' ability to routinely make medical decisions while remaining unaccountable for the injuries they cause must be remedied. Health plans duplicitously argue that they should make medical necessity decisions and control utilization review and appeals processes while stating that they want to be protected by ERISA preemption. By not removing that immunity, health plans will not be held accountable. Presently, 127 million enrollees participate in ERISA-covered health plans, and despite state legislative initiatives to

provide adequate legal remedies, those enrollees are all without effective legal recourse against their health plans. This is an issue of fundamental fairness.

We firmly believe that Americans covered by ERISA plans must have the same right of redress as those who are covered by non-ERISA plans. Thus we urge you to support patients' rights legislation that removes the ERISA preemption for health plans.

Point-of-Service

All enrollees in managed care plans should be offered a point-of-service option that will enable them to obtain care from physicians outside the health plan's network of participating physicians or dentists. Provisions that establish loopholes for employers to create sham point-of-service options do not create a real patient protection. In addition, we urge your support of provisions to provide increased access to the services of obstetricians/gynecologists, pediatricians, and family physicians.

Please support patients' rights legislation that creates a real and viable point-of-service option that allows patients to obtain the care they need.

Scope of Patient Protections

All Americans should receive fundamental patient protections. Legislation that falls short of this standard, and applies only to patients in ERISA plans or that has provisions that apply only to patients in "self-funded" ERISA plans, is inadequate. This type of legislation would not cover patients most likely to be enrolled in HMOs that employ abusive practices, and could exclude from its coverage up to 111 million patients.

In order to be meaningful, Congress must enact national patient protections that apply to all Americans with private health insurance. Further, we urge you to support federal legislation that establishes a minimum floor of patient protections and that allows stronger state patient protections to remain in place.

In conclusion, we appreciate the Senate's efforts to adopt legislation that would promote fairness in managed care. We urge you to join us in advancing patients' rights by passing legislation that guarantees all patients have meaningful protections.

Respectfully,

American Academy of Child and Adolescent Psychiatry
American Academy of Dermatology
American Academy of Facial Plastic and Reconstructive Surgery
American Academy of Family Physicians
American Academy of Ophthalmology
American Academy of Otolaryngology Head and Neck Surgery
American Academy of Pediatrics
American Association of Clinical Endocrinologists

American Association of Neurological Surgeons
American College of Cardiology
American College of Chest Physicians
American College of Emergency Physicians
American College of Nuclear Physicians
American College of Obstetricians and Gynecologists
American College of Occupational and Environmental Medicine
American College of Osteopathic Family Physicians
American College of Physicians-American Society of Internal Medicine
American College of Surgeons
American Dental Association
American Gastroenterological Association
American Lung Association
American Medical Association
American Psychiatric Association
American Osteopathic Association
American Society for Gastrointestinal Endoscopy
American Society for Reproductive Medicine
American Society of Anesthesiologists
American Society of Cataract and Refractive Surgery
American Society of General Surgeons
American Society of Hematology
American Society of Nephrology
American Society of Plastic and Reconstructive Surgeons
American Thoracic Society
American Urological Association
College of American Pathologists
Congress of Neurological Surgeons
Renal Physicians Association
Society of Cardiovascular and Interventional Radiology
Society of Nuclear Medicine