

*****DRAFT MEDIA ADVISORY*****

FOR IMMEDIATE RELEASE

November 3, 2009

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ERISA-PROTECTED INSURANCE COMPANIES GET AWAY WITH MURDER!

PRESS CONFERENCE WEDNESDAY

***VICTIMS, FAMILIES, AND MEMBERS OF THE HOUSE AND SENATE EXPOSE SECRET DEAL
FOR INSURANCE COMPANIES IN THE HOUSE AND SENATE
DEMOCRATS' HEALTH CARE BILLS***

WASHINGTON, D.C. –Victims and their families will join lawmakers tomorrow, Wednesday, November 4, 2009, at 10 a.m. at a press conference at the U.S. Capitol to expose the hypocrisy in the Democrats' health care bills that gives employer and union health care plans immunity from damages when they wrongfully or negligently deny coverage and an employee or union member is injured or killed.

WHO: Victims and their families (including Mrs. Florence Corcoran of *CORCORAN v. UNITED HEALTHCARE, INC.*)
Members of the House and Senate
Victims' Physicians

WHEN: Wednesday, November 4, 2009
10:00 a.m. Eastern

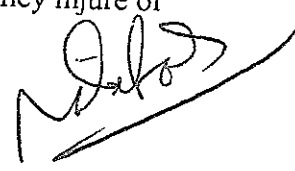
WHERE: House Triangle (outside)

In 1974, Congress passed the Employee Retirement Income Security Act (ERISA), a federal law which the United States Supreme Court has ruled provides "immunity" to an ERISA health plan in the event of negligent or wrongful denial of coverage. In 1999, Senators Ted Kennedy, John McCain, and Harry Reid, along with former Congressman Charlie Norwood and others condemned the injustice ERISA immunity causes and worked with Mrs. Florence Corcoran to repeal it. Yet, buried in the Democrats' health care bills is a provision that preserves and extends ERISA "immunity" to employer and union plans sold outside of the new "exchange."

Unlike Speaker Pelosi's official unveiling of her government takeover of health care, this press conference will be open to the public!

Why is Nancy Pelosi giving insurance companies immunity when they injure or kill someone? What other secret deals are in this bill?

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FOR IMMEDIATE RELEASE

November 4, 2009

CONTACTS: Nicole Philbin, 202-225-3361

The American People Deserve to Know

*Why did Democrats Agree to Give America's Biggest Insurance Companies Immunity
When They Injure or Kill Workers in a Union or Employer Plan?*

WASHINGTON, D.C. – Today, Congressman John Shadegg (AZ-03) issued the following statement regarding the Pelosi and Baucus health care bills:

“During the Patients Bill of Rights debate, Senator Ted Kennedy fought on behalf of victims like Florence Corcoran. He met and talked with Florence Corcoran and championed her cause. Senator Kennedy, at that time, said: ‘Patients should have the right to hold their [Insurance Company] accountable in court when its negligence causes the injury or death of a patient...No other industry in America enjoys immunity from accountability for its actions, and the insurance industry does not deserve it either.’ [Emphasis Added] *Senator Ted Kennedy, (D-MA) 2001.*

“Similarly, current Senate Majority Leader Harry Reid said: ‘Let's talk about a real person. Florence Corcoran is an example of the need to hold [Insurance Companies] accountable. She lost a baby because the [Insurance Company] refused the doctor's request for hospitalization in the last days of her pregnancy. The [Insurance Company] would pay for only 10 hours of at-home care. During the final months of pregnancy, when no one was on duty, her baby went into distress and died. Because Florence received health care coverage through an employer, they had no recourse or remedy for the death of this baby. The [Insurance Company] was not responsible under the law...’ [Emphasis Added] *Senator Harry Reid, (D-NV) July 15, 1999*

“In July of this year, Speaker Nancy Pelosi said: ‘It is well known to the public that the health insurance companies are the problem... The glory days are coming to an end for the health insurance industry... This is about... educating about what is in the bill. Of course they've been immoral all along in how they have treated the people that they insure... They are the villains.’ [Emphasis Added] *Speaker Nancy Pelosi, (D-CA) July 2009*

“The American people deserve to know, given these statements, why Nancy Pelosi, Harry Reid, Barack Obama, and Max Baucus cut a deal with America's biggest insurance companies and quietly put in their bills language that does exactly what Ted Kennedy, and Harry Reid condemned, giving insurance companies immunity when they injure or kill employees or union members.

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“As the late Senator Kennedy, in whose name these bills are being advanced said: ‘No other industry in America enjoys immunity from accountability for its actions, and the insurance industry does not deserve it either.’

“In Mrs. Corcoran’s case, the very case Senator Kennedy and Leader Reid talked about, the court ruled that Mr. and Mrs. Corcoran could recover nothing for the wrongful death of their son because Section 514 of ERISA prohibits any recovery. Specifically the court said:

‘For all the foregoing reasons, we find that ERISA [S. 514] pre-empts the Corcorans’ tort claim against United and that the Corcorans may not recover damages for emotional distress under ERISA.’

“Yet, on page 49 of H.R. 3200, on page 140 of Pelosi’s current bill, H.R. 3962, and on page 56 of the Baucus bill, rather than repealing Section 514 of ERISA and giving the Corcorans and thousands of other victims like them a remedy, the Pelosi and Reid bills preserve, protect, and extend Section 514 leaving millions of potential workers and union members with no remedy if they are injured or killed by the denial of coverage by a union or employer health care plan:

“Page 140 of H.R. 3962 reads: ‘Nothing in paragraphs (1) or (2) shall be construed as affecting the application of section 514 of the Employee Retirement Income Security Act of 1974.’

“Page 56 of the Baucus bill is identical: ‘(3) Nothing in this part shall be construed to affect or modify the provisions of section 514 of the Employee Retirement Income Security Act of 1974 with respect to group health plans.’

“Speaker Pelosi, Majority Leader Reid, tell America why the insurance industry is given immunity from accountability for its actions in your bills.”

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1 hrs 7/30
3:05 pm
A

AMENDMENT

**OFFERED BY MR. SHADEGG OF ARIZONA
RELATION TO OTHER REQUIREMENTS**

Strike Sec. 151(a)(2) and replace with:

(2) APPLICATION OF RIGHTS AND REMEDIES. -- Notwithstanding Section 514 of the Employee Retirement Security Act of 1974, individual rights and remedies under state laws shall apply for injury or wrongful death.

(3) CONSTRUCTION. -- In the case of coverage described in paragraph (1), nothing in such paragraph shall be construed as preventing the application of rights and remedies under State laws.

Nancy Pelosi's

Health Care Secret

Giving the biggest health insurance companies immunity when they kill people, while claiming to protect the little guy

- Section 514(a) of the Employee Retirement Income Security Act of 1974 (ERISA) provides *immunity* for insurers in the event of negligence or any other wrongful action – **even if their action results in the injury or death of a patient!**
- This immunity is specifically **preserved and extended** on page 140 of the Pelosi/Waxman/Miller/Rangel bill, H.R. 3962, as well as on page 56 of the Baucus bill, S. 1796.
- One tragic example of this gross injustice is Florence Corcoran. Mrs. Corcoran, an employee of South Central Bell, became pregnant in early 1989. That July, Mrs. Corcoran's obstetrician recommended that she have complete bed rest during the final months of her pregnancy.
- Benefits were denied despite numerous second opinions and United's *own* in-house physician stating that bed rest was necessary.
- As Mrs. Corcoran neared her delivery date, her doctor ordered her hospitalized so that he could monitor the baby around the clock.
- On October 3, 1989, Mrs. Corcoran went to the hospital under doctor's orders, but because United did not pre-approve, she was sent home on October 12, 1989. Instead, United approved ten hours per day of home nursing care.
- On October 25, during a period when no nurse was on duty, the baby went into distress and died.
- Mrs. Corcoran filed a lawsuit against United for the wrongful death of her child and was denied any recovery because of section 514(a) of ERISA. **This very section is preserved and extended in the Pelosi and Baucus bills! Why?**
- Someone needs to ask: 'Speaker Pelosi: Why does your bill give immunity to insurance companies when they refuse or deny care? Sen. Reid: Do you realize that this provision in your legislation will mean millions of workers and union members will have no remedy if they are denied care and injured as a result? Do the unions who support this bill know it leaves their members unprotected? Does the American Medical Association (AMA) know it is supporting a bill that lets doctors be sued but not ERISA plans?'

Senators Kennedy, Reid, and McCain and Speaker Nancy Pelosi on ERISA

Why have the Democrats abandoned the late Senator Ted Kennedy on this issue? Here is what he said:

“Patients should have the right to hold their [insurance company] accountable in court when its negligence causes the injury or death of a patient....No other industry in America enjoys immunity from accountability for its actions, and the insurance industry does not deserve it either.” (Emphasis added)

Senator Ted Kennedy, D-MA, 2001

“Let me tell you a story about Florence Corcoran from Louisiana. She was in the middle of a high risk pregnancy when her [health insurance company] denied her doctor's recommendation for hospitalization. She got a second opinion and they denied it again. During the last month of her pregnancy, the baby went into distress and because she had been denied monitors and hospital supervision-the baby did not survive. Our current system left her without a real remedy. This is unacceptable. (Emphasis added)

Senator Ted Kennedy, D-MA, June 2001

“[You] should be able to hold your [health insurance company] accountable when it makes a decision that harms you.”

Senator Ted Kennedy, D-MA, June 2001

“The [health insurance companies] want special consideration, special privilege. They want to be unique in our country and not bear responsibility for their decisions, and that's basically and fundamentally wrong...the reason that we are so strong for accountability is for this reason: When you have accountability and responsibility in the [health insurance industry], then the [health insurers] do the right thing. And we don't have the suits.” (Emphasis Added)

*Senator Ted Kennedy, D-MA
News Hour with Jim Lehrer, June 19, 2001*

“Sen. Edward M. Kennedy, D-Mass., who has backed a federal right-to-sue law, said, ‘Congress can and should change this antiquated and unfair law at once.’”

*Hartford Courant (Connecticut)
June 22, 2004 Tuesday, STATEWIDE*

Speaker Pelosi,

If the insurance companies are “immoral” “villains,” why does your bill give them the ability to go on hurting or killing people without being able to be held accountable for the injuries they cause?

“It is well known to the public that the health insurance companies are the problem... The glory days are coming to an end for the health insurance industry... This is about...educating about what is in the bill.” (Emphasis added)

Speaker Nancy Pelosi, D-CA, July 31, 2009

“It’s almost immoral what [the insurance companies] are doing.”

Speaker Nancy Pelosi, D-CA, October 15, 2009

“Of course they’ve been immoral all along in how they have treated the people that they insure... They are the villains.” (Emphasis added)

Speaker Nancy Pelosi, D-CA, July 30, 2009

November 4, 2009

President Barack Obama
1600 Pennsylvania Avenue
Washington, DC 20500

Dear President Obama:

It has come to my attention that the health care reform bills that you support, H.R. 3962, and S. 1796 have the same provision (on page 140 in H.R. 3962 and page 56 in S. 1796) that would protect insurance companies. These bills provide immunity from lawsuits for health insurance companies if they deny coverage and a patient is hurt or killed because of that denial.

During your State of the Union address on September 9, 2009, you spoke fondly about your friend Ted Kennedy and his passion. Senator Kennedy fought tirelessly to raise awareness and correct the ERISA preemption problem. In 2001, Senator Kennedy said, "Patients should have the right to hold their HMO accountable in court when its negligence causes the injury or death of a patient....No other industry in America enjoys immunity from accountability for its actions, and the insurance industry does not deserve it either."

However, during your State of the Union address you quoted a letter that you received from Senator Kennedy that said, "What we face...is above all a moral issue; at stake are not just the details of policy, but fundamental principles of social justice and the character of our country." Denying patients a legal remedy when they are wronged by their insurance company is not justice of any kind and the character of our country is better than that.

How can you support health care reform bills in Senator Kennedy's name that will EXTEND this immunity to insurance providers that the Senator fought against? Will you pledge not to sign any bill that preserves and extends this horrible injustice? We look forward to your response on this important issue.

Sincerely,

November 4, 2009

The Honorable Nancy Pelosi
Speaker of the House
235 Cannon House Office Building
Washington, DC 20515

Dear Speaker Pelosi:

It has come to my attention that the health care reform bill that you wrote, H.R. 3962, has a provision on page 140 that would protect insurance companies. Your bill provides immunity from lawsuits for health insurance companies if they deny coverage and a patient is hurt or killed because of that denial.

On October 6, 2009 you said, "So our message is very clear to the women of America: if you are a young woman, if you are a woman of child-bearing age, this legislation helps you. It helps you by removing co-pays and deductibles for preventive care, whether that is for mammograms, whatever challenges there may be. If you are a young woman of child-bearing age, they consider pregnancy a pre-existing condition — that will no longer be the case."

Senator Reid says it better than I could, "Let's talk about a real person. Florence Corcoran is an example of the need to hold HMOs accountable. She lost a baby because the HMO refused the doctor's request for hospitalization in the last days of her pregnancy. The HMO would pay for only 10 hours of at-home care. During the final months of pregnancy, when no one was on duty, her baby went into distress and died. Because Florence received health care coverage through an employer, they had no recourse or remedy for the death of this baby." (Senator Reid, July 15, 1999).

How can you support a health care reform bill that will EXTEND this immunity to insurance providers? And, will you remove the language that preserves and extends this horrible injustice?

Sincerely,

Corcoran v. United Health Care
United States Court of Appeals for the Fifth Circuit, 1992

“For all the foregoing reasons, we find that ERISA [§ 514] pre-empts the Corcorans’ tort claim against United and that the Corcorans may not recover damages for emotional distress under ERISA.”

Pilot Life Insurance Co. v. Dedeaux

United States Supreme Court, 1987

“We conclude that Dedeaux’s state law suit asserting improper processing of a claim for benefits under an ERISA-regulated plan.. is pre-empted by § 514(a).”

MAJORITY LEADER REID:

“The law now has the effect of allowing an [insurance company] to deny or delay care, with no effective remedy for patients. All we want to do is make the law apply to [insurance companies].”

Majority Leader Harry Reid, July 15, 1999

SPEAKER PELOSI:

“It is well known to the public that the health insurance companies are the problem... The glory days are coming to an end for the health insurance industry... This is about... educating about what is in the bill.”

Speaker Nancy Pelosi, July 31, 2009

SPEAKER PELOSI:

‘It’s almost immoral what [the insurance companies] are doing.’

Speaker Nancy Pelosi, October 15, 2009

‘Of course they’ve been immoral all along in how they have treated the people that they insure... They are the villains.’

Speaker Nancy Pelosi, July 30, 2009

November 4, 2009

The Honorable Harry Reid
Majority Leader of the U.S. Senate
522 Hart Senate Office Building
Washington, DC 20510

Dear Senator Reid:

It has come to my attention that the health care reform bill that you support, S. 1796, has a provision on page 56 that would protect health insurance companies. This bill provides immunity from lawsuits for health insurance companies if they deny coverage and a patient is hurt or killed because of that denial.

However, this is something that you already understand. On July 15, 1999 you said, "Today, even an HMO involved directly in dictating, denying, or delaying care for a patient can use a loophole in what we call ERISA to avoid any responsibility for the consequences of its actions. The American people simply do not support that. ERISA was designed to protect employees when they lose pension benefits to fraud, mismanagement, and employer bankruptcies, which occurred so often during the 1960s. The law now has the effect of allowing an HMO to deny or delay care, with no effective remedy for patients. All we want to do is make the law apply to HMOs."

How can you support a health care reform bill that will **EXTEND** this immunity to insurance providers? And will you remove the language that preserves and extends this horrible injustice?

Sincerely,