



June 20, 2001

Has Senator Edwards Read His Own Bill?

This weekend, a doctor (Senator Frist, sponsor of S. 889) and a trial lawyer (Senator Edwards of S. 1052 fame) appeared on ABC's *This Week* to discuss patients' rights legislation. This myth/fact sheet is for those who may have noticed that the trial lawyer's lips were moving.

<u>Senator Edwards</u>	<u>Fact</u>
"First of all, we specifically protect employers from lawsuits."	Flat wrong. S. 1052 specifically <i>authorizes</i> lawsuits against employers. Page 145, line 3 reads: ". . . a cause of action may arise against an employer . . ."
"I think the [Congressional Budget Office] has the cost of [S. 889, the Frist-Breaux bill] as increasing insurance premiums about 3 percent. It has ours increasing insurance premiums about 4 percent. And for that kind of marginal cost, we think the American people, employers and employees, will think this is a good buy."	S. 1052 would not be a "good buy" for the 1,260,000 people who would lose their health coverage if it became law. S. 1052 would be 45 percent more costly than Frist-Breaux, which would cancel coverage for some 870,000 Americans.

<p>“What we have done is constructed a bill that’s designed to avoid lawsuits. . . . If the HMO denies the claim, we have an internal review process within the HMO. We have an independent external review process. And it’s only when those processes don’t work that anybody goes to court.”</p>	<p>Wrong. Under S. 1052, enrollees could go straight to court and seek monetary damages. . .</p> <p>. . . simply by waiting 181 days from a coverage denial, <i>or</i></p> <p>. . . at any time the enrollee claims the benefit denial would cause “immediate and irreparable harm.”</p> <p>Also, no external review is required before contract disputes could go to federal court.</p>
<p>“Under Senator Frist’s bill, if a child is paralyzed for life by the conduct of an HMO, under his bill the most that child could ever recover is \$500,000.”</p>	<p>Wrong. If the paralysis is alleged to be the result of . . .</p> <p>. . . medical malpractice, the case would go to state court, where Breaux-Frist would impose no caps on damages.</p> <p>. . . a medically reviewable coverage decision, that child could collect unlimited economic damages in federal court, which, in the words of Senator Frist, include “hospitalization, rehabilitation, lost wages in the future, everything, which can be millions and millions and millions of dollars.” The child could collect \$500,000 <i>more</i> in non-economic damages.</p>
<p>“The majority of states in this country have caps [on damages]. They have caps in place. And what we want . . . ultimately is for HMOs and insurance companies to be treated just like everybody else . . .”</p>	<p>Wrong.</p> <p>Many states protect doctors through caps on medical malpractice lawsuits.</p> <p>S. 1052 neither extends this protection to health plans nor to employers.</p>

“The president, during his campaign . . . looked the American people in the eye in the third debate and said, ‘I will fight for a patients’ bill of rights,’ referencing the Texas bill. Our bill is almost identical [to Texas law].”

Wrong.

Texas law explicitly protects employers from lawsuits. S. 1052 explicitly *authorizes* lawsuits against employers.

Texas law caps damages in state lawsuits. S. 1052 does not.

Texas law does not authorize lawsuits for non-medically reviewable coverage decisions. S. 1052 does.

Senator Frist: “It’s absurd to say that the Texas bill is like theirs.”