CONSUMER PROTECTION LEGISLATION

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 11, 1999

Mr. PAUL. Mr. Speaker, I rise to introduce my Consumer Protection Package—consisting of two pieces of legislation which will benefit consumers by repealing federal regulations. The first piece of legislation, the Consumer Health Free Speech Act, stops the Food and Drug Administration (FDA) from interfering with consumers' access to truthful information about foods and dietary supplements in order to make informed choices about their health. The second bill, the Television Consumer Freedom Act, repeals federal regulations which interfere with a consumers ability to avail themselves of desired television programming.

The Consumer Health Free Speech Act accomplishes its goal by making two simple changes in the Food and Drug Act. First, it adds the six words ''other than foods, including dietary supplements'' to the statutory definition of ''drug,'' thus allowing food and dietary supplement producers to provide consumers with more information regarding the health benefits of their products, without having to go through the time-consuming and costly process of getting FDA approval. This bill does not affect the FDA's jurisdiction over those who make false claims about their products.

Scientific research in nutrition over the past few years has demonstrated how various foods and other dietary supplements are safe and effective in preventing or mitigating many diseases. Currently, however, disclosure of these well-documented statements triggers more extensive drug-like FDA regulation. The result is consumers cannot learn about simple and inexpensive ways to improve their health. Just last year, the FDA dragged manufacturers of Cholestin, a dietary supplement containing lovastatin, which is helpful in lowering cholesterol, into court. The FDA did not dispute the benefits of Cholestin, rather the FDA attempted to deny consumers access to this helpful product simply because the manufacturers did not submit Cholestin to the FDA's drug approval process!

The FDA's treatment of the manufacturers of Cholestin is not an isolated example of how current FDA policy harms consumers. Even though coronary heart disease is the nation's number-one killer, the FDA waited nine years until it allowed consumers to learn about how consumption of foods and dietary supplements containing soluble fiber from the husk of psyllium seeds can reduce the risk of coronary heart disease! The Consumer Health Free Speech Act ends this breakfast table censorship.

The bill's second provision prevents the FDA's arbitrary removal of a product from the marketplace, absent finding a dietary supplement ''presents a significant and unreasonable risk of illness or injury.'' Current law allows the FDA to remove a supplement if it prevents a ''significant or unreasonable'' risk of disease. This standard has allowed the FDA to easily remove a targeted herb or dietary supplement since every food, herb, or dietary supplement contains some risk to at least a few sensitive or allergic persons. Under this bill, the FDA will maintain its ability to remove products from the marketplace under an expedited process if they determine the product causes an ''imminent danger.''

Allowing American consumers access to information about the benefits of foods and dietary supplements will help America's consumers improve their health. However, this bill is about more than physical health, it is about freedom. The first amendment forbids Congress from abridging freedom of all speech, including commercial speech.

My second bill, the Television Consumer Freedom Act, repeals federal regulations which interfere with a consumers ability to avail themselves of desired television programming. For the last several weeks, congressional offices have been flooded with calls from rural satellite TV customers who are upset because their satellite service providers have informed them that they will lose access to certain network television programs.

In an attempt to protect the rights of network program creators and affiliate local stations, a federal court in Florida properly granted an injunction to prevent the satellite service industry from making certain programming available to its customers. This is programming for which the satellite service providers had not secured from the program creator-owners the right to rebroadcast. At the root of this problem, of course, is that we have a so-called marketplace fraught with interventionism at every level. Cable companies have historically been granted franchises of monopoly privilege at the local level. Government has previously intervened to invalidate ''exclusive dealings'' contracts between private parties, namely cable service providers and program creators, and have most recently assumed the role of price setter. The Library of Congress, if you can imagine, has been delegated the power to determine prices at which program suppliers must make their programs available to cable and satellite programming service providers.

It is, of course, within the constitutionally enumerated powers of Congress to ''promote the Progress of Science and useful Arts by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.'' However, operating a clearing-house for the subsequent transfer of such property rights in the name of setting a just price or ''instilling competition'' via ''central planning'' seems not to be an economically prudent nor justifiable action under this enumerated power. This process is one best reserved to the competitive marketplace.

Government's attempt to set the just price for satellite programming outside the market mechanism is inherently impossible. This has resulted in competition among service providers for government privilege rather than consumer-benefits inherent to the genuine free market. Currently, while federal regulation does leave satellite programming service providers free to bypass the governmental royalty distribution scheme and negotiate directly with owners of programming for program rights, there is a federal prohibition on satellite service providers making local network affiliate's programs available to nearby satellite subscribers. This bill repeals that federal prohibition and allows satellite service providers to more freely negotiate with program owners for programming desired by satellite service subscribers. Technology is now available by which viewers will be able to view network programs via satellite as presented by their nearest network affiliate. This market-generated technology will remove a major stumbling block to negotiations that should currently be taking place between network program owners and satellite service providers.

Mr. Speaker, these two bills take a step toward restoring the right of free speech in the marketplace and restoring the American consumer's control over the means by which they cast their ''dollar votes.'' In a free society, the federal government must not be allowed to prevent people from receiving information enabling them to make informed decisions about whether or not to use dietary supplements or eat certain foods. The federal government should also not interfere with a consumer's ability to purchase services such as satellite or cable television on the free market. I, therefore, urge my colleagues to take a step toward restoring freedom by cosponsoring my Consumer Protection Package: the Consumer Health Free Speech Act and the Television Consumer Freedom Act.

''AUDIOLOGIST'' FOR MEDICAID

HON. ED WHITFIELD

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 11, 1999

Mr. WHITFIELD. Mr. Speaker, today I am introducing a bill with my good friend from Ohio, Mr. SHERROD BROWN, that would establish a Medicaid definition of ''audiologist'' used for Medicare reimbursement. Congress updated the definition of ''audiologist'' for Medicare reimbursement in 1994, but the same update has not yet occurred for Medicaid. The definition used by Medicare, and which I am proposing to be used for Medicaid purposes, relies primarily on state licensure or registration as the mechanism for identifying audiologists who are qualified to participate in the program.

Currently, under Health Care Financing Administration (HCFA) regulations, the Medicaid program uses a definition of ''audiologist'' that is nearly thirty years old and relies upon certification from third party organizations. HCFA's Medicaid definition has not kept pace with the significant changes that have occurred in audiology credentialing over the last three decades. The current definition also does not reflect the critical role that state licensure/registration now plays in assuring the quality of audiology services. State licensure/registration statutes currently exist in 49 of the 50 states.

Today, there are approximately 28 million Americans with some degree of hearing loss. While this number will grow along with the aging of the Baby Boomers, hearing loss is not exclusively an ''older'' person's problem. A recent article in the Washington Post entitled ''Hearing Loss Touches A Younger Generation'' points out that more and more Americans are suffering from various degrees of hearing loss at a younger age. The article refers to a Journal of the American Medical Association study which found that nearly 15% of children ages 6 to 19 who were tested showed some hearing deficit in either low or high frequencies. Audiologists are specifically trained and licensed to provide a broad range of diagnostic and rehabilitative services to persons