

Whose Rights Are We Protecting Anyway?

By Jennifer Brooks

Closing the Gap, The Problem of Accessing Health Care • August/September 1999

For more than two years, members of the U.S. House of Representatives have been haggling—mostly along party lines—over what has now become known as The Patients' Bill of Rights. While most of the Congress agrees a patient protection bill is needed, no consensus has been reached on what protections should be included in such a bill. In fact, there are several comprehensive patient protection bills currently before the House and Senate.

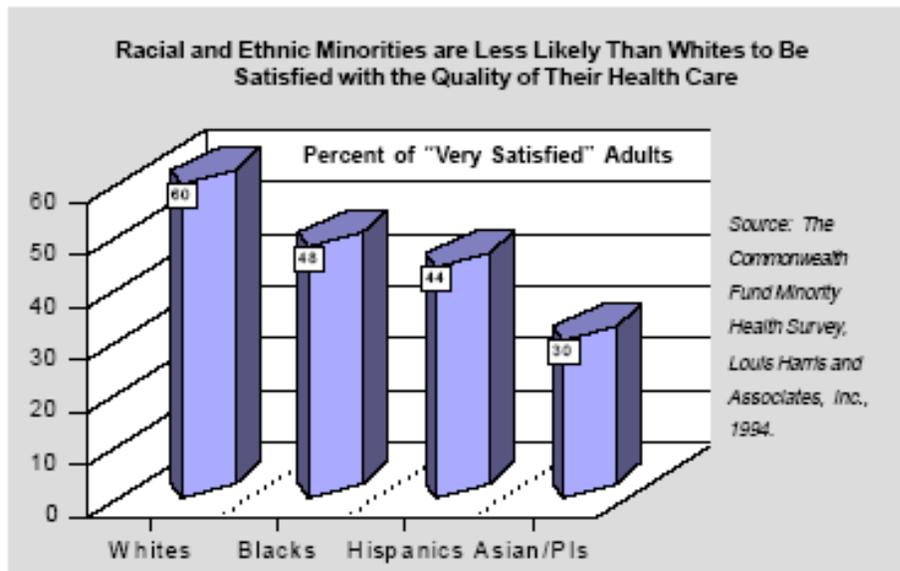
Some key consumer protections under debate in Congress are: access to emergency care and specialty services, access to out-of-network providers, access to clinical trials, the right of doctors to define medical necessity, the right to an external appeal, disclosure of treatment options, disclosure of financial incentives to deny care, and the right to sue health plans for damages.

The Senate bill

In July 1999, the Senate narrowly passed the new Republican Patients' Bill of Rights Plus Act (S. 1344) by a 53-47 vote. The bill, delivered by Senate Majority Leader Trent Lott (R-MS), provides language on the right of an external appeals process. This would allow the federal government to slap \$10,000 fines against any health plan that does not comply with review deadlines and an additional \$10,000—awarded to the patient—if the health plan does not comply with a reviewer's decision.

The Senate bill also includes rights to emergency care, access to specialists, points-of-service, direct access to OB/GYNs, continuity of care, access to clinical trials, provider non-discrimination, prohibition of gag clauses, and protection against genetic discrimination and disclosure of consumer information.

While the revised Republican bill is more comprehensive than prior versions, opponents argue it leaves off several essential protections like a patient's right to sue a health plan, a physician's authority to determine medical necessity, and coverage for all 161 million



health care consumers. Senate Republicans argue their bill is reasonable in that it protects people but preserves their freedom to choose and keeps costs down.

The Democrats call the bill a "sham." Their proposal, which failed in the Senate by a 53-47 vote, allows patients to sue health plans in state court if their plans' denial or delay in benefits caused them harm. And the Senate Democrats' bill covers all 161 million privately insured Americans. The Senate Republican bill only protects 48 million Americans enrolled in self-funded health plans for most provisions; some are broader. Republicans say individual states should regulate health insurance for the remaining 113 million Americans with private insurance who are not exempt from state regulation.

President Clinton has held to his position that any patient protection bill must cover everyone with private health insurance. Such legislation must include the ability of physicians to make necessary treatment and medical decisions. And he insists it must have managed care liability provisions, including a patient's right to sue, before he signs it into law.

A House compromise?

In August 1999, House Commerce Committee member Charlie Norwood (R-GA) and the panel's ranking Democrat, John Dingell, Jr. (D-MI), came up with a managed care bill that is generating bipartisan support in the House. The Norwood-Dingell bill, the Bipartisan Consensus Managed Care Improvement Act (HR 2723), would provide protection for all 161 million privately insured Americans and include the right to sue managed care companies in state court for damages. The plan also includes a "whistleblower" provision that would prevent managed care companies from retaliating against doctors and nurses who raise concerns about their patients' care.

The bill has the support of President Clinton, as well as the American Medical Association and more than 30 other physician, labor, and consumer groups.

In response, Tom Coburn (R-OK) and John Shadegg (R-AZ) announced plans to offer an alternative Republican

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bill that would also cover all privately insured Americans. The bill would include the right to sue health plans, although lawsuits would only be allowed in federal rather than state court to eliminate the threat of exorbitant jury awards.

The Coburn-Shadegg proposal includes a portion of the Republican tax relief package (H.R. 2488), which allows people to get deductibility for health insurance and long-term insurance expenses if they pay at least half the premiums. Their bill also includes provisions to expand medical savings accounts, but it has yet to generate the kind of support it needs to pass.

Foes of the Norwood-Dingell plan, including business and health insurance groups, have been running advertisements against the bill. But these groups are not exactly thrilled about the Coburn-Shadegg bill either. They are trying to encourage House Republicans

to consider an alternative bill that excludes liability altogether, according to a report from the Bureau of National Affairs.

Twenty-one House Republicans—many of whom are physicians—said they would vote against the Coburn-Shadegg bill unless its patient protection provisions are strengthened. These Republicans, along with the House Democrats—all of whom are expected to support the bill—would produce enough votes to pass the Norwood-Dingell bill.

Where do we go from here?

Everyone will have to wait and see how the House proposals play out when the leadership allows votes to be brought to the House floor. If either of the House bills pass, the House and Senate will be in direct conflict.

The Republican leadership in the Senate has expressed strong opposition to liability provisions because they say it would only drive up health care costs. But the President has promised to veto the Senate bill because it excludes liability.

And the House Democrats, along with the 21 Republicans, won't endorse any House bill that does not include liability.

So the fate of the patients' bill of rights will be left up to action in the House and then to the House-Senate conference committee who will face the difficult task of deciding what provisions to keep.

Consumer advocates fear the legislation will inevitably die because the conference committee will not be able to reach consensus. Business groups do not want legislation passed that, they say, would only hurt consumers in the long run. ❖

President's Commission Identifies Key Consumer Protections

Not everyone who has health insurance feels confident his or her health plan will be there when needed.

In fact, one of the biggest problems many insured Americans face is that their health coverage lacks some of the basic protections that should be afforded to everyone.

Responding to complaints by the American public about managed care and its impact on the quality of health care, President Clinton appointed the Advisory Commission on Consumer Protection and Quality in the Health Care Industry in 1997. The Commission informed the President of changes occurring in the health care system, and recommends necessary measures to promote and assure health care quality and value.

The 34-member Commission, cochaired by Donna E. Shalala, Secretary of Health and Human Services, and Alexis M. Herman, Secretary of Labor, was made up of individuals from a variety of backgrounds including: consumers, health care providers, businesses, health plans, state governments, and health care quality experts.

A major undertaking of the Commission was to draft a "consumer bill of rights." In March 1998, the Commission released a report that identified some key consumer protections. These protections included:

- **Information Disclosure.** Consumers have the right to receive accurate, easily understood information—including information on health plans, health professionals, and health care facilities—to help them make informed health care decisions.

- **Choice of Providers and Plans.** Consumers have the right to access emergency services when and where the need arises.
- **Participation in Treatment Decisions.** Consumers have the right and responsibility to fully participate in all decisions related to their health care, or be represented by parents, guardians, or other conservators if they are unable to do so.
- **Respect and Nondiscrimination.** Consumers have the right to considerate, respectful care from all members of the health care system at all times and under all circumstances.
- **Confidentiality of Health Information.** Consumers have the right to communicate with health care providers in confidence and to have the confidentiality of their health care information protected. Consumers also have the right to review and copy their own medical records and request amendments to their records.
- **Complaints and Appeals.** Consumers have the right to a fair and efficient process for resolving differences with their health plans, health care providers, and the institutions that serve them, including a rigorous system of internal review and an independent system of external review.
- **Consumer Responsibilities.** Consumers are expected and encouraged to assume reasonable responsibilities. Greater individual involvement by consumers in their care increases the likelihood of achieving the best outcomes and helps support a quality improvement, cost-conscious environment.

