



The “Patients’ Bill of Rights”: Get Two Lawyers and Call Me in the Morning

by Roger H. Leemis

Summary

The “patients’ bill of rights” currently being debated in Congress would encourage costly litigation, impose greater federal controls, and do little to improve Americans’ access to affordable, quality health care and insurance. States already are addressing patients’ concerns another way: by requiring independent medical experts to review health plans’ coverage and treatment decisions.

Main text word count: 719

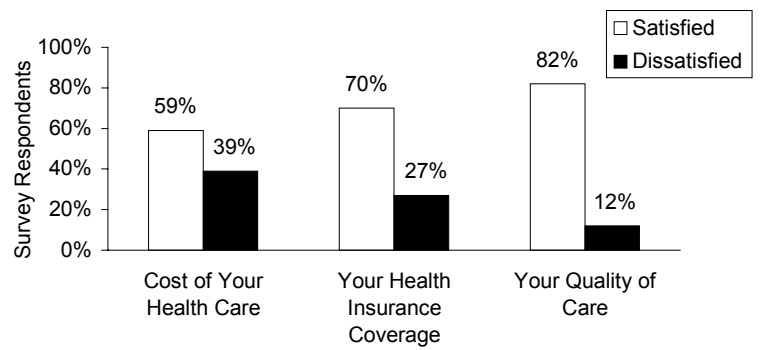
After endless debate in the U.S. Congress over a “patients’ bill of rights,” it has come to this: Where and when can patients sue health maintenance organizations (HMOs)? The final outcome has large implications for the cost and availability of both insurance and health care for all Americans.

Both major political parties have made the dubious assumption that the federal government can—and should—be the manager of “managed care” and the HMOs that deliver it. The House of Representatives would allow all 161 million Americans enrolled in HMOs to sue in state or federal courts if their HMOs make decisions patients deem excessively restrictive or harmful. Bills approved in the Senate would allow such lawsuits only in federal courts, which don’t allow punitive damages, and only after an independent reviewer determined that the HMO improperly denied care.

Consumer discontent with managed care suggests patients are unprotected, poorly cared for, and in desperate need of a lawyer. However, there is no evidence that managed care is *necessarily* of lower quality than traditional fee-for-service care. In fact, managed care can improve the overall quality of care, by using standard protocols, limiting ineffective medicines or treatments, and so on.

Specific complaints about managed care tend to focus on its impersonal nature and coverage limits, not quality of care per se. The real problem is that such limitations are essential if managed care is to control costs. Managed care generally works by having the insurer decide in advance which services are necessary (in the eyes of the insurer) and covered. Managed care plans—including HMOs—are *intended* to control costs by limiting services and restricting treatment options to those approved and available under the patient’s plan. That has been federal policy since 1973, when Congress first authorized HMOs.

Despite Problems, Most Americans Are Satisfied With Their Health Care



Source: Gallup, September 2000

In a recent Gallup survey, 58 percent of respondents indicated they believed the U.S. health care system had “major problems.” Despite this, clear majorities stated they were satisfied with their health care in general.

continued on back

Patients do not like hearing, “we don’t cover that.” Thus, several bills in Congress require expanded coverage, including specified treatments, permitting physician referrals, etc. These are the mandates of the “patients’ bill of rights.” To address coverage disputes, Congress likely would require extensive internal and external reviews and appeals. Mandated coverage and mandated appeals impose added costs. Adding expanded liability and thereby encouraging more litigation brings still more costs.

Once lawyers are involved, each coverage decision could mean a lawsuit. A plan enrolls only some doctors? Sue the HMO if the doctor makes a mistake. Reduce hospital stays? Sue if a patient has a relapse. Limit unproven treatments? Sue because the patient does not have other choices. America’s system of contingent fee litigation means that plaintiffs’ lawyers are the big winners and stand to win even bigger in a no-holds-barred lawsuit environment. (Incidentally, injured patients already may sue for malpractice in state courts.)

Health care cost containment results mainly if delivery of care is managed. Encouraging litigation over coverage decisions will be a major disincentive to managing care and will increase costs by reintroducing the unnecessary tests and defensive medicine managed care was supposed to avoid. Permitting patients to sue over coverage may end the ability of HMOs to control costs—yielding another round of painful hikes in insurance premiums and health care expenses.

Expanded liability is in a sense just another mandate, with its own price. Letting lawyers second-guess everyone will improve neither management nor care. Health plan costs already are rising significantly (up 9.7 percent over 1999 and accelerating), even before a “bill of rights” passes. In response to a spate of new lawsuits and the expensive paperwork new mandates from Washington will surely impose, some employers may decide to drop health coverage for employees or not offer it at all. None of this is likely to improve the overall quality or availability of health care in America.

While Washington dithers over the litigation question, states already are moving toward what may be a better solution: independent, external reviews by medical experts who judge whether a health plan is justified in denying coverage for an illness or employing a particular treatment. Thirty-nine of the 50 states, including Michigan, require such outside review. The result is that expensive litigation is often avoided and patient health stays at the center of attention.

In an era of concern over the cost and availability of health care, the best thing Congress could do for managed care is to resist the temptation to say, “just sue ’em.”

#####

(Roger H. Leemis practices health law in Southfield and is an adjunct scholar with the Mackinac Center for Public Policy, a research and educational institute based in Midland. More information on health care is available on www.mackinac.org. Permission to reprint in whole or in part is hereby granted, provided the author and his affiliations are cited.)

Permitting patients to sue over coverage may end the ability of HMOs to control costs—yielding another round of painful hikes in insurance premiums and health care expenses.

Attention Editors and Producers

Viewpoint commentaries are provided for reprint in newspapers and other publications. Authors are available for print or broadcast interviews. Electronic text is available at www.mackinac.org or on disk. Please contact:

Michael D. LaFaive
Research Project Manager
140 West Main Street
P.O. Box 568
Midland, MI 48640

Phone: (517) 631-0900
Fax: (517) 631-0964

www.mackinac.org
LaFaive@mackinac.org