Fates of Patient Protection Legislation Remain in Doubt

Even though the US House of Representatives passed the bipartisan Norwood-Dingell patient protection bill in early October, the fate of the long-awaited bill designed to reign in managed care remains in doubt. The final word will emerge from a House and Senate conference committee charged with resolving the differences between the bills the two chambers passed. The bills have two major differences. The House bill covers a majority of privately insured patients and gives them the right to sue their managed care companies; the Senate legislation is much more limited in the scope of patients it covers and does not include the right to sue. The bill that emerges from the conference committee still must be signed into law by the president. Whether or not he will sign the bill depends on the provisions of the bill that emerges.

Most House Republicans opposed the provision that would make managed care companies liable in state courts in the event that care is denied and the patient suffers injury or death as a result. Making such suits possible would require amending the Employee Retirement Income Security Act (ERISA), which currently provides patients with no legal recourse if the decision of a health plan results in harm. ERISA preempts state law when companies are self-insured or go across state lines. Moderate Republicans instead preferred a substitute bill introduced by Tom Coburn (R-Okla), who is a physician, and John Shaddegg (R-Ariz) that would require suits be filed only in federal courts and would limit the liability of plans.

The vote by the House of Representatives brought praise from the American Medical Association, the nation’s largest organization of doctors, which has been pushing for strong patient protection legislation for 5 years. AMA President Dr Thomas Reardon called the vote “a real win for American patients.”

Both bills included strong language that would allow patients to obtain emergency care when such care was, in the judgment “of a prudent layperson,” needed.

Major provisions of the Norwood-Dingell bill include:

- Making certain that children have access to pediatric specialists and pediatricians as their primary care providers.
- Insuring that patients’ care is continuous, even when there is a change in plan or the network of providers in a managed care plan.
- Giving access to clinical trials and requiring the plan to pay for routine patient costs associated with the trials.
- Allowing patients to go outside a plan’s drug formulary when the prescribing physician feels it is necessary.
- Permitting patients to choose a point-of-service option when their health insurance does not allow them to access healthcare providers outside the plan.
- Giving patients information about what is covered under their health plan.
- Allowing patients to appeal decisions to deny or delay care prescribed by the patient’s physician within the healthcare system in an expedient manner. There must also be an external independent body that can consider and rule on such disputes if a satisfactory solution cannot be found internally. Only after these reviews can a patient take the matter to court.
- Providing information about incentive plans within the HMO and prohibiting the doctor from “gagging” doctors.

Ron Pollack, director of the patient advocacy group Families USA, said, “With the passage of patients’ rights legislation in the House, the American public has won a great victory. Unfortunately, the victory may be a hollow one because the House leadership has stacked the deck against ultimate passage. When the House leadership tied patient protection legislation to controversial provisions that would harm people who need health care the most, it poisoned the bill. By forcing these two bills together, the House Leadership is giving the insurance industry exactly what it wants: a patients’ bill of rights that will never be enacted into law.” Among the provisions that he called a poison pill are “last minute alternatives, bogged down with proposals that haven’t been fully debated in the House, such as medical savings accounts,” adding that these “will destroy any chance of passing real patient protections.”

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