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Legislating Patients' Rights

by Jamie Young

The latest drama unfolding on Capitol Hill offers the November elections as the grand prize. The drumbeat from nearly every state-house to Washington, D.C., echoes the call for some reform of the managed care industry. The movement toward patients' rights has become a campaign issue all across the country. Regardless of which side prevails, the next wave of changes is likely to be profound for providers and patients.

President Clinton stepped up his quest for a patient bill of rights by stating at a mid-July rally on Capitol Hill that the cost-saving mandates of managed care have overtaken the objectives of health care "so often that doctors are hamstrung, patients are alienated, and...lives are endangered."

Patient rights legislation has floundered for months in Congress, including bipartisan legislation sponsored by Rep. Charles Norwood (R-Ga.) as well as the Democrats' version written by Sen. Ted Kennedy (D-Mass.) and Rep. John Dingell (D-Mich.). House Republicans finally released their own patient protection proposal near the end of June that would guarantee coverage of emergency services, provide for open communication of treatment options between doctors and patients, grant women in HMOs direct access to obstetricians and gynecologists, enable patients to choose pediatricians instead of family doctors, coordinate care for children in HMOs, and allow consumers, for an extra premium, to buy coverage for out-of-network doctors. Democrats argue the plan does not do nearly enough to pro-

tect consumers. The Health Insurance Association of America (HIAA) has criticized the Republican plan as a "mishmash of cobbled-together ideas that are guaranteed to raise consumers' costs, reduce choice, and generate more federal bureaucracy." HIAA is equally opposed to the Kennedy/Dingell bill and the Norwood proposal.

Both the Republican plan and the Democratic bill have certain provisions that are lightning rods for controversy. The plan preferred by many Democrats and the Clinton administration would give patients the right to sue for penalties any HMO that denies health care treatments that patients (and their doctors) think they need. This plan would also apply to self-insured health plans (plans directly underwritten by employers) protected by the Employee Retirement Security Act of 1974 (ERISA), which exempts self-insured plans from state benefits mandates and insurance department oversight. Republicans, businesses, and the managed care industry vehemently oppose this provision, believing it would lead to endless litigation. An estimated 125 million Americans are enrolled in self-insured plans.

The House Republican plan includes provisions that would allow associations to create health plans to insure their members, thereby making health insurance more affordable to smaller companies. However, these new types of plans would be able to self-insure and would be exempt from mandates such as coverage of off-label drugs and the patient care costs of clinical trials. HIAA opposes association health plans because they would be exempt from state insurance rules and would not be required to pay state premium taxes that fund pools to cover high-risk individuals. These waivers would allow association health plans

to provide cheaper coverage than traditional small-group insurers.

Another provision of the House Republican proposal would allow the creation of "health marts"—insurance purchasing pools formed by employers, insurers, consumers, and providers. These health marts also would not be required to cover state benefit mandates, although solvency standards and premium taxes would likely be applied. These non-profit health coverage purchasing pools would be allowed to offer multiple coverage options, such as HMOs, PPOs, PSOs, medical savings accounts, and indemnity insurance. Proponents tout this idea as allowing families to shop for the lowest prices, best quality plans, and providers available. Many of the same criticisms leveled at association health plans are targeted at health marts. Their exemption from state mandates could create a two-tiered regulatory system and could encourage health marts to seek out only the healthiest groups.

The American Medical Association (AMA) and the AFL-CIO are each launching campaigns to push for passage of patient protection legislation. The AMA has withheld support for the Republican proposal partly due to the lack of language giving patients the right to sue their employer-sponsored insurance in cases of medical malpractice. The AFL-CIO ad campaign is designed to criticize congressional opponents of the Democrats' plan and praise its supporters.

The stakes are high because everyone involved recognizes that the majority of the American public believes that the pendulum has swung too far in favor of managed care organizations. Neither side wants to lose seats in the November elections because it failed to respond to this call for action. ■

Jamie Young is ACCC director of state societies and government relations.