Patients' Bill of Rights: not even a band-aid for US health care crisis

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The US Senate voted June 29 for the Bipartisan Patients Bill of Rights Act of 2001. The margin was 59-36, with nine Republicans joining all 50 Democrats to approve legislation that President Bush has threatened to veto. Despite the grandiose title, however, and the exaggerated claims made for and against it in the Senate debate, the bill will have little effect on the deteriorating provision of health care for the vast majority of Americans.

It is a measure of how far official political discourse in Washington has moved from any genuine conception of social reform that the Patients' Bill of Rights should be considered a significant step forward. This legislation will not provide access to medical care for a single one of the 43 million Americans currently without health insurance. Nor does it guarantee any improvement in the medical treatment of those who already have insurance. Rather, it expands the right of patients enrolled in HMOs, PPOs and similar medical plans to sue the plans if they are denied medical treatment for a range of prohibited reasons, largely related to cost.

The legislation is a monument to the feebleness of contemporary liberalism. Accepting the position of the Republican right that the defeat of Clinton's health care reform plan in 1993-94 demonstrated public hostility to "big government," the Democrats refuse to propose even the slightest expansion of the government role in health care or health insurance.

Instead of upholding access to health care as a universal basic right, they limit themselves to defending the right of those damaged by the penny-pinching of HMOs to sue in state and federal courts, i.e., the "right" to obtain belated monetary compensation for a denial of medical treatment that could result in protracted suffering, lifelong injury or even death.

Much of the legislation consists of provisions requiring HMOs, PPOs and other health care management organizations to conduct themselves with a slightly reduced degree of callousness towards patients. These include:

* barring HMOs from requiring approval in advance before patients seek treatment in an emergency

* barring HMOs from requiring approval in advance before parents take their children to a pediatrician or women see and obstetrician or gynecologist

* permitting patients with emergency or life-threatening conditions to continue seeing the same doctor even if the HMO ended its business relationship with that physician

* forbidding HMOs from imposing "gag rules" on doctors that bar them from even discussing with patients treatments that are considered too expensive

* barring HMOs from offering financial incentives to doctors to cut back on their patients' care

* barring HMOs from requiring that women receiving a mastectomy go home the same day as the surgery, rather than staying overnight in the hospital.

The fact that it requires federal legislation to decree such elementary standards of humane and civilized behavior is itself a commentary on the brutality of social relations in America. If this is the way insured patients are treated, what must be the fate of those who are uninsured, who are disproportionately drawn from among the working poor, youth, immigrants and minorities?

Both the bill which eventually passed the Senate, co-sponsored by Democrat Edward Kennedy and Republican John McCain, and the alternative proposal backed by the White House, drafted by Democrat John Breaux of Louisiana and Republican William Frist of Tennessee, contained the same prohibitions against gross misconduct by profit-driven HMOs. Both bills provided that the enforcement mechanism would be private lawsuits, rather than federal regulations, to be filed only after an external reviewer had ruled against the HMO.

The principal differences related to the venue and the terms under which the lawsuits could be filed. Under the Kennedy-McCain bill, lawsuits could be filed in state courts, considered to be more favorable to plaintiffs in liability lawsuits, and damage awards could range as high as $5 million. Under the Breaux-Frist bill, federal courts would hear the suits, and damage awards would be capped at $750,000.

According to a study by the Kaiser Family Foundation, similar rights to seek external review and then file suit over denial of care, provided under the federal Medicare program for the elderly and in certain states, have been little used. Only two of every 1,000 Medicare enrollees sought external review, and even fewer went to court. In Pennsylvania, only 200 of 5 million enrollees sought review. In Maryland, only 255 patients

sought external review, and fewer than 70 actually won court judgments, out of 3.5 million eligible.

While these provisions are of little value to the mass of working people who seek medical assistance, they are of enormous significance to corporations and institutions with huge financial stakes in the health care industry. Hence the frenzied lobbying on both sides of the debate in the Senate—billions of dollars were at stake in the multi-cornered struggle involving the insurance industry, the HMOs, hospitals, the American Medical Association (AMA), the US Chamber of Commerce and the American Trial Lawyers Association. Each of these lobbies poured millions into the conflict.

The result was a series of bitter battles on the floor of the Senate as the Republicans, doing the bidding of the HMOs, insurance companies and large corporations generally, sought to weaken the legislation and restrict the scope of lawsuits, while the Democrats, backed by the AMA and the trial lawyers, sought to maintain the bill as drafted.

The AMA switched sides from the stance it took in 1993-94, when it worked closely with the right wing to torpedo Clinton's health care plan. This is not simply the result of the growing financial conflict between doctors in private practice and HMOs, but reflects the mounting revulsion among nearly all doctors over the restrictions on medical treatment imposed by HMOs for financial reasons.

The most strenuous Senate conflict arose over language that made employers liable for damages if they participated, along with health insurers, in denying access to medical treatment. This provision would affect only a particularly outrageous corporate employer—only a very large company would have sufficient financial muscle to affect HMO policy. But in their usual fashion, the Republicans denounced a timid restriction on the power of giant corporations as though it would bankrupt every small business in America.

Republican amendments were introduced, first eliminating any liability for employers (defeated 57-43), then exempting employers with fewer than 50 workers (defeated 53-45), then exempting employers with fewer than 15 workers (defeated 53-45). Finally, a compromise amendment was approved overwhelmingly, 96-4, allowing employers to be free of liability if they separated themselves from all decision-making on specific medical treatments.

The resulting bill now goes to the House of Representatives, which passed somewhat broader legislation last year only to see it killed in the Senate, then under Republican control. Whatever bill emerges could still face a veto by President Bush, who denounced the Senate version as too generous to plaintiffs in its ceiling on damage awards.

One irony in the debate was the reversal of traditional roles on the question of state vs. federal control. The Democrats insisted on state jurisdiction for the lawsuits, since state juries have tended in the past to be more sympathetic to injured plaintiffs in damage suits. The Republicans, generally claiming to uphold "states' rights," demanded federal jurisdiction, with the aim of curbing the amount of damages awarded.

Another irony, and a very telling one, came in the attacks by the insurance industry, which opposed any legislation, including the Bush-supported bill, which would restrict its power to deny medical treatment. The result of such legislation, the insurance lobby declared, would be increased costs that would be passed on to consumers in the form of higher premiums. The higher premiums, it was claimed, would impel hard-pressed employers to terminate insurance coverage for their workers, thus increasing the number of uninsured. One insurance industry television ad even declared that the Patients' Bill of Rights "could leave millions of working poor with no health coverage at all."

There was no answer from the Democrats to this arrogant threat to punish the poorest sections of the working class. Both big business parties, the Democrats as much as the Republicans, accept the profit-based framework of the health care system. They support the subordination of medicine to the profit interests of insurance companies, drug companies, medical equipment companies, HMOs, giant hospital chains, millionaire doctor-businessmen, and millionaire liability lawyers.

The only genuine alternative to the present system is a program of socialized medicine that starts with the principle that adequate health care is a basic human right. The medical system must be transformed into a comprehensive system of publicly-funded health care and insurance, available to every man, woman and child, regardless of income, social position, employment or medical condition.

This requires the building of a political movement among working people that is independent and opposed to the profit system as a whole and to the two big business parties that represent different factions of the corporate elite.