

# HMO Liability & Public Accountability

Considerable controversy has arisen at both the state and national levels over whether a patient should have the right to sue his HMO if the plan makes a decision with adverse consequences. Industry representatives argue that this will increase premiums and create a torrent of cases from mercenary lawyers seeking deep pockets. Patient representatives counter that HMOs, like doctors, should be held accountable for their decisions and point to Texas where the right to sue did not bring the expected torrent of litigation or have more than a minimal impact on premiums.

According to several different surveys, the majority of Americans believe that health insurers should be held accountable in court. In a North Carolina survey, 80 percent of respondents supported HMO liability. In a Connecticut survey by the Center for Survey Research and Analysis at the University of Connecticut, 85 percent of respondents agreed that “health insurers should be held accountable in court for health-related consequences of financial decisions.” Fifty-five percent supported right-to-sue laws even if, as insurers predict, they result in higher premiums. Similarly, a national survey by Kaiser Family Foundation and Harvard University found that 54 percent of Americans support HMO liability, even if such a law would increase costs.

The industry, however, wholeheartedly opposes liability and has been busy making sure it does not happen.

## Arizona

### *Making Sure Business Concerns Are Not Left Out*

The Arizona Chamber of Commerce spent \$100,000 on radio ads and direct mailings to defeat a proposed HMO reform bill. Jim Norton, the chamber’s lobbyist said that the group decided

to run the campaign after it failed to get the attention of lawmakers in the state capitol. According to Norton, “The business concerns are being left out of this debate.” The House and Senate finally reached a compromise on managed care reform—one without the right to sue.<sup>1</sup>

## California I

### *He’s Getting the Message*

In 1999, California Governor Gray Davis issued a statement on HMO reform, chastising Congress for meddling in the affairs of HMOs. While consumer advocates called his remarks “shocking,” Les Spahn, a lobbyist for United HealthCare, said he was “gratified” by the governor’s remarks, commenting that the governor “seemed to be getting the message the industry has put forth in meetings with the governor’s advisors.” According to Spahn, the industry is “preparing a plan that Davis is expected to disclose next month.”<sup>2</sup>

## California II

### *There’s No Connection Here*

In 1999, California Governor Gray Davis invited a group of business and labor leaders to meet with him in a closed door meeting. According to the Associated Press, the invitees were to “help [Davis] plow through dozens of bills” involving state oversight of managed care, the right to sue HMOs, and outside review of disputed decisions. Receiving invitations to the meeting were: 1) Alan Hoops, President and CEO of PacifiCare Health Systems. PacifiCare contributed \$100,650 to Davis’ campaign in 1998; 2) Les Schlagel, Vice President of Bank of America which contributed \$55,000; 3) Jay M. Gellert, President and CEO of Foundation Health—contributing \$15,000; 4) Walter Zelman,

President and CEO of the California Association of Health Plans, which gave Davis \$10,000 and helped fundraisers bring in \$100,000 more; and 5) Art Pulaski, executive secretary-treasurer of the California Labor Federation, AFL-CIO. Mr. Pulaski wrote a personal check to Davis' campaign for \$4,625. The Governor's spokesperson, Hillary McLean, refuted suggestions that campaign contributions could affect Gray's decisions: "There's no connection here."<sup>3</sup>

## District of Columbia

### *It's Bad Faith*

The D.C. Council passed a patients' bill of rights, including an eleventh hour amendment allowing patients the right to sue if the HMO fails to comply with the decision of an independent panel. The HMO industry was puzzled by the last minute change, asserting that it "undermined the compromises" they had made. According to David Wilmost, executive director of the D.C. HMO Association, "To slip that in now...it's bad faith."<sup>4</sup>

## Florida

### *Written by the Industry, Totally and Completely*

In response to a bill proposed by Senate Majority Leader Jack Latvala (R) allowing patients the right to sue, House Republicans have offered their own bill also including the right to sue, but adding major tax breaks for the industry and other perks. Latvala described the House bill as "written by the industry, totally and completely."<sup>5</sup>

## Georgia

### *Surviving a Massive PR Blitz*

Georgia is the third state to pass a law that allows health plan members to sue their insurers for denial of coverage. The law was enacted despite a "massive public relations blitz" from the insurance industry.<sup>6</sup>

## Illinois

### *Successfully Blocking the Right to Sue*

After years of "bickering between business and consumer groups," the Illinois House managed to pass a "sweeping" HMO reform package. Not included in the bill is the right to sue. While consumer groups have long fought for this right, "business groups and the HMO industry successfully blocked its inclusion."<sup>7</sup>

## Iowa

### *Armed With a Slingshot*

Iowa passed a "sweeping" patients' rights bill, but not before pulling a provision that would have given patients the right to sue. State Rep. Pam Jochum said, "I feel that the best we've done is arm patients with a slingshot."<sup>8</sup>

## Maine

### *Needs More Time to Consider Complex Issues*

The state Senate Banking and Insurance Committee voted to kill a series of patients' rights bills, including one that would have given patients the right to sue. The committee said it needed more time to consider the complex issues involved and would return to the issue in the future. Jadine

O'Brien, lobbyist for Blue Cross and Blue Shield of Maine, reported that she "was pleased with the committee's action."<sup>9</sup>

## Massachusetts

### *External Review Panel Appointed by the Industry*

The Massachusetts Medical Society and the Massachusetts HMO Association put together a compromise bill that the Associated Industries of Massachusetts said it could support. Under the bill, patients can appeal HMO denials to an external review panel appointed by the industry.<sup>10</sup>

## Ohio

### *Not in Anybody's Pocket*

During his campaign for public office, Ohio Governor Bob Taft said he "wholeheartedly" supported the idea of HMO liability and he would make sure it was included in the state's patient protection legislation. Yet, after he was elected, Taft announced that he had changed his mind. Interestingly, Ohio Rep. Dale Van Vyven (R), who moved to strip the right-to-sue measure from the bill, received \$18,000 from the insurance industry during his campaign. In response to charges that the campaign money influenced his thinking, Van Vyven responded, "I'm not in anybody's pocket."<sup>11</sup>

## Rhode Island

### *Not the Politically Right Thing to Do*

House Majority Whip Suzanne Henseler (D) gutted her own bill that would have made HMOs subject to malpractice liability saying that it "was not the politically right thing to do" at the moment. The liability provision was replaced with language creating a 14-member study commission to examine all aspects relating to the status of health care and HMO liability.<sup>12</sup>

## Tennessee


### *Strong Opposition from the Insurance Industry*

A bill allowing the right to sue dies in the Senate, as a result of "strong opposition from the insurance industry."<sup>13</sup>

## Virginia

### *Dies Under Massive Assault*

A Virginia bill that would have allowed patients to sue their health plan died after a "massive assault" by industry lobbyists. State Sen. Stanley C. Walker reported, "There was a great deal of lobbying, as much as I've seen [in my 35 years as a lawmaker]." Insurance companies, drug manufacturers, hospitals and other providers registered 170 lobbyists with the Commonwealth. Trigon Healthcare, the state's largest health insurer, alone hired 33 lobbyists.<sup>14</sup>

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- <sup>1</sup> Chris Moeser, “Chamber Ads Attack Backer of Health Care Reform Proposal,” *The Arizona Republic*, Apr. 13, 1999; “Arizona: HMO Reform Compromise Reached,” *American Health Line*, Apr. 30, 1999.
  - <sup>2</sup> “California II: Gov’s Remarks on HMO Reform ‘Shocking,’” *American Health Line*, Feb. 26, 1999.
  - <sup>3</sup> Scott Lindlaw, “Most private-sector leaders at HMO meeting gave to Davis’ campaign,” *Sacramento Bee*, July 23, 1999.
  - <sup>4</sup> “District of Columbia: Passes Revised HMO Appeals Law,” *American Health Line*, Dec. 16, 1998.
  - <sup>5</sup> “Florida: Senate Leaders Revamp Health Care Package,” *American Health Line*, Apr. 26, 2000.
  - <sup>6</sup> “Georgia: Legislature Passes Third HMO Reform Bill,” *American Health Line*, Mar. 25, 1999.
  - <sup>7</sup> Dave McKinney and Matt Adrian, “Major HMO Reform Passes,” *Chicago Sun-Times*, May 27, 1999.
  - <sup>8</sup> “Patients’ Rights: View From the States,” *American Health Line*, Apr. 16, 1999; “Patients’ Rights: Iowa Gov. Signs Measure Into Law,” *American Health Line*, Apr. 23, 1999.
  - <sup>9</sup> “Maine: HMO Reform Measures Shelved by Committee,” *American Health Line*, Apr. 1, 1999.
  - <sup>10</sup> “Patients’ Rights: MA Lawmakers Study Bill By Docs, HMOs,” *American Health Line*, Apr. 8, 1999.
  - <sup>11</sup> “Medical Board leaps into HMO-regulation shootout,” *The Columbus Dispatch*, June 13, 1999; “Ohio: Managed Care Battles Give Hint of Things to Come,” *American Health Line*, May 10, 1999.
  - <sup>12</sup> “HMO Liability: RI Bill ‘Gutted,’ Replaced by Study Panel,” *American Health Line*, June 10, 1999.
  - <sup>13</sup> “HMO Reform: As Congress Drags Heels, States Act,” *American Health Line*, Feb. 11, 2000; “Tennessee: Senate to Consider Patients’ Bill of Rights,” *American Health Line*, Jan. 22, 2001.
  - <sup>14</sup> “Insurance Proposals Bring Out Lobbyists,” *Washington Post*, Feb. 21, 1999.