Why Dems Lost Patients Rights to Bush, HMOs

by Linda Everett

On August 2, the House of Representatives, in a near-party-line vote of 226-203, passed the "compromise" Patients' Protection Act of 2001. If the House version prevails in the House-Senate Conference Committee negotiations in September, the legislation will cause another major ratchet downward in health care for U.S. citizens. In the House bill, President George W. Bush gives his buddies in the insurance, managed-care and health maintenance organization (HMO) "industries" new leeway to increase their predatory activities, including protection to loot hospitals, patients, and employers.

The bill is the result of relentless, if predictable, round-the-clock pressure by President Bush and his staff on the few Republican House members who opposed him, targetting especially Rep. Charles Norwood (R-Ga.). Norwood had been the chief sponsor for six years of decent bills to protect patients from murderous HMO policies, by giving patients or their survivors the right to sue HMOs in state courts, if denied care. Norwood's compromise with Bush transformed the useful bill he co-sponsored with Democrats, into an HMO weapon to be used against the population as a whole, as shown below.

Bush's victory would not have been possible without the opportunist approach taken by the Democratic Congressional leadership itself on health care. While the legislation, centered on the "right to sue" was useful, Democratic Presidential pre-candidate Lyndon LaRouche warned weeks ago that in the Patients' Protection Act, the Democrats had chosen to take only "a piece" of the health-care issue. They backed away from LaRouche's leadership of the fight for Congressional action to save the District of Columbia General Hospital—a fight for the general welfare, to which the Democratic leaders of both House and Senate had committed themselves in May. By abandoning that fight—that every citizen has a right to health care—the Democrats set themselves up to be outflanked on their limited goal. The Democrats opted for a single-issue approach to the popular issue of improved health care, in order to win votes in the 2002 mid-term elections. They avoided the fight to save hospitals, by abolishing managed care and returning to the principle of the 1946 Hill-Burton Act. Thus, they were easily outmaneuvered.

In addition, the Senate Democratic leadership had given freshman John Edwards (D-N.C.) the high-visibility role of co-sponsoring the popular legislation, with Senate heavyweights Edward Kennedy (D-Mass.) and John McCain (R-Ariz.), and managing day-to-day negotiations. The Democratic leadership's shrewd, pragmatic intention was thereby to build up Edwards' stature and record of accomplishment, so that he might emerge as a Democratic Presidential candidate for 2004.

Ironically, the "shrewd, let's be practical" Democratic types, have suffered the most embarrassing political defeat imaginable: They have been outwitted by dim-bulb George W. Bush, who reportedly has an IQ of 91! But, that is easy, even for a dim-bulb, when the general welfare is not the ocean in which the fish swim.

Bill Repeals Right To Sue in Ten States

Bush claims the bill he supports provides all sorts of patient "protections," such as ensuring emergency care without HMO approval, access to specialists when needed, and more. In fact, it guts *any* way to force HMOs or insurers to provide those protections, by eliminating the right to sue in state court if they don't. Worse, it would wipe out existing laws in ten states that allow suits in state courts against negligent HMOs. It will overturn state laws that give patients the right to have their case heard before actually independent external reviewers. Such laws now exist law in 40 states.

Under this bill:

- When a patient appeals to an external reviewer to exam-

Rep. Charles Norwood's (R-Ga.) cave-in on patient protections, under heavy pressure from the White House, was prepared by the earlier, far more serious cave-in of the Congressional Democratic leaders, who refused to save D.C. General Hospital.

ine an HMO's denial or delay of medical care, the bill allows the HMO/insurer/managed care plan to hire and pay a reviewer of its choice. The reviewer—who then actually works for the HMO—would allegedly review the case according to new Federal rules.

- Patients harmed by their insurer's or HMO's denial of care can sue in state court if the external reviewer (picked by the insurer or HMO) rules in favor of the patient and the insurer/HMO refuses to comply. Should the external reviewer (picked by the plan) rule against the patient, the patient can still go to state court—*but,* the court and the jury must start with the assumption that the insurer or HMO is correct, and the patient is wrong!
- Patients who work for companies that are self-insured, or have self-administered plans, like Motorola or Wal-Mart, can only sue in Federal court. About 6% of the insured workforce are in such plans.

Several Congressional offices told *EIR* that the bill's language allows HMOs, when they are sued for a patient's death or injury, to decide whether the cases will be heard in state or Federal court. Federal cases are far more costly and time-consuming for patients and their families; moreover, Federal courts already have a several-year backlog of cases. You don't have to be an actuary to see that patients will continue to die waiting for their day in Federal court.

Accounting, Not Medical, Standards

The American Medical Association (AMA), in an Aug. 2 letter to Rep. John D. Dingell (D-Mich.), criticized the Bush bill extensively. The AMA points out that the Bush amendment would create new Federal law in which "designated decision-makers" (those whom companies appoint, in their insurance or managed care plan, to be liable for all medical decisions) "would be liable if they fail to exercise *ordinary care* in making medical claims determinations and such a failure is proven to be the proximate cause of personal injury or death of the patients" (emphasis added). The problem is how the bill determines "ordinary care." Historically, individuals have a right to a standard of care that reflects how "reasonable medical professionals would act." Need for treatment is usually judged "in accordance with the standards of the medical profession."

The AMA stated that the new bill leaves the task of evaluating medical care up to the "care and skill" of an ordinary layperson—a health insurance claims processor. The medical standard is thrown out in favor of an *accounting* standard, with the following instructions on how to determine what medical care to "cover": "That degree of care, skill and diligence that a reasonable and prudent individual would exercise in making a fair determination on a claim for benefit of like kind to the claims involved."

Worse, the AMA says, the bill's language preempts medical malpractice laws in various states, by legislating Federally that an HMO's wanton denial of medical treatment has nothing to do with medical care, but that it is simply the plan's determination of "a claim for benefits." So, an HMO can't be held liable for the injury or death caused by their denial of needed care, no matter how egregious.

The compromise bill increases the amount of the non-economic damages awarded when patients are killed or maimed by HMOs, from $500,000 to $1.5 million. This is of little benefit to infants or elderly patients, who cannot show loss of income because of their injuries. If an infant lost both arms and legs because an HMO refused to allow his parents to take him to the nearest emergency room, the child would need both life-long medical assistance and multiple medical interventions to live, besides constant upgrading of adaptive technologies. As anyone with multiple disabilities can attest, $1.5 million won't cover it. In a Texas case, an HMO delayed approving care so long to a woman bitten by a spider, that she lost her leg.

'The Devil Went Lookin' for a Soul'

The Aug. 2 *Congressional Record* reports that Rep. Max Sandlin (D-Tex.) recounted on the House floor, how the words of an old Charlie Daniels song appropriately characterized Norwood's "compromise" with President Bush on the Patients' Protection Act of 2001: "The devil went down to Georgia. He was lookin' for a soul to steal. He was in a bind, he was way behind, and he was willing to make a deal." So, Sandlin continued, the Bush Administration "went down to Georgia and made a deal. In that deal, they sold out patients. . . . They created a new legal standard in court that says, the insurance companies are right, the patient has to prove them wrong."

How hypocritical, that our "pro-life" President and most pro-life Republicans would support HMOs' maiming and outright murder of the citizenry, when they are most vulnerable. Or, that Democrats would support the right to sue, but not keep the only public hospital in the nation's capital open. Maybe, before this bill becomes law, it's time for you to get behind Lyndon LaRouche, and stop helping the devil make deals.