

"USA TODAY hopes to serve as a forum for better understanding and unity to help make the USA truly one nation."

—Allen H. Neuharth, Founder, Sept. 15, 1982

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Today's debate: Suing HMOs

Pressure mounts against law cheating patients of power

OUR VIEW Without fear of lawsuits, HMOs are free to scrimp on services.

In 1991, Cynthia Herdrich suffered severe abdominal pain and went to the doctor. But it took days before she could get a lab test, and her appendix burst while she waited, requiring emergency surgery. Herdrich blames her HMO, saying it dragged its feet to save money.

But that delay was nothing compared to the runaround Herdrich got when she tried to sue her HMO for damages. After conflicting lower court rulings, the Supreme Court heard arguments in the case Wednesday.

Based on the barbed questions from justices, they aren't eager to overturn the federal law blocking such lawsuits. But that doesn't mean the law is fair. Far from it. In fact, Congress is under growing bipartisan pressure to change the legislation that denies about 125 million Americans the right to sue HMOs for malpractice.

The trouble stems from a 1974 law designed to protect worker pensions. That law, called the Employee Retirement Income Security Act, effectively holds employer-sponsored health plans immune from lawsuit, even if the health plans' decisions lead to tragic results.

For an industry that increasingly makes medical decisions based on cost, this is a wonderful loophole. Unlike doctors, or any other industry for that matter, HMOs are free to scrimp on services without fear of lawsuits.

But the ground is shifting rapidly as the intolerability of this situation grows clearer.

► Judges reviewing HMO cases have taken to blasting the law. As one put it: ERISA "eliminates an important check on the thousands of medical decisions routinely made." And some have shown a willingness to let cases proceed.

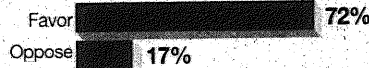
► Meanwhile, Texas, California and Georgia have passed laws recently to let patients in their states sue health plans.

► And last October, the House overwhelmingly approved a right-to-sue bill, just three months after the Senate voted down a similar measure and despite intense opposition from Republican leadership.

Pressing suits

The majority of the public approves of "patients rights" legislation that includes the right to sue, even if it means paying \$20 more a month in premiums.

Percentage of registered voters who favor "patients rights" legislation:



Percentage who favor if premiums climb \$20



Source: January 2000 survey by the Kaiser Family Foundation/Harvard School of Public Health.

By Quin Tian, USA TODAY

► Now all four leading presidential candidates have endorsed cracking this lawsuit ban, to at least some degree.

Still, the industry continues fighting its rear guard action, hoping to keep Congress from joining this march when House and Senate negotiators try to iron out differences in their bills. The industry's increasingly strained argument is that letting patients sue will drive premiums through the roof and put employers providing insurance on the hook for any mistakes the health plan makes.

But a recent report from the Congressional Budget Office finds that a broad right to sue would push premiums up by just 1% — equal to roughly \$8 a month on a \$10,000-a-year policy. Even that might be an exaggeration. In Texas, which passed its law in 1997, HMO premiums are about where they were in 1995. And all the proposed laws would specifically exempt employers offering health benefits from liability, knocking down a favorite scare tactic used by the HMO industry.

Herdrich might not get a favorable decision from the Supreme Court. She might not even get a favorable ruling from a jury. But she should at least be able to try. That's not likely to happen until Congress tunes out wailing industry lobbyists long enough to hear patients.

For-profit health care solution

Two wrongs don't make a right. Yet the approach the managed care industry has taken to combat rising health care costs essentially amounts to replacing one wrong with an even more egregious one.

Traditional fee-for-service health care plans financially rewarded doctors and hospitals for doing more tests and procedures, even if they were not necessary. Result: excessive health care spending.

To control these costs, the managed care industry increasingly relies on "capitated care," in which hospitals and doctors are paid a fixed sum to care for a group of patients, regardless of how much care is ultimately required.

Implicit in this is a clear financial incentive to provide less care. Furthermore, as described in USA TODAY's article

Wednesday, some HMOs offer financial bonuses to doctors for fewer tests ("HMO cut costs on care, plaintiff says," Newsday).

While these policies are laudable in some ways, to some extent, it has come at a steep price: unhappy patients with their health care, medical errors and strained relationships.

Capitated care also has led to teaching hospitals, sicker patients and more medical errors. Many of these errors are being caught by the courts, but the clinical research program supported by the National Health or drug companies.

Soldiers not trained for police duties

The Kosovo incidents, in which American and other allied troops were pelted with snowballs and stones by angry Serbs and Kosovar Albanians, are prime examples of why our soldiers should never have been committed to this ill-conceived peacekeeping mission ("New troop movements reflect tensions near Kosovo border," The World Report, News, Tuesday).

It's testimony to the leadership on the ground that retaliation and serious bloodshed were avoided. As a retired infantryman, I can state that U.S. combat forces have no business being there. It is a waste of military manpower, as infantrymen have neither the training nor temperament to perform purely police duties.

Further, such silly missions seriously degrade military readiness — the ability to deploy and defend our national interests.

The State Department types and the anti-military Clinton administration obviously see it differently, but then many of these guys have never seen a shot fired in anger. This is not to say the situation in that part of the world is not deplorable. But it has everything to do with swatting gnats with sledgehammers. It is also another insight into why the military is having so much difficulty maintaining manpower levels.

I hope these incidents will be a wake-up call to the White House. But I doubt it.

Maj. Maurice N. Moore, retired
 Shelbyville, Tenn.

Drug 'hypocrisy'

When I read the news reports about psychiatric drugs and their growing use among children, the glaring hypocrisy of America's drug policy suddenly made sense to me (Editorial cartoon, Thursday).

The goal of a drug-free America that so many politicians claim to be working toward applies only to certain drugs — specifically, natural drugs that cannot be patented by the pharmaceutical industry, one of Washington's most powerful lobbies.

New lifestyle drugs routinely are granted fast-track approval by the Food and Drug Administration, while marijuana, which has been used medicinally and recreationally for thousands of years, allegedly requires further research.

In the short time that the blatantly recreational drug Viagra has been on the mar-



John McCain: The

This Demo

I am a Michigan resident who has been particularly political in the more than 20 years I have been voting. I have voted Democratic most of the time.

This year I "crossed the aisle" and agreed with Michigan's state election officials that I was a "meddler" by voting in the primary Tuesday last for months." N

In fact, I am a candidate for the upcoming election.

If the only candidate for Texas Gov. George W. Bush is President Al Gore, I will vote for him. I have a "best candidate" choice.

As some of Bush's supporters suggest, "I want to be sitting in the White House." I feel the only way I can choose Sen. Ariz., over Gore.

We've already elected White House, and we're currently having a choice between

Settlements benefit lawyers

OPPOSING VIEW

Patients are better off with settlements

Without a fast-track error-reporting system without safeguards to protect against predatory lawyers