

Bipartisan majority passes Patients' Bill of Rights

by Linda Everett

Sixty-eight Republicans defied the Republican House leadership on Oct. 7, and joined the Democrats in passing by a vote of 277-151, the Bipartisan Consensus Managed Care Reform Act of 1999 (H.R. 2723). The passage of this bill, known as the Norwood-Dingell bill after its sponsors, Georgia Republican Charlie Norwood and Michigan Democrat John Dingell, sets the stage for reversing the murderous policies of health maintenance organizations (HMOs), and returning to a Constitutional policy of protecting the General Welfare of the U.S. population.

The Norwood-Dingell bill is nearly identical to President Clinton's Patients' Bill of Rights, which was defeated in the Senate in July, after a major mobilization by insurance companies and HMOs. It gives patients in all managed care and HMO plans, a host of protections, such as the right to emergency care at any hospital when necessary without the plan's prior approval, and the right to timely access to a completely independent external review of a plan's treatment decisions. The most significant provision of the bill is that it holds HMOs liable for decisions which result in the injury or death of their patients, thus allowing victims or their families to sue in state court, and putting a major penalty on the HMOs, which have, up until now, had a virtually free hand in deciding whether to deny health care to the needy for "cost-cutting" reasons.

Victory over what Lyndon LaRouche has correctly called the "crimes against humanity" of the HMOs' Nazi medical practices, is not yet assured, however. Not only did the Republicans attach what President Clinton has called "poisoned pills" to the House bill, but the bill must also be reconciled with the one passed by a Republican majority in the Senate.

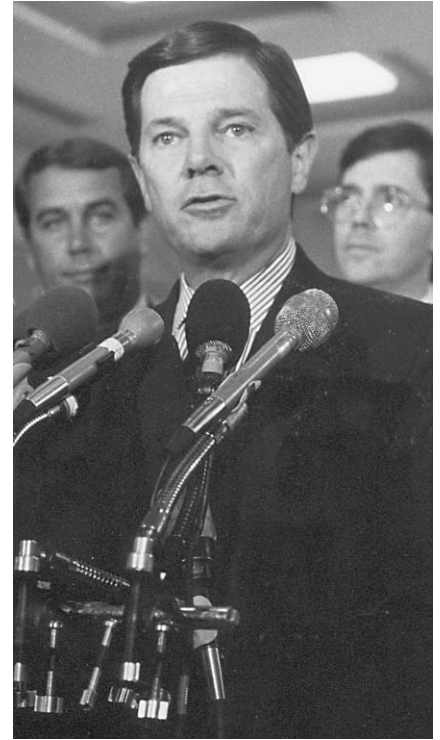
The insurance companies and HMOs can be expected to escalate their blackmail campaign to prevent the Norwood-Dingell protections from ever being enacted into law. On the other side, the Democrats, led by the LaRouche wing of the party, can be expected to intensify their campaign to defeat the HMO policy. LaRouche, in early August, called for a national campaign to politically punish those politicians who would defend the HMOs' crimes against humanity, by protecting them from legal liability for those crimes.

The fundamental issue

Over the past three years, as managed care has expanded to take over a vast majority of health insurance coverage in the United States, there has been a growing outcry against, first, its abuses, and then, its fundamental philosophy. HMOs were initially promoted on both sides of the aisle as an alleged solution to the ballooning of health care costs. But, as HMOs increasingly took over the market, and power over health care was concentrated more and more in fewer and fewer managed-care companies, themselves controlled by insurance giants, the backlash began.

At first there was a series of bills fashioned to deal with the particular abuses, such as what were ironically called "drive-by" mastectomies, or even births. But, gradually, as the list of abuses grew, it became obvious that the HMOs could never be brought under control unless they, at least, could be held accountable for deaths or injuries caused by their wrongful denial of delay of necessary medical treatment, through lawsuits.

Right now, most managed care plans are governed by the Employee Retirement Income Security Act, the 1974 Federal



The Conservative Revolution fanatics were determined to protect the HMOs from liability for their crimes. Left to right: Speaker of the House Rep. Dennis Hastert (R-Ill.), House Majority Leader Dick Armey (R-Tex.), House Majority Whip Tom DeLay (R-Tex.).

law known as ERISA, which provides uniform Federal regulations to employee benefit plans, including health plans, like HMOs, but exempts them from state laws. So, HMOs can openly deny benefits, knowing that the ERISA shield protects them from prosecution, no matter whether the patient suffers or dies.

Thus, the Patients' Bill of Rights, devised by the Democrats, sought to change this exemption, by giving aggrieved patients the right to sue. Eventually, this bipartisan bill was formulated, which President Clinton called on Congress to pass. He was joined by the American Medical Association and more than 300 organizations and medical societies nationally. He had already mandated such protections for everyone in all Federal health plans, from Medicare (for older and disabled Americans) to Medicaid (for indigent families, elderly or disabled) and all Federal workers. He now will extend these critical strong patient protections to every child enrolled in the Children's Health Insurance Program (CHIP), a new program aimed to cover children erroneously eliminated from the Medicaid program.

But, the Republican leadership, still dominated by the Conservative Revolution fanatics, who would be the first to permit any creditor to sue his debtor, all of a sudden were concerned to prevent a rash of lawsuits. Fundamentally, they were determined to protect the HMOs from liability for their crimes, and to continue to cut health costs no matter how many lives are sacrificed.

For example, Speaker Dennis Hastert (R-Ill.) had Reps. Tom Coburn (R-Okla.) and John Shadegg (R-Ariz.) craft H.R. 2824 as an alternative. But, even this seriously flawed bill, in which you can lose your Constitutional right to a trial jury, had a very limited right-to-sue provision—to which Hastert and his insurance-business benefactors objected. He next promoted Rep. John Boehner's (R-Ohio) bill, H.R. 2926, a hodgepodge of phony "protections" that has no right-to-sue provision at all—and which is hailed by insurers.

Yet, support for protections against HMO crimes continued to grow, and the Republican leadership was forced to bring the issue to a vote, including the Norwood-Dingell bill.

The Republican maneuvers

House Speaker Hastert spared no effort to the very last minute. Just hours after hosting a \$1,000-a-plate breakfast with health insurance and HMO industry vultures on Oct. 5, which netted \$15,000 for his campaign war-chest in the process, the Speaker executed a series of "parliamentary maneuvers" designed to kill the bipartisan Norwood-Dingell Patients' Bill of Rights.

The maneuvers took the form of the introduction of a series of bills which were meant either to derail, or to poison, passage of the Norwood-Dingell bill.

On Oct. 1, days before Hastert was to send the Norwood-Dingell bill to the floor for debate, he decided to change the subject. Hastert "got religion," as Minority Leader Richard

Gephardt (D-Mo.) says, about “uninsured Americans,” and mandated that *any* HMO reform bill that passed the House had to include new “insurance access” provisions delineated in a bill drafted by Rep. James Talent (R-Mo.) and Shadegg.

The Talent-Shadegg bill was filled with well-known Republican free-market prescriptions to “help” uninsured Americans with useless high-risk, high-deductible plans and tax-free medical savings accounts (MSAs). These MSAs are *exempt* (like ERISA plans) from state mandates for coverage and state insurance laws, meaning that you cannot sue if you suffer wrongful injury or death.

The GOP bill does not address the actual reason why a million Americans every year can no longer afford insurance. That is due to the free-market globalization policies that are destroying the country’s economy (and jobs and income) in the name of “competition.” The same free-market-driven reign of managed care has created a new class of uninsured at home—those who have health insurance but can’t get the medical treatment they need, because their HMOs deny it.

In addition, the GOP’s phony “access” legislation, which would help only 1% of the uninsured, contains \$48 billion in tax cuts that the President recently vetoed.

Hastert mandated that this GOP bill and its “poison pills”—all of which the Democrats have traditionally opposed—would be the first bill voted on in the health care debate, and would then be *combined* with whatever HMO reform bill is passed. It passed 227-205, along party lines, on Oct. 6. The Republican leadership clearly hoped to thereby assure that any resulting HMO reform bill with these poison pills would be vetoed by President Clinton, who then would be accused of vetoing “patients’ rights.”

Other tricks defeated

But that was not all the Republicans did for their HMO and insurance company backers. The night before the debate, they passed a series of parliamentary procedures designed to subvert the movement for patients’ rights.

One of the host of parliamentary maneuvers passed “in the dark of the night,” was one in which House leaders eliminated any way to pay for the HMO reforms proposed. In effect, this was intended to force those who support the Norwood-Dingell bill to either vote against it, or, “to use the Social Security surplus to pay for it,” which the majority of Democrats oppose, according to one House member.

Another of the maneuvers involved the rules of debate and the ordering of the votes on the reform bills. These were rigged through the House Rules Committee, on which sits Hastert “insider” Rep. Deborah Pryce (R-Ohio). The Committee voted 9-3, along straight party lines, that the Norwood-Dingell bill would be the main bill of the debate, but that the “majority rules.” This meant that, should any of the HMO reform bills proposed as a substitute for Norwood-Dingell, or any proposed amendment to it, receive the majority of votes

first, the debate is over.

The clincher came in the order of the debate as set by the Rules Committee: first, the Boehner bill; then, Coburn-Shadegg; then, a new overnight killer amendment by Reps. Amos Houghton (R-N.Y.) and Lindsey Graham (R-S.C.), that would eliminate the Norwood-Dingell right to sue in state court provision and allow Federal suits only if an “external” appeals panel agrees with the patient’s claim; then, finally, the Norwood-Dingell bill.

It didn’t work

But, most of Hastert’s effort went for naught. Although the Talent-Shadegg “access” bill was passed, and will create problems for the Norwood-Dingell bill, each of the other bills, which were meant to draw Republicans’ votes from the bipartisan bill, failed by significant margins. And when Norwood-Dingell finally came up for a vote, it won by the margin of 275-151.

There were two Democratic defections to the Republican side in the final vote. They were Virgil Goode of Virginia, who has been flirting with the Republicans for a couple years now, and Collin Peterson of Minnesota.

Representative Dingell triumphantly said at a press conference afterwards, that the work is not nearly done. The bill next has to go to a House-Senate conference committee, to be combined with the Senate GOP bill, which protects HMOs, not patients. Senators Edward Kennedy (D-Mass.), Tom Daschle (D-S.D.), and others have already voiced opposition to the “poison pills” included in the bipartisan bill through the “access” provision, as well as the fact that Hastert’s \$48 billion in tax cuts are not funded. And, finally, President Clinton has said that he will veto any bill containing the Hastert “access” bill.

The insurance companies are already operating at full tilt, in their attempts to prevent the implementation of government controls, and of the right of patients to sue. Their basic argument, retailed in newspaper, TV, and radio ads, is one of blackmail: If they are forced to give care as mandated by doctors, not accountants, they will jack up the price of health care until the opposition cracks. Congressional spokesmen for the insurance companies argue that the reason for the rapid rise in health care costs prior to HMOs taking over, was the prescription of unnecessary medical procedures, and that it is such procedures that will again run rampant, if the Patients’ Bill of Rights goes into effect.

The American population is going to have to decide here on a matter of basic philosophy. Should people die and be maimed because insurance companies say we “can’t afford them,” or should the methods of funding and regulation be reinstated which will put a priority on providing adequate care to all Americans? The principles of the General Welfare, as previously implemented under the Hill-Burton Act, are available, if Americans choose to implement them. Will the accountants, or the people, come first?