

## Where will the Health Reform Debate Lead?

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The “Patient Bill of Rights,”—the “Patients’ Bill of Rights”—the “Promoting Responsible Managed Care Act”—the “Patient Access to Responsible Care Act”—the “Patient Protection Act”—who can keep them straight? This summer, we are caught in a deluge of lengthy proposals to reform—and perhaps to weaken or destroy—managed care. In the few legislative days left this year, the 105th Congress is determined to milk the anti-HMO sentiment in the country for all its potential political worth. Proposals for health care reform are proliferating, and harsh rhetoric from the President, both parties, and both houses of Congress suggests to some that irreconcilable differences will block passage of any legislative bill again this year. Other informed opinion knows that this issue has major political traction going into the fall campaigns and that to do nothing may risk many incumbents’ jobs. Will any of these proposals pass?

### Some Proposals: Déjà Vu?

The various bills have common elements that mimic the protections applied to Medicare last year in the Balanced Budget Act. For example, the bills generally agree that all insured persons should have access to emergency care and that provision of this care should apply the prudent layperson standard. Other requirements that everyone seems comfortable with would provide more information to beneficiaries and ban gag rules—contractual limitations to what physicians may tell their patients. (This implicit indictment of the managed care industry belies a recent General Accounting Office study indicating that no health plan contractual clauses limit patient/clinician communication.) Women’s access to obstetricians/gynecologists and children’s access to pediatricians for routine services and primary care are common features of most proposals. All sponsors want internal and external mechanisms for appealing disputed coverage determinations when health plans deny services. Other provisions within these complex bills, however, are very controversial.

### Objections to Provisions

We often hear the phrase “poison pill” used to describe provisions that are highly objectionable to various special interest groups. For example, in H.R. 4250, officially titled the “Patient Protection Act of 1998” and passed by a slim majority in the House, Republican members of Congress have included provisions that would allow aggregate purchasing by small businesses through association health plans and through Healthmarts, a mechanism that would afford small businesses their choice of health plan options. How-

ever, because these new programs would all come under ERISA protections, they would not be required to meet the state-regulated standards that Kaiser Permanente (KP) and other health plans are required to obey. Moreover, large businesses, insurance interests, and state regulatory agencies object to these provisions as anticompetitive. We also are opposed to these provisions because they could allow manipulation of insurance pools, resulting in much higher premiums for sicker people, who might drop their traditional and managed care coverage. Similarly, the bill’s provision for the widespread expansion of Medical Savings Accounts—touted by conservative Republicans as critical to fulfilling the promise of expanding choice in the marketplace—could divert the healthiest and wealthiest people into low-cost, high-deductible insurance programs, leaving the sick and the poor in very expensive comprehensive care programs. In addition, medical malpractice reform provisions included in H.R. 4250 are anathema to President Clinton and Congressional Democrats who are supported heavily by contributions from trial attorneys.

The Democratic health reform proposal, S. 1890, also contains a “poison pill” provision: health plan liability, or the right to sue any health plan for perceived bad outcome. Self-insured large and small businesses alike have warned that if this legislation passes, many businesses will simply drop their voluntarily offered insurance programs because no business wants to risk its treasury on the outcome of a malpractice suit over which it had little control. This is not an idle threat. The President has promised to veto any legislation that lacks this provision. KP and other health plans and insurers regard this provision as the single most objectionable proposed piece of legislation. Potential health plan financial losses for delay or denial of care could undermine utilization programs and vitiate care management.

### Other Movements for Reform

In addition to the partisan bills offered by the two political parties, Senators John Chafee (R-RI), Robert Graham (D-FL), and Joseph Lieberman (D-CT) have established the nucleus of a mainstream bipartisan coalition in the Senate by introducing S. 2416, the “Promoting Responsible Managed Care Act of 1998.” Their hope is that when the Senate Republicans fail to garner the required 60 votes to stop a Democratic filibuster and when Senators Kennedy and Daschle and the President concede that the Democrats’ “Patient Bill of Rights” cannot prevail over opposition from the Republican majority, enough right-minded Senators will support a middle-of-the-road proposal.



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This strategy has failed twice in recent years, beginning with the Clinton health care reform initiative. We wonder: Is there time for accomplishing anything other than acrimonious accusations that have dominated the Congressional debate so far? Only four weeks remain on the legislative calendar, and distractions have surfaced.

### KP Involvement

Where is KP in the debate? One channel for our influence is the process of drafting original bills. Because this influence is indirect, however, it can be difficult to track. For example, three years ago, we spent almost a year collaborating with the American College of Emergency Physicians to draft the Cardin/Graham "Prudent Layperson Access to Emergency Medical Services Act" (S. 356/H.R. 815). Although this bill per se has not been passed, its fundamental concepts and much of its language have surfaced in subsequent proposals. Many 1998 proposals on emergency access can trace their lineage back to the Cardin bill. More directly, KP has participated in drafting parts of the Dingell/Kennedy bill as well as the Chafee proposal. We will also add our voice to future debates. If a bill passes this year, we hope it will be compatible with our Principles of Consumer Protection, a statement that has influ-

enced the President's Commission on Consumer Protection and Quality in the Health Care Industry in writing its report on the Patients' Bill of Rights (and succeeding iterations and proposals). We won't get everything we want, but any legislation that passes will be likely to hold our competitors to standards that we have defined in Permanente Practice and that are fundamental to the workings of the Kaiser Foundation Health Plan.

### Current Forecast: Turbulence Ahead

Will we or won't we have health reform this year? The debate is turning into a political free-for-all. Harsh campaign rhetoric has resulted in hardening of partisan positions in Congress and veto threats from the President. Special-interest advocates are weighing in with specific objections to key elements of all proposals. And distractions on both domestic and international fronts are sapping energy and attention. We hear threats of stalling the 12 remaining appropriations bills, which could lead to another government shutdown at year-end. This strategy worked to discredit the majority party three years ago—why not try it again? We expect the last month of the 105th Congress to be consumed with bitter exchange over several political issues, leaving the health care bills for a new Congress convening in January. ♦

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## Doctors' "Eidetic Imagery"

Researchers at Harvard University released a study in 1993 that estimated 1 million potentially preventable medical errors lead to 120,000 deaths each year. "What is not as often discussed is how all mistakes, including minor ones that harm nobody, are potentially devastating to the doctors involved," according to Dr. Steven Small of Massachusetts General Hospital. Doctors are scarred by "eidetic imagery" from such events, that is, moments that are vividly recalled and readily reproducible in one's memory long after they have occurred. Doctors carry these events with them for their entire careers, feeling a mixture of embarrassment, humiliation, guilt and shock that extends long past the incident.

*Michael Luo, Associated Press, 10/11/98*