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**HEALTHCARE: ROADS TO REFORM**

## **Healthcare bills lack protections against treatment denials, experts say**

**Measures pending in Congress push insurers to keep down costs and cover all regardless of health. That leaves the firms with a big cost-containment tool: refusing requests to cover treatments.**

By Lisa Girion

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Despite growing frustration with the way health insurers deny medical treatments, major healthcare bills pending in Congress would give patients little new power to challenge those sometimes life-and-death decisions.

"Right now, the deck is stacked against patients," said Bryan Liang, director of the Institute of Health Law Studies at California Western Law School in San Diego. "Healthcare reform is not going to change the ball game."

Yet a patient's ability to fight insurers' coverage decisions could be more important than ever because Congress, in promoting cost containment and price competition, may actually add to the pressure on insurers to deny requests for treatment.

By requiring insurers to cover everyone, regardless of pre-existing conditions, healthcare reform will make it more difficult for insurers to control their costs, or "bend the cost curve," by avoiding sick people.

That leaves insurers with the other big cost-containment tool: turning down requests to cover treatments.

"There are going to be a lot of denials," said insurance industry analyst Robert Laszewski, a former health insurance executive. "I am not setting insurance companies up to be villains. But we are telling them to bend the cost curve. How else are they going to bend the cost curve?"

Experts said the legislation under consideration does not significantly enhance patient protections against insurers refusing to cover requests for treatment. Most people currently have no right to

challenge health insurers' treatment decisions by suing them for damages.

Patient advocates point to the continuing struggle of Hilda and Grigor Sarkisyan, whose daughter Nataline died in 2007 when insurance giant Cigna Corp. refused to cover a liver transplant.

The parents' wrongful-death suit against Cigna over the transplant denial was thrown out this year by a federal judge, who cited a 1987 U.S. Supreme Court decision involving the Employee Retirement Income Security Act. That ruling said ERISA bars suits for damages over health benefit decisions.

The ruling affects 132 million people who get insurance through employers.

The Sarkisyans traveled to Washington a couple of months ago to try to persuade members of Congress to undo the ERISA ruling and allow people with job-based coverage to sue for damages.

The healthcare reform bill pending in the House would extend that right to anyone who buys coverage through one of the health insurance exchanges it envisions. That could include small businesses.

But the legislation does not remove the barrier to such suits by people in the employment-based insurance market.

Insurers and employers strongly support the ban. They say any increase in litigation would drive up costs and could force some employers to drop health benefits.

But some members of Congress said the Sarkisyans' case illustrates why change is needed. They said patients would be better protected if insurers feared the possibility of a lawsuit over their treatment coverage decisions.

Rep. Brad Sherman (D-Sherman Oaks) said the ERISA ruling had created an "unbalanced set of incentives" for insurance companies.

"If they fail to fund an operation and then it turns out the operation would not have been useful and wasn't necessary, the patient lives and they save money," he said. "But if they fail to fund an operation and it turns out the patient dies, their liability is extremely limited."

Rep. Adam B. Schiff (D-Burbank), who met with the Sarkisyans in Washington, said it was not clear that Congress intended ERISA to bar damage suits against health insurers.

"They are the only industry in the nation that has that kind of immunity from potentially very wrongful conduct," he said. "It is a real problem."

Still, Schiff said there were not enough votes to overcome industry support for the ERISA ruling.

But a government-sponsored health insurance option could be an antidote, he said.

The so-called public option, though controversial, was not included in the bill approved by the Senate Finance Committee last week. But it is still under consideration in the House, where Speaker Nancy Pelosi (D-San Francisco) favors it.

The idea is that private insurers would be forced to compete with the public option on price and service, which includes the ease with which patients can get needed treatment paid for.

"Companies would be that much more scrupulous to ensure they provide the care necessary, because if you establish the reputation for denying care, there are not many buyers wanting your plan," Schiff said.

Another pair of liver transplants illustrate how that might work.

UCLA doctors told Ephram Nehme, a San Fernando Valley produce market owner, that he could die waiting for a liver in California and encouraged him to go to Indiana, where waits were much shorter. But Nehme's insurer, Anthem Blue Cross of California, refused to pay for an out-of-state operation.

Fearing for his life, Nehme paid \$205,000 out of his own pocket for the 2007 operation at Clarian Transplant Center in Indianapolis.

But if Nehme, now 61, had been on Medicare, the public insurance plan for people 65 and older, his Indiana transplant would have been covered.

That's what happened last year to Glen Ossiander, a retired Pacific Palisades artist. Like Nehme, Ossiander was being treated for hepatitis at UCLA. Like Nehme, he needed a transplant. And, like Nehme, he faced a long wait. And, like Nehme, he moved temporarily to Indianapolis where he underwent the transplant operation within two weeks at Clarian.

That's where the similarities end. Ossiander's operation was covered, without a hitch -- mostly by Medicare but also by his Medicare supplemental insurance provider, Anthem Blue Cross.

Ossiander, 68, who knew his hepatitis might eventually require a transplant, said he was relieved when he turned 65 because he knew it would be covered.

"As soon as I got onto Medicare, the hospital and everybody said, 'You really don't have anything to worry about now,' " he said. "You are on Medicare."

Sen. John D. Rockefeller IV (D-W.Va.) said he planned to fight for a public option as the debate moves to the full Senate because insurers have "failed to meet their obligations to the American people."

"We've seen all the insurance industry tricks -- hiding rules in fine print, cutting people off when they get sick, and refusing to pay for necessary treatment because of pre-existing conditions," he said in a statement. "This is why I am fighting for a public option -- we need an insurance option out there that puts people first, not profits. We need a real public option, one that competes with private insurance companies to keep them honest and accountable."

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