

Patients' Bill of Rights

ABA Urges Enactment of Legislation

Legislation known as the “Patients’ Bill of Rights” was given much attention in Congress during 1999, 2000 and 2001. That legislation would have expanded patients’ protections under the Employee Retirement Income Security Act of 1974 (ERISA) by giving patients the right to have adverse coverage decisions by employer-sponsored health plans reconsidered — and in some cases reversed — through a system of internal and external review. “Internal review” involves a reexamination by the health insurer itself of the initial decision to deny coverage while “external review” involves a separate arbitration-type procedure conducted by an outside panel of neutral doctors. The House-passed legislation would have given patients the right to seek damages against employer-sponsored plans in state courts using federal standards. The Senate-passed bill would have given patients the right to seek damages in state courts under state laws. The legislation passed both houses of Congress and went to a conference committee but died at the end of the 107th Congress. Since that time, Congress has given little attention to the issue.

During the 109th Congress in 2006, Senator Edward Kennedy (D-MA) introduced the “Patients’ Bill of Rights” legislation as S. 1012, and Congressman John Dingell (D-MI) introduced the legislation as H.R. 2259. Senator Kennedy and Congressman Dingell are expected to introduce their bills again in the 110th Congress. The ABA supports the internal and external review provisions of S. 1012 and H.R. 2259 and the provisions in the legislation that allow injured patients to bring a cause of action against their employer-sponsored health plans *in state court under state laws*. **The ABA urges reintroduction and enactment of a “Patients’ Bill of Rights” along the lines of S. 1012 and H.R. 2259 of the 109th Congress because:**

- **In many cases, internal and external review programs will result in patients receiving the care to which they are entitled without the necessity of pursuing costly and time-consuming legal action.** It is essential, however, that such programs be developed with due process safeguards for the rights of all participants in the process.
- **As a result of ERISA, enrollees in employer-sponsored health plans are generally unable to pursue legal remedies under state law for injuries resulting from actions or decisions of their health plans.** They may seek redress only in federal court under provisions of ERISA, which limit damages to the cost of the plan benefits under dispute and, in certain cases, attorneys’ fees and court costs. In recent years, some federal courts ruled that enrollees could sue their plans in state courts for vicarious liability for the medical negligence of the plan’s providers, but disputes over denial or delay of coverage have largely been preempted by ERISA.
- **Since ERISA was passed, traditional health insurance, in which the doctor makes the decision about a patient's care, has given way to managed care.** Because managed care plans with an emphasis on cost containment did not exist when Congress passed ERISA, the legislation was not written to address such plans.
- **Managed care companies should be held to the same standards of accountability expected of doctors, nurses, hospitals and other health care professionals** if their decision to deny or delay medically necessary care that is covered under the insurance policy results in harm to a patient.



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Privacy Provisions

The American Bar Association understands that in this Congress, attention will be paid to legislation to enact a "Patients' Bill of Rights." In the last Congress, Senator Edward Kennedy (D-MA) introduced "Patients' Bill of Rights" legislation as S. 1012, and Congressman John Dingell (D-MI) introduced the legislation as H.R. 2259. Senator Kennedy, who chairs the Senate Committee on Health, Education, Labor and Pensions, and Congressman Dingell, who chairs the House Committee on Energy and Commerce, are expected to reintroduce their bills in the 110th Congress. The ABA supports various provisions in the legislation, including its internal and external review provisions. The ABA also encourages those who introduce legislation in the area to assure protection for the patients' right to privacy and security of health information.

While the ABA applauds Congress' bipartisan efforts to expand individuals' protections under the Employee Retirement Income Security Act of 1974 (ERISA) by giving them the right to have adverse coverage decisions by HMOs reconsidered through a system of internal and external review, the ABA urges Congress to assure suitable protection for individual privacy and security of health information as part of this review process.

For over two decades, the ABA has advocated for the protections of the privacy and security of health information. Toward that end, it has been a policy of the ABA to support legislation that acknowledges and furthers an individual's right to privacy and security of his or her health information. Consistent with the ABA policy, any "Patients' Bill of Rights" legislation should, at a minimum, ensure that the standards of accountability currently set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) govern the internal and external review process. Similarly, the same standards of accountability should expressly govern utilization review conducted by an HMO or by third parties under contract with the HMO.

Additionally, in the past, other "Patients' Bill of Rights"-styled legislation contained provisions which permitted the collection of certain personally identifiable information for data collection purposes. The only version of Patients' Bill of Rights legislation that has been introduced thus far in this Congress is H.R. 979 by the late-Representative Charles W. Norwood (R-GA). These data collection provisions are absent in H.R. 979. However, the ABA recognizes that data collection may be included in subsequent versions of the bill, and therefore urges Congress to ensure protection of personally identifiable information in that circumstance.

H.R. 979 lacks sufficient detail regarding the privacy and security of health information to ensure that the privacy of such information is adequately protected. The ABA is concerned that the public's right, and expectation, of privacy and security with regard to health information needs to be protected. Thus, the ABA urges enactment of legislation that ensures that the current protections of the privacy and security of health information are maintained in the "Patients' Bill of Rights." Therefore:

- **Patients' Bill of Rights legislation should contain sufficient detail regarding the privacy and security of health information to ensure that the privacy of such information is adequately protected.** Lack of such detail raises a host of uncertainties regarding the privacy and security of health information, which must be clarified.

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