

BACKGROUND ABOUT PATIENTS' RIGHTS CASE IN SUPREME COURT

Background: In 1997, the Texas legislature adopted the Texas Health Care Liability Act to protect patients from HMOs' improper denials of needed medical care. It authorizes patients to sue in state court HMOs that wrongfully deny care, and creates remedies similar to those for harm caused by medical malpractice.

The Texas statute was challenged by Aetna and Cigna, claiming that the Texas statute is invalid because it violates the federal so-called "ERISA" (the Employee Retirement Income Security Act) law. The plaintiffs claim that the Texas statute is preempted by the federal ERISA law and lawsuits for damages cannot be pursued in state courts. The plaintiffs lost in the U.S. Court of Appeals. If the insurance companies prevail, it would invalidate similar laws in at least nine other states – AZ, CA, GA, ME, NJ, NC, OK, WA, and WV.

Since, the ERISA law bars suits for damages in federal courts from HMOs that wrongfully deny care, this case is of extraordinary importance for insured patients. The Supreme Court's invalidation of the Texas statute means that there will be no effective way for patients to hold their HMOs accountable for improper denials of care. As a result, there will be no economic deterrence to prevent HMOs from making wrongful decisions that cause significant harm to patients and their families.

President Bush's Role in the Litigation: There is a deep irony about the Bush Administration's role in this litigation. When Governor Bush ran for President in 2000, he boasted about the Texas statute and claimed that he was responsible for bringing about its enactment. For example, in response to the first question (about holding HMOs accountable for their decisions) asked during the third Presidential debate in St. Louis, Governor Bush responded:

I do support a national patients' bill of rights. As a matter of fact, I brought Republicans and Democrats together to do just that in the State of Texas, to get a patients' bill of rights through.

It requires a different kind of leadership style to do it though. You see, in order to get something done on behalf of people, you have to put partisanship aside. And that's what we did in my state. We've got one of the most advanced patients' bill of rights

We're one of the first states that said you can sue an HMO for denying you proper coverage. . . . You know, I support a patients' bill of rights, Mr. Vice President. And I want all people covered. I don't want the law to supersede good law like we've got in Texas. . . .

People'll be able to take their HMO insurance company to court. That's what I've done in Texas. And that's the kind of leadership style I'll bring to Washington.

Ironically, however, the Bush Administration argued in the Supreme Court on the side of Aetna and Cigna to invalidate the Texas statute.

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