

Statement of Congressman Henry A. Waxman on the Delay and Revision of
Medicaid Patients' Rights Regulations

August 16, 2001

In these regulations, the Bush Administration has taken every opportunity to side with the HMO industry and against Medicaid patients. There is probably nothing in this rule that the industry could object to. Unfortunately, there's a lot that those Americans who depend on Medicaid should worry about.

First and foremost, let's be clear that the only regulation that is final today is the one that delays Medicaid patients rights for a year. Everything else that the Bush Administration has published is a proposed rule that just starts a long process over with no guarantee of what we'll have next year. In the meanwhile, there are no national protections for most of these rights.

Second, there's an old motto that "There is no right without a remedy." If you can't enforce the right, it's not real. The Bush Administration has put so many loopholes and delays in the grievance and appeals process, that there may be no real rights left in this regulation.

Third, these regulations were supposed to provide protections for some of the most vulnerable patients in HMOs in America. But instead, they shortchange low-income families, seniors, and people with disabilities and do not help them get what they need. Even the basic information about services and appeals are limited. It's particularly unfair because these people are forced into HMOs for health care and they don't have the money to go someplace else if their HMO won't help them.

I am particularly worried about the fate of individuals with disabilities under President Bush's new plan. The President has eliminated key protections to help disabled people transition to managed care plans, see their own doctors, participate in health care decisions, receive quality services and appeal denials of care. This new policy seems designed to give HMOs the flexibility to shortchange some of our most vulnerable citizens.

A few specifics out of the 300 pages released today:

–In the original rule, the appeals process could start as soon as access to care

was so delayed that there was a risk to the patient's health. Under the proposed Bush rule, you can't start your appeal until the HMO gives you a formal reply. So if your HMO doesn't answer the phone or won't give you an appointment when you need it, there's nothing the Bush rule would let you appeal.

–In the original rule (and in Medicare and in the Patients' Bill of Rights), emergency appeals for denial of services were supposed to be resolved by the HMO within 72 hours. The proposed Bush rule says three working days. In other words, emergency protections don't apply over the weekend. Medicaid patients who get seriously ill on Fridays are in trouble.

–In the original rule, HMOs were supposed to resolve non-emergency appeals for denials of services within 30 days. The proposed Bush rule says 45 days. Why? Who asked for 15 days more to give a yes-or-no answer about denied medical care?

–In the original rule, the whole appeals process was guaranteed to be concluded by HMOs and the States within 90 days. The proposed Bush rule has no limit.

–In the original rule, plans were to ensure that their doctors did not discriminate against Medicaid patients. That provision is deleted.

–Under the original rule, the fact that an HMO violated the law and didn't provide patients rights was supposed to be made public so that potential enrollees would know. The Bush rule only requires that a note be sent to HHS.