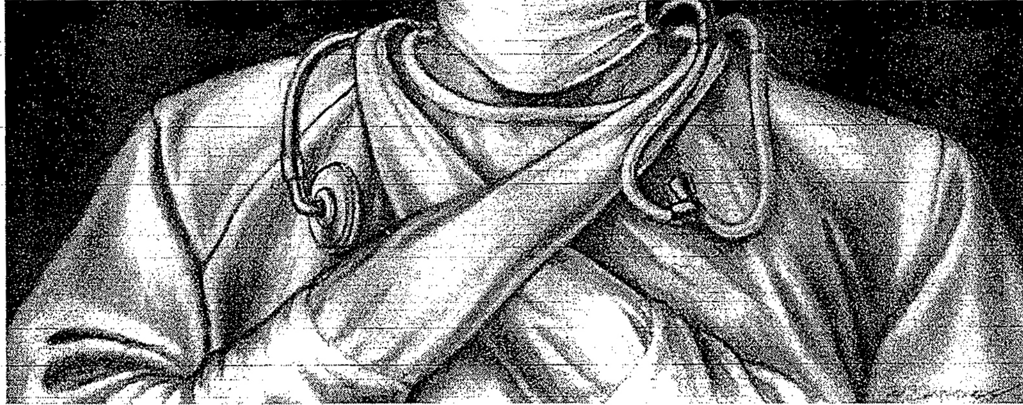
HMO accountability still missing in action

By SCOTT D. GROSSMAN



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Earlier this month, Acting Gov. Donald T. DiFrancesco signed the Health Care Carrier Accountability Act, also known as the "Right to Sue Your HMO Act." What makes for a great public-relations, bipartisan, caring, smiling-faces media event is, in practice, more HMO-friendly than the insurance industry or our elected officials want New Jersey residents to realize.

A careful analysis of the new law reveals that it sounds significant but it will not extend to 98 percent of New Jersey's policyholders who have been wrongfully denied necessary medical treatment or testing. Specifically, it permits redress in court only if the insured can prove that his HMO's denial or delay in medical treatment or testing directly caused catastrophic permanent injuries. These injuries are codified as death, serious and protracted or permanent impairment of a bodily function or system, loss of a body organ necessary for normal bodily function, or loss of a body member.

If you are wrongfully denied medical treatment or testing by your HMO and you have not suffered a catastrophic injury, notwithstanding all of the hype, this law won't be of the slightest help to you.

Under these circumstances, in accordance with the regulations promulgated by the state Department of Insurance, if you are wrongfully denied treatment or testing — for example, if your HMO primary care physician refuses to authorize further treatment with a specialist or the HMO refuses to pay for a medically necessary diagnostic test that your "out of network" physician believes you need — you or your physician are required to first file a two-stage, cumbersome, internal appeal, whereby the HMO's decisions concerning your treatment and testing will be decided by the HMO's employees or representatives. Can you predict the outcome of your internal appeal before it is filed?

After you lose the internal appeals, you or your physician must proceed with filing another complex appeal with a state entity entitled the "Independent Health Care Appeals Program," which will be heard by an independent utilization review organization. Now this sounds wonderful, except that most people lack the requisite knowledge and skills necessary to file these appeals effectively. Equally problematic is the fact that your doctors sustain their livelihood from these HMOs and, saddled with $150,000 in student loans from medical school, would not dare bite the hand that feeds them.

At the end of your struggles, if you haven't suffered a grave injury and you prevailed in your lengthy appeals, your HMO would use the new law as a shield. They would be responsible only for providing the benefits that it was to provide in the first place and nothing else.

While our elected officials have attained a slight incremental change with the passage of this act, HMOs continue to have no incentive to do the right thing for the people and provide the appropriate treatment or testing. This is because they have absolutely no accountability. HMOs continue to practice medicine by making critical medical decisions about people's lives based solely on the bottom line. HMOs must learn that every time they wrongfully deny their insureds medically necessary treatment or testing, there will be repercussions.

Those who believe they are wrongfully denied treatment or testing should be able to retain their own attorneys. If their attorney prevails in the appeals process, the HMOs must be forced to pay the attorney's fees, costs and fines large enough to deter future misconduct.

Under the present system, the managed care insurance companies will continue to use corporate profits, earned by unfairly denying treatment and testing, to retain an arsenal of attorneys to defend their corporate interests, leaving the innocent consumer to battle Goliath alone. Without the prospect of attorney's fees at the end of the appeals process, consumers are forced to incur the attorney's fees themselves, which not only is unfair but, as the HMOs realize, is not something the consumer can, or is willing to, incur.

When one reads the fine print of New Jersey's "right to sue" law, one can see that the new law has been strategically designed to protect the status quo of the managed care industry. Tell your state legislators that you demand legislation with real teeth that will hold New Jersey's HMOs accountable whenever they wrongfully deny treatment or testing under all circumstances, not only when their insured has died or is knocking on death's door.

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