Supreme Court gives HMOs immunity from damage suits

By Patrick Martin
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One of the last rulings issued by the Supreme Court before its June 30 adjournment was a 9-0 decision in favor of health maintenance organizations (HMOs), the billion-dollar corporations that dominate healthcare provision in the United States. The court ruled unanimously that a 1974 federal law, the Employee Retirement Income Security Act (ERISA), forbids the states from permitting patients to sue HMOs for damages caused by their refusing to pay for needed medical treatment.

Patients may still file suit to challenge the refusal to pay, but the HMOs cannot be held liable for the damage caused by those decisions, even if the patient dies or suffers major injury. This eliminates the danger of financial penalties that has pushed many HMOs into loosening their oversight of the medical decisions made by doctors and patients. About 130 million Americans are covered by HMOs and similar plans, the largest single group of healthcare recipients in the US.

Patient advocate groups and the American Medical Association, which represents most doctors in private practice, condemned the Supreme Court decision. The AMA statement said, “Managed-care plans can now practice medicine without a license, and without the same accountability that physicians face every day.” Insurance companies, drug manufacturers and the Chamber of Commerce hailed the ruling.

The two cases before the court are typical of the daily mistreatment of patients in the market-driven US healthcare system, where medical decisions are made on the basis of private profit, not the needs of patients. Both involved patients in Texas who sued their HMOs for refusing to pay for medical treatment deemed necessary by their doctors.

In *Cigna Healthcare v. Calad*, the plaintiff, Ruby Calad, had a hysterectomy which was paid for by her husband’s employer-provided healthcare plan. But Cigna refused to authorize more than a one-day hospital stay after the surgery, although Ms. Calad’s surgeon disagreed. Unable to pay the cost without insurance, Ms. Calad went home after 24 hours, developed complications, and had to visit the emergency room.

In *Aetna v. Davila*, the plaintiff Juan Davila was prescribed the anti-inflammatory drug Vioxx, but Aetna required that he try two less expensive drugs first before it would pay for Vioxx. Davila developed gastrointestinal bleeding, a common side effect of Naproxyn, one of the drugs Aetna insisted he take, and nearly died. He was in critical condition for five days and received seven units of blood to offset the bleeding.

Both victims of HMO abuse sued under the 1997 Texas Health Care Liability Act, which makes HMOs liable for the consequences of a wrongful refusal to pay. Nine other states—Arizona, California, Georgia, Maine, New Jersey, North Carolina, Oklahoma, Washington and West Virginia—have adopted similar laws, in response to widespread popular outrage over callous denial of health benefit claims by these giant corporations.

There was no dispute about the facts in either case. Texas courts found both HMOs guilty of denying benefits to which the plaintiffs were clearly entitled, and ordered them to pay damages. The companies appealed, lost again, then took the case to the Supreme Court, which did not dispute the lower-court finding of wrongdoing, but ruled that the HMOs cannot be held accountable under either state or federal law. Two justices, Ruth Bader Ginsburg and Stephen Breyer, wrote that it was up to Congress to create a means of redress for their grievance.

That the cases originated in Texas puts the spotlight on the remarkable cynicism and duplicity of George W. Bush and the Bush administration. As governor of Texas, Bush vetoed the first attempt to pass a patient rights' bill, and he only allowed the 1997 bill to become law without his signature out of concern that to side so openly with the HMOs would hurt his 1998 reelection bid. This did not stop Bush from claiming credit for the Texas law during his 2000 presidential campaign, citing it during a debate with Al Gore, and claiming, "That's what I've done in Texas, and that's the kind of leadership style I'll bring to Washington."

Once installed in the White House, however, Bush worked with the insurance industry to block all efforts at federal patients' rights legislation. The Justice Department filed a brief before the Supreme Court urging it to overturn the same Texas law that Bush had touted in 2000 as one of his credentials for the presidency.

In another sign of the close ties between the White House and the HMOs, the lawyer for Aetna and Cigna who argued the case before the Supreme Court was Miguel Estrada, whom Bush nominated to a vacancy on the US Court of Appeals for the District of Columbia, the second highest US court. Estrada withdrew his nomination after it was blocked by a Democratic filibuster.