



The Corporate Truth Squad (CTS) Alert is a project of [USAction](#). The CTS Alert highlights how our civil justice system gives ordinary citizens the power to stand up against corporations that commit fraud, abuse or other wrongdoing. We will distribute the CTS Alert regularly to all state legislators, Members of Congress and the media, with documentary evidence of corporate indifference to predictable illness, injury and death, uncovered by ordinary citizens seeking justice through the courts.

HMOs Deny Obligation to Provide Patient Care

Alert #5 – April 2, 2004

Insurance companies and private health maintenance organizations (HMOs) are refusing needed care to hundreds of patients, in the name of cost-containment. The managed care industry says it is not making medical decisions when it refuses to pay for certain treatments or medicines, but that it is only setting limits on the benefits offered through employer healthcare plans, as it is allowed to do under the 1974 federal ERISA (Employee Retirement Income Security Act) law. Yet that law did not anticipate that HMOs would begin making decisions that impact patient care, under the guise of controlling healthcare costs. About 72 million Americans receive their health care through employer-sponsored HMO or managed care plans.

In response to these HMO policies that have led to injury of hundreds of patients, **several states have passed laws giving back to HMO patients the right to hold HMOs accountable for their actions.**

But the insurance industry – backed by the Bush Administration – has gone all the way to the Supreme Court to kill these patient rights’ laws, including one in Texas.

Case Study – Insurance Industry Denies Liability

The decisions HMOs and insurers make have major implications in the lives of people who need medical care, particularly in exigent circumstances. [See [The List of Cases Continues to Grow](#) for over 100 examples of injured patients.]

A 27-year-old man from central California was given a heart transplant, and was discharged from the hospital after only four days because his HMO wouldn't pay for additional hospitalization. Nor would the HMO pay for the bandages needed to treat the man's infected surgical wound. The patient died. (Mitchell, Larry, "Butte urged to immunize against potential HMO ills," *The Enterprise-Record*, Jan.21, 1996.)

The Cigna insurance company "... told Ruby Calad of Sugar Land, Texas, that she would have to leave a hospital just one day after a complicated hysterectomy and surgical repairs. Her doctor objected, but she was discharged, only to return days later after complications arose." [See *Los Angeles Times*, March 24, 2004, Page A-12]

Industry Asks U.S. Supreme Court for Liability Protection

The insurance industry has gone all the way to the U.S. Supreme Court to protect itself from liability, and to deny patients the right to demand care. In two recent cases before the U.S. Supreme Court, the insurance industry argued that states have no power to adopt laws giving patients who are denied needed medical care the right to sue insurance companies and health maintenance organizations (HMOs).

Miguel Estrada, on behalf of Aetna Health Inc. and Cigna HealthCare of Texas, Inc., asked the Supreme Court to wipe out state court verdicts in two separate cases from Texas involving arthritis sufferer, Juan Davila, and hysterectomy patient, Ruby Calad. Both Davila and Calad claimed that their conditions were made worse when their HMOs overruled doctors' advice.

- According to media reports, interest in this issue is widespread in the corporate community: “[t]he U.S. Chamber of Commerce and the health insurance industry are asking for a complete shield from lawsuits.” *Los Angeles Times*, March 24, 2004, A-12.

States Seek to Protect Patients

Texas and nine other states – Arizona, California, Georgia, Louisiana, Maine, New Jersey, Oklahoma, Washington and West Virginia – have adopted laws that make HMOs responsible, in state courts, for the decisions they make about patient.

- Twenty states joined Texas in pointing out to the Supreme Court, that “[m]odern HMO practice, unforeseen in 1974, has resulted in managed care providers routinely making medical judgments and decisions.” [[Brief on behalf of Texas and 20 state Attorneys General, p. 2](#)]. For the news release regarding this case and link to full brief see [Texas Attorney General Gregg Abbott’s Website](#)]
- The American Medical Association joined the state Attorneys’ General and patient rights’ advocates in urging that HMOs not be allowed to make decisions with medical implications and then escape liability for those actions.
- If the HMOs win, those laws would be wiped out and victims of HMO abuse will have to go to federal court under ERISA, which provides “no meaningful remedy for negligent and wrongful decisions made by HMOs,” said Texas Solicitor Gen. R. Ted Cruz in the brief to the court. [[Brief on behalf of Texas and 20 state Attorneys General, p. 3](#)]

President Bush Breaks his Promise to Patients

During the final presidential debate against Vice-President Al Gore in 2000, then Governor **George W. Bush said he supported a national patient’s bill of rights and took credit for passing Texas’ law.**

If I’m president ... people will 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. [See *Los Angeles Times*, March 24, 2004, Page A-12]

The fact is that the president did *not* support legislation allowing patients to take their HMOs to court, as clearly stated by his spokeswoman in a 2000 article in the *New York Times*: “Mr. Bush feels the liability bill, which passed the Texas Senate last week, would ‘open a Pandora’s box of litigation,’ according to Karen Hughes, his spokeswoman....” [See “Taking Credit for Patients’ Rights Where It’s Not Necessarily Due,” October 18, 2000]

In the Texas Supreme Court case, the Bush Administration argued industry’s position:

As employers have noted, imposition of liability under state law could prevent employers from designing innovative health plans that are consistent across state borders and could make employers less willing to provide health benefits because of the higher costs associated with them. [[Brief for the United States as Amicus Curiae Supporting Petitioners at p. 29](#). For the full PDF copy of the brief see [United States Department of Justice Website](#)]

Moreover, the Administration argues, patients aren’t limited in treatments they can receive; they just need to find other ways of paying for them:

In addition, HMOs like petitioner Aetna and CIGNA in this case have an incentive to inform participants clearly that they provide only coverage, not treatment, and that an HMO determination not to provide coverage does not preclude claimants from obtaining care recommended by a treating physician through other sources of funds. [[Brief for the United States, at p. 29](#)]

The truth is that President George W. Bush has never supported a real patients’ rights proposal. Not surprisingly, the insurance industry – particularly HMOs – has rewarded him for protecting their interests.

According to the [Center for Responsive Politics](#), **Mr. Bush has received \$629,808 from HMOs, the most of any candidate running since the 2000 election cycle.**

For more information about this alert, the Corporate Truth Squad Campaign, or for a PDF version of this document please call Helen Gonzales, USAction Policy Director, at 202-624-1730.