

BETWEEN THE LINES

FIGHTING THE HMO MEANIES

Managed care is the only industry in America that can't be sued. That makes no sense.

By JONATHAN ALTER

PRESIDENT BUSH BELIEVES he's

getting the hang of things in Washington. "A dictatorship would be a heck of a lot easier there's no question about it," he said again last week, repeating what appears to be his favorite quip. "But dealing with Congress is a matter of give and take." Give and take. Very American. As the president noted, no one has unlimited power in the United States. Every institution is subject to checks on its authority. Every person is accountable for his or her actions. Every health-maintenance organization can do whatever it damn well will. Exception that proves the rule, I guess. It's a tribute to their power in Washington: HMOs are the only type of

business that, by law, cannot be sued, so their managers don't have to worry about such pedestrian notions as give and take. Every day brings yet another horror story of their dictatorship over the vulnerable. Just this week I heard about a 6-year-old New York boy with a brain tumor whose "in network" pediatrician recommended a specialist. When the specialist was later discovered to be "out of network," the parents got stuck with a bill for \$ 25,000, a mere down payment on what they will owe. No appeal allowed. That family is relatively fortunate. At least they're getting the necessary care in the first place. Millions of others are denied it. "When I talk to some of these HMO doctors, I ask if they're veterinarians, because my dog is treated better," says Margaret Mikol, chair of Sick Kids Need Involved People (SKIP), which helps stricken families fight the managed-care meanies. Now, finally, some action may be on the way. With Sen. Jim Jeffords's defection giving the Democrats control, the Senate passed a bill this year. And in the House, Bush's fealty to the insurance industry has run up against the personal experience of GOP Rep. Charles Norwood, a deeply conservative Georgian whose dental practice gave him a good close look at the fangs of the HMOs.

Norwood's position is simple: why should HMOs be treated differently than doctors or anyone else? He believes that's a conservative position. Sure, trial lawyers can be obnoxious, and they're mostly Democrats. But where does Washington get off telling people whom they can sue, for how much and in which court? Talk about Big Government.

The remedy—the "patient's bill of rights"—has always bugged



Kissing babies: 'We're creating an incentive for the HMOs to do the right thing,' says Edwards, coauthor of the Senate's patient's bill of rights

me. Maybe it's the name. The packaging is so self-consciously clever and politically slick. They're turning the very idea of "rights" into a cliché. I'd rather they called it the "HMO's bill of responsibilities." Yet when you look closely, Bush's critique of the patient's bill of rights is factually inaccurate, and he should know it. The president argues that the bill will send premiums skyrocketing, hurt the uninsured and lead to a rash of lawsuits. But the Congressional Budget Office estimates less than a 1 percent annual rise in premiums, and in the seven states that currently give patients the right to sue, the uninsured haven't suffered and the hungry trial lawyers have been disappointed so far.

Take Texas, where such a bill was approved in 1997 over the then Governor Bush's objections. So far only 17 lawsuits have been filed against HMOs, and health insurance premiums have actually declined. Bush has willfully ignored these facts sitting under his nose. Meanwhile California and Georgia have new laws on their books allowing lawsuits against HMOs. According to North Carolina Sen. John Edwards, a grand total of *none* had been filed.

Why? Senator Edwards offers some answers. Edwards is getting good buzz as a possible Democratic presidential candidate, notwithstanding his background as a personal-injury lawyer. (When I asked if trial lawyers were getting a better reputation amid this anti-HMO fight, he replied: "I wouldn't go that far.")

As a coauthor (with Ted Kennedy and John McCain) of the bipartisan bill that cleared the Senate, Edwards says the whole goal is to keep these cases out of court. Their bill, like Norwood-Dingell in the House, requires that patients exhaust their appeals within HMOs and independent reviews before litigation. But the threat helps. "This is about creating the incentive for them [the HMOs] to do the right thing," Edwards says. Capping damages at \$500,000, as Bush's compromise suggests, doesn't accomplish that end. Because many of the disputed treatments can cost \$500,000 or more over the life of the patient, HMOs have no incentive to be accommodating. What's finally tipping the debate is the increasing isolation of HMOs from the business community at large. For years HMOs told small-business lobbies that their members' premiums would increase 50 percent if the bill passed. This was untrue and contrary to market economics, but the ploy worked. Now, however, evidence from the states is proving that business can live with a patient's bill of rights, especially when the employers themselves are protected from any suits over treatment brought by their employees. (This type of immunity makes sense, given that they are not making medical decisions.)

Even if a compromise gets hammered out this week, there's no guarantee of success. In the last Congress, a patient's bill of rights passed the House 275 to 151. But the GOP leadership made sure that only opponents were named to the all-important conference committee working out the final bill with the Senate. The bill died, like a patient denied coverage after his doctor said yes.