HEALTH CARE

Legislation for sale

The Kassebaum-Kennedy bill gives crumbs to the uninsured and cake to the insurance industry.

By Ramón Castellblanch

On the campaign trail, Bill Clinton has been touting health insurance reform as one of his administration's proudest accomplishments. He describes the Kassebaum-Kennedy bill, which he signed into law on August 21, as a simple bill that will protect the health insurance of people who have been sick or hurt.

In fact, under its veneer of incremental health insurance reform, the Kassebaum-Kennedy bill contains a complicated array of political payoffs. The bill was loaded with rewards for special interests close to House Speaker Newt Gingrich and his House majority, including heavy contributors in the health insurance industry and the heir of the Star-Kist Tuna fortune.

When it left the Senate Labor and Human Resources Committee in August 1995, the health insurance bill, named for its authors, Sens. Nancy Kassebaum (R-KS) and Edward Kennedy (D-MA), addressed the problem known in the health insurance industry as "pre-existing condition exclusions." These exclusions deny coverage to newly hired workers if they or a family member have recently been sick or injured.

The Kassebaum-Kennedy bill did not bar pre-existing condition exclusions, but it did specify that they could last no longer than one year. According to the Congressional Budget Office (CBO), this change would move 400,000 Americans onto the rolls of the insured. Presidential candidates Bill Clinton and Bob Dole have inflated that number to 25 million, citing a highly dubious 1995 U.S. General Accounting Office (GAO) study that assumed that every person who changed jobs got another job with family health insurance and that every such worker had someone in their family with a pre-existing condition. In fact, the Kassebaum-Kennedy bill will make only a small dent in the growing number of Americans without health insurance. According to the Lewin Group, a Washington-based health insurance consulting firm, even with the legislation, 1 million people will join the ranks of the uninsured each year.

After the Senate committee hearings, the bill would normally have gone to the Senate floor for a vote, but instead secret "holds" placed by the Republicans, along with other procedural delays, caused it to languish for eight months. When then-Majority Leader Bob Dole finally allowed the bill to reach the Senate floor in April, House Republicans had taken control of it.

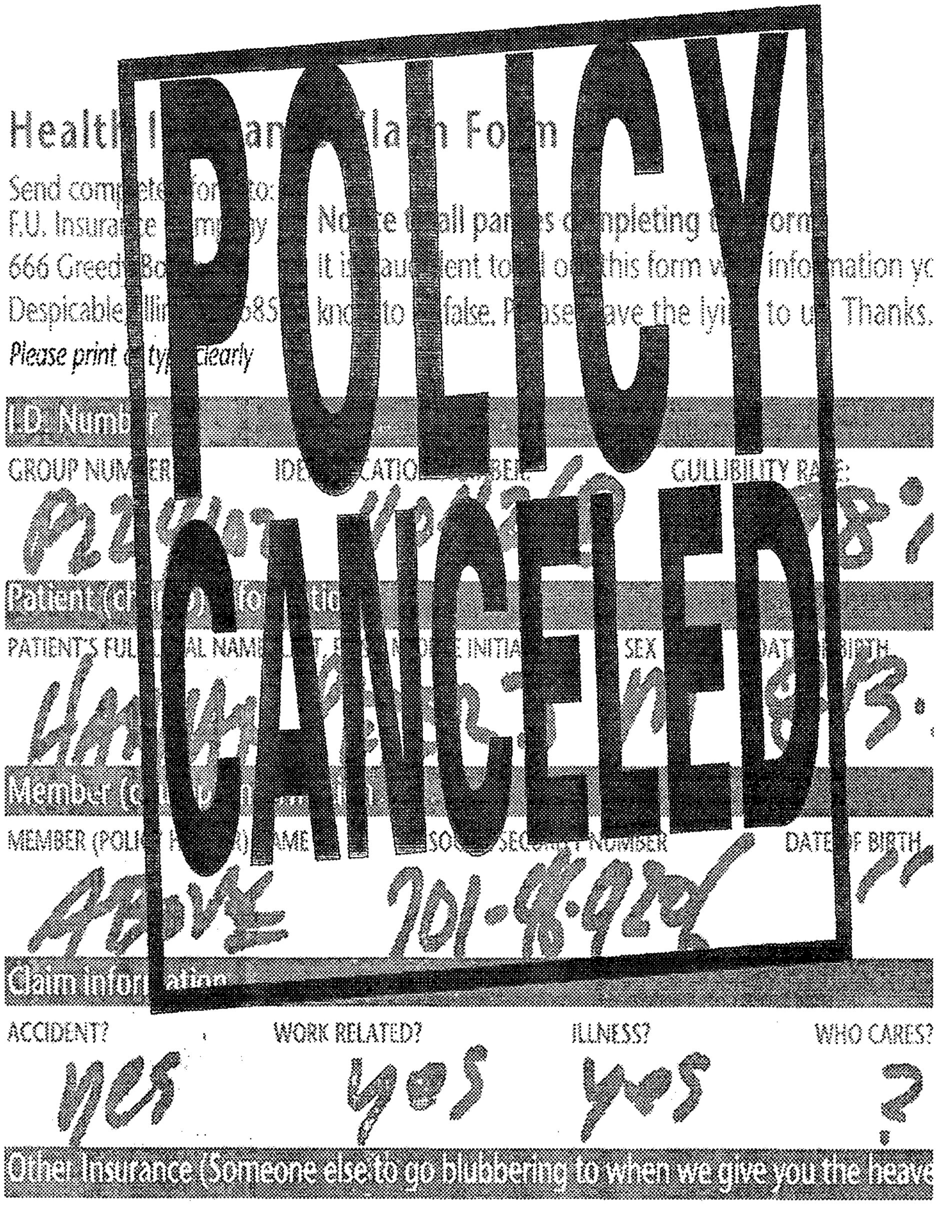
While the Senate stood by, House Republicans took up their own version of the bill last March. The House leadership, under the auspices of Rep. Dennis Hastert (R-IL), quickly set about the task of seeing how many special interests they could reward in the bill.

First on their list was the Golden Rule Insurance Co. Golden Rule sells a two-part health care financing package—high-deductible insurance coupled with medical savings accounts (MSAs). In this arrangement, people foot their own medical bills using funds in the MSA up to the threshold of the deductible, say $5,000. To make it easier to sell these packages, Golden Rule wanted Congress to allow clients to place pre-tax earnings into these MSAs.

Such a tax break would aggravate the problems of the U.S. health insurance system in several ways. By providing a new tax shelter, MSAs would draw healthier and wealthier individuals away from the regular health insurance market. With the main health insurance market left with a sicker pool of people, health insurance premiums for most people would presumably rise. Some also see MSAs as a way to force workers into high-deductible health insurance policies, raising workers' out-of-pocket health care costs.

J. Patrick Rooney, a member of the family that controls Golden Rule, and John M. Whelan, the company's president, gave more than $117,000 to GOPAC, Gingrich's political action committee. Rooney acknowledged that he and Golden Rule employees have contributed $1.1 million to the Republican National Committee and various Republican candidates since 1993. In return, House Republicans put tax-shelter status for MSAs into the Kassebaum-Kennedy bill. The CBO estimates that, over the next six years, this exemption will cost the government more than $1 billion in lost tax revenue.

Next on the list of special interests to pay off was American Family Life Insurance, a subsidiary of AFLAC, which sells cancer insurance and other types of supplemental coverage. A 1994 GAO study of this type of insurance policy found that in 1991, 3 million seniors were paying approximately $2 billion a year for insurance that duplicated their Medicare coverage. When they fell sick, the policies often wouldn't cover the treatment because Medicare already paid for it. The Omnibus Budget Reconciliation Act of 1990 (OBRA 90) included a requirement that companies selling supplemental policies inform seniors that their cancer policies duplicated some Medicare benefits.



AFLAC has contributed more than $200,000 to Republican candidates for federal office and more than $250,000 directly to the Republican Party during this year's electoral campaign. According to a congressional source, AFLAC lobbyists working out of the office of Rep. Mac Collins (R-GA) were responsible for a subtitle in the health insurance bill that repeals the OBRA 90 requirement that insurers inform consumers about Medicare duplication. In addition, the subtitle extends retroactive protection to insurers for civil and criminal penalties arising from violations of this requirement.

House Republicans also made sure that insurance companies selling long-term care insurance were taken care of. From 1988 to the present, the number of long-term care policies sold has soared from 20,000 to more than 440,000. A key problem with long-term care insurance is that it often doesn't cover people who have been admitted to nursing homes, since many policies require extreme levels of disability for coverage to start. Some policies, for example, stipulate that an individual be unable to perform two of six very basic activities of daily living (eating, bathing, dressing, moving about the house, using the toilet, and continence) in order to be eligible for benefits. As a consequence, someone can be completely unable to live independently—incapable of moving about the house unaided, for instance—and still not get benefits.

The Health Insurance Association of America (HIAA) used the "revolving door" between government and big business to help get its way on the issue. Chip Kahn was on the Republican staff on the Health Subcommittee of the House Ways and Means Committee when former Rep. Willis Gradison (R-OH) was the panel's ranking Republican. When Gradison became president of the HIAA, Kahn followed him there. Together they orchestrated the "Harry and Louise" attacks on Clinton's 1993 health care plan. After the Republicans took control of Congress, Kahn returned to the House, becoming chief of staff for the Health Subcommittee. In this post, he oversaw the House's work on most of the health insurance bill, including a long-term care insurance subtitle. Under the subtitle, long-term care insurance receives favorable tax treatment and federal rules continue to make it hard for people to collect benefits.

The HIAA received another major reward in the bill. Health insurers have long wanted a national health care data network that would help them identify and avoid groups or individuals likely to be sick or hurt. The network would use medical records to show which people and groups were most likely to file claims. Such a network would have to surmount two technical obstacles: First, insurance company codes for medical diagnoses and treatments vary widely. Secondly, health care consumers are not assigned numerical identifiers.

A subtitle in the Kassebaum-Kennedy bill requires that all medical claims filed electronically use standardized codes and identifiers. It assigns the U.S. Department of Health and Human Services (DHHS) the job of developing these codes and identifiers, and allows the use of Social Security numbers as identifiers.

Such a national health care data network will pose a serious threat to privacy. If everybody's medical records are accessible via computer and identified by Social Security numbers, these can be used against them not only by insurance companies but by any business. For example, banks could theoretically obtain medical records and use them to make credit decisions. Likewise, prospective employers could get access to these data and use them when hiring.

The bill established a process for developing privacy protections that is fraught with problems. It required DHHS to consult with the National Committee on Vital and Health Statistics on privacy protections, but it mandated that insurers and health insurance claim processors be heavily represented on the committee. Worse still, it allowed the establishment of a procedure to ensure privacy to lag as much as two years behind the introduction of standardized codes and identifiers. That delay means that in the interim, the health care data industry has a free hand to compile medical histories and sell the data, and the insurance industry can use the data to identify high-risk groups.

Spreading around the favors, House Republicans also helped the American Medical Association (AMA). Many physicians make referrals to medical businesses such as labs and therapists in exchange for fees from the businesses. The practice of taking kickbacks for referrals wastes large amounts of Medicare funds each year. Because this arrangement can be illegal, some physicians have sought to weaken enforcement of anti-kickback laws.

One way the AMA proposed to weaken enforcement was to require DHHS to provide "advisory opinions" to physicians considering financial deals with medical businesses. These advisory opinions would suggest ways to accept compensation for referrals without breaking the law. Physicians could then use the advisory opinions to defend themselves in court. According to the CBO, the opinions would cost federal taxpayers $390 million over six years in lost penalties and additional administrative staff.

The AMA curried favor with the 104th Congress with a battalion of lobbyists and a political action committee that donated tens of thousands of dollars to members. Last year Rep. Bill Thomas (R-CA), chair of the Health Subcommittee of the House Ways and Means Committee, acknowledged that an AMA plan was the "blueprint" for much of the House's 1995 Medicare proposal. The AMA recently declared that this session of Congress produced "the AMA's best Washington record in at least 20 years." The Kassebaum-Kennedy health insurance bill was a final feather in the organization's cap. Despite its cost to taxpayers, the bill contains "fraud and abuse" provisions that require DHHS to provide advisory opinions to physicians considering financial deals with medical businesses.

To top off the pile of deals for their allies, House Republicans took care of an interest with absolutely no connection to health care: billionaire expatriate Joseph J. Bogdanovich. Bogdanovich, heir of the Star-Kist Tuna fortune, was earning a huge income from his large foreign holdings and, as a U.S. citizen, was paying U.S. taxes on it. To avoid that tax burden, he gave up his U.S. citizenship in 1995.

Bogdanovich actively lobbied against any tax on expatriates' foreign holdings. He argued that expatriates should only pay U.S. taxes on their U.S. holdings. To drive his message home, he hired former Rep. Guy Vander Jagt (R-MI), who had been on the Joint Committee on Taxation (JCT) before going to work for Washington tax attorney Kenneth J. Keis. After the Republicans took control of Congress, they named Keis chief of staff of the JCT. Keis was closely involved in drafting the revenue title of the health insurance bill.

Under the guise of providing revenue to offset the losses

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CAMPAIGN '96

A cookie-cutter campaign

Paul Wellstone is an unabashed populist, but his campaign has all the earmarks of politics as usual.

By **Monika Bauerlein**

The billboard has become a fixture on Minneapolis/St. Paul's main thoroughfare, looming over a grocery-store parking lot and the AxMan surplus store. A cartoon character with a familiar face is shown flying skyward, the chest of his superhero costume emblazoned with a "W." Next to the figure, big letters blare "WELFARE MAN." And below, "Elect Rudy Boschwitz U.S. Senate."

Crude? Maybe. But goofy as it looks, the billboard—an earlier version of which showed Sen. Paul Wellstone's name altered to read "Wel*fare*"—is part of a hard-core campaign to reinstate the Republican who once held his seat. The race, once considered a cakewalk for Wellstone, has turned into a tooth-and-nail battle, in good part because of an unprecedented infusion of national GOP cash. To date, the National Republican Senatorial Committee (NRSC) has spent more than $1.2 million on an ad campaign in Minnesota masterminded by one of the most aggressive consultants this side of Dick Morris. Wellstone, committee officials have said, is their No. 1 target for defeat.

It's easy to see why. A populist college professor who beat Boschwitz on raw grassroots energy in 1990, Wellstone is by any account the Senate's feistiest Democrat. He's picked fights over nuclear waste, the minimum wage and NAFTA; gone up against his colleagues on lobbying and campaign finance reform; and battled the White House with his advocacy of a single-payer health system. Most recently, he was the only senator up for re-election to vote against the Clinton/Gingrich welfare reform bill.

And so the campaign against him is easily summed up in one word: "liberal." The mantra cropped up no fewer than 10 times in one short NRSC press release; sometimes modified to "embarrassingly liberal" or "ultraliberal," it was repeated over and over in the TV and radio ads that filled Minnesota airwaves through the summer and fall. The strategy is as old as dirt, and about as simple: Wellstone, the message goes, is fundamentally at odds with a state that, though traditionally Democratic, is also profoundly conservative in a Garrison Keillor sort of way. It's an idea, a strategist close to the Boschwitz campaign says, born of an early internal poll, one of whose questions featured the "L" word: "It was obvious that that was a red flag," she says. "The responses just went off the chart."

But if Boschwitz is banking on conventional political wisdom, the sitting senator pits his hope on an uncommon idea: That, at bottom, the electorate is a lot more willing to contemplate "radical" positions than politicians give it credit for. And to understand what he means by that, you have to go back to 1990 and what a lot of people still call the upset of the decade. A professor of political science at Carleton College—a small, prestigious liberal arts school 50 miles from the Twin Cities—Wellstone began his campaign in 1989 with a motley crew of helpers drawn from Jesse Jackson's Rainbow Coalition. No one took him very seriously; Boschwitz was considered hard to beat, and on the Democratic side there were plenty of better-known and better-connected candidates.

But Wellstone had a secret weapon: the pavement-pounding, door-knocking, phone-banking stamina of his supporters. They scoured farm country, blue-collar neighborhoods and activist meetings, mobilizing what the pundits hadn't yet identified as "angry voters." There was a recession that added to the aftertaste of the farm crisis and the disaster Minnesota's taconite industry had become. Wellstone's message of standing for "the little fellers, not the Rockefellers," hit home. The insurgents took the endorse-