



Righting Wrongful Denials of Insurance Coverage

Written On October 28, 2009 By [Bob Kraft](#)

This article from the [Los Angeles Times](#) provides a good, brief insight into what I think is one of the worst federal laws ever passed — the Employee Retirement Income Security Act, better known as ERISA.

One purpose of the [healthcare reform effort](#) in Washington is to help more Americans obtain coverage, in part by making policies available to people with preexisting conditions. But the pending bills wouldn't end the nightmares faced by others whose insurance fails them when they need it most.

The problem starts with the 35-year-old [Employee Retirement Income Security Act](#), a federal law that regulates the pensions, retirement savings programs and other benefits provided by private employers, guilds or unions. ERISA imposes two of the same requirements on employers' group insurance policies that Congress wants to apply to the individual insurance market: no denials of coverage and no increase in premiums for individuals with preexisting conditions. But it also exempts employers from state rules mandating which types of treatments must be covered and protects employers and their insurance partners from most damages if a policyholder's treatment is wrongfully delayed or denied. Patients can go to federal court and try to force the insurer to pay for the treatment, but, as [Times staff writer Lisa Girion](#) [has pointed out](#), that's cold comfort for the families of those who die waiting for the dispute to be resolved. State regulators may levy fines against some insurers that act unfairly on a broad scale, but they don't have the wherewithal to respond to individual patients' complaints.

Insurance industry lobbyists argue that many employers would stop providing health benefits if they lost this shield against bad-faith and wrongful-death lawsuits. But because it includes no potential penalty for bad faith — the only remedy, after all, is to pay for a treatment wrongfully denied — the current system

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has the perverse effect of giving insurers and self-insured employers an incentive to deny costly claims whenever possible. And that incentive could increase if Congress enacts a healthcare reform bill that stops insurers from shunning the people they'd previously deemed too costly.

Giving people the right to collect damages from insurers that deny treatments their doctors recommended would provide a deterrent to bad-faith cost-cutting and remove an unjustified disparity between ERISA-covered plans and other policies. But lawmakers should explore ways to do that without forcing more of these disputes into the courts. Developing guidelines for effective treatments could provide a way to resolve questions about what should be covered. Promoting competition among insurers would help too — possibly by giving employees more choices of plans. That way, consumers could vote with their wallets against insurers that violate their promise to pay for necessary care.