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Justices to hear HMO cases

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The Supreme Court agreed Monday to hear two Texas cases that could determine a patient's right to sue for damages when HMOs refuse to pay for their doctor's recommended medical treatments.

At issue: Will patients be allowed to sue their insurers in state courts, where juries can award big damages? Or does a 30-year-old federal law trump state laws, such as Texas' "patients' bill of rights?"

Both lawsuits were brought by Fort Worth lawyer George Parker Young under a 1997 law that made Texas the first state to give patients the right to sue their health maintenance organizations.

In one case, a Denton man accused his HMO of negligence in denying payment for a drug prescribed by his doctor. The other lawsuit was filed on behalf of a Sugar Land woman, whose HMO allowed only a one-day stay in the hospital after surgery.

Young and the insurers have been feuding for several years over where the suits should be tried -- reflecting similar disputes around the country about whether such cases should be handled in state or federal courts.

Insurers argue that the federal Employee Retirement Income Security Act, which sets standards for private employers' pension and health plans, prevails over state laws. And they routinely seek to move HMO suits to federal courts.

That's important because although a state lawsuit might result in millions of dollars in damages, federal courts cannot award damages. Instead, patients can collect only the cost of whatever medical service they were denied -- rarely more than a few thousand dollars.

Young said that amounts to a blank check for HMOs, which routinely make financial decisions about what treatments are medically necessary for their members.

"The main issue from a legal standpoint is: Did Congress really intend to take away [pre-emptively] from states the ability to regulate medical decision-making by HMOs?" Young said.

The lawsuit filed by Juan Davila of Denton, a post-polio patient who suffers from diabetes and arthritis, accused Aetna of negligence in making decisions about his medical necessities.

Davila's doctor had prescribed the painkiller Vioxx for his arthritis pain, because it was less likely to cause stomach problems, such as bleeding and ulcers.

Before covering the drug, the insurer insisted that Davila first try two other medications. If his condition didn't improve, or if he suffered an adverse reaction, then Aetna would consider a switch to Vioxx, according to the lawsuit.

