House Legislative Analysis Section

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NO CHARGING ABOVE MEDICARE RATE

House Bill 5448 (Substitute H-2)
First Analysis (3-21-90)

Sponsor: Rep. Perry Bullard
Committee: Judiciary

THE APPARENT PROBLEM:

The federally-funded Medicare program offers health insurance for people 65 years of age and older, and for people with disabilities or chronic kidney disease. The Health Care Financing Administration, the federal agency administering the program, contracts with various carriers to process and pay claims for physicians' services; in Michigan, the carrier is Blue Cross and Blue Shield of Michigan. A physician may decide on a claim-by-claim basis whether to accept Medicare "assignment," meaning that the patient ("beneficiary") assigns to the physician the right to payment under the program. A physician who accepts Medicare assignment agrees to accept Medicare rates as full payment on the claim. Under assignment, the physician bills the carrier who then pays the physician 80 percent of the Medicare-approved amount; the beneficiary is responsible for a 20 percent copayment and any deductible that might apply. Physicians who do not accept assignment are free to "balance bill," that is, they may charge fees in excess of Medicare rates. In Michigan, the roughly eight percent of Medicare claims that are not assigned give rise to about $32 million annually in fees in excess of Medicare rates. With health care costs escalating, many people on fixed incomes are faced with hard choices on where and how to spend their limited dollars. To many, a partial solution lies in limiting physicians' ability to charge Medicare patients fees that are higher than what Medicare considers reasonable. Legislation to establish such limits has been proposed.

THE CONTENT OF THE BILL:

The bill would create a new public act to require physicians to accept Medicare rates as full payment for services. For a Medicare-covered service, a physician could not collect from a beneficiary an amount that was greater than the total of the coinsurance and any deductible due under Medicare based on the Medicare allowable amount. A physician who violated this provision would be liable to the patient for three times the amount of the excess fee (plus reasonable costs and attorney fees), or $1,000 (plus costs and reasonable attorney fees), whichever was greater.

In addition, the bill would require a physician to file a patient's Medicare claim free of charge within 30 days after rendering a Medicare-covered service (or within 30 days after a beneficiary's discharge from a hospital). A physician who charged a fee for submitting the claim would be liable to the patient for $500, plus reasonable costs and attorney fees.

A physician who violated the bill's provisions limiting fees and requiring claims to be filed would also be liable for a civil penalty of $2,000 per violation. These civil fines would be paid to the Department of Social Services and used to pay for health care for individuals who have no health insurance.

After receiving a properly completed claim for Medicare-covered services, the state Medicare carrier would have to pay a physician in a timely manner according to guidelines established by the federal government. If the carrier failed to do so, the physician could sue for injunctive relief.

The insurance bureau could assist the Medicare carrier in distributing directories of physicians participating in Medicare.

FISCAL IMPLICATIONS:

Fiscal information is not available. (3-21-90)

ARGUMENTS:

For:

Sharply rising medical costs have put many on fixed incomes in a financial bind, forced to choose between medical care and other necessities. Medicare beneficiaries suffer under a combination of low income and chronic health problems; advocates for senior citizens report that the average senior pays about $2,000 per year in out-of-pocket health care costs. High copayments and deductibles make Medicare barely affordable for many, yet the state imposes no limits on the fees that doctors may charge in excess of the Medicare rate. While the federal government does impose some limits, those limits are generous for nonparticipating doctors, being well over the Medicare rate and based on previous billing practices. Medicare has been no panacea for the problem of rising medical expenses for older or disabled people: reports are that senior citizens now pay a higher proportion of income on health care than they did before Medicare was enacted. In contrast, physician incomes are high and getting higher.

By forbidding physicians to "balance bill" their Medicare patients, the bill would ensure that the elderly and disabled do not have to forfeit needed medical care in favor of food or rent. While it is easy to say that these people may control their own health care costs by using physicians that accept Medicare assignment, the reality is that many beneficiaries are uninformed on the complexities of the Medicare system. More importantly, many beneficiaries, such as those facing surgery, are not in circumstances to "shop around" for different doctors. The bill would make the system fairer by limiting fees for Medicare patients to the rates that Medicare considers reasonable. That those fees are indeed reasonable is evidenced by the numbers of Michigan physicians — over 40 percent — who "participate" in the Medicare program and thereby accept Medicare assignment and rates for all their Medicare patients.

Against:

The bill is unnecessary, as assignment rates among Michigan physicians are high (about 92 percent based on numbers of claims, 94 percent based on dollar amounts), and well above national averages. Clearly, there is not much of a problem in Michigan. Rather than forcing

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physicians to accept Medicare rates that run 20 to 25 percent below what private insurers pay, it would be better to focus on the development of voluntary assignment programs aimed at ensuring assignment of claims for beneficiaries in need. Such programs have been successful in other states and in Midland county, and formalize the policies that many individual physicians have of not balance billing Medicare patients who are not affluent. In addition, beneficiaries to whom Medicare assignment is important can make use of directories that list physicians accepting assignment. To force all physicians to in effect accept assignment would be overly restrictive on physicians; they, too, are faced with rising costs of malpractice insurance, rent, and supplies. Federal limits on balance billing already limit what physicians may charge Medicare patients, and even those limits are less than what physicians charge non-Medicare patients. The bill suggests remedying the problem of inadequate federal payments by penalizing Michigan physicians and discouraging the practice of medicine in Michigan.

Against:

The bill would create disincentives for physicians to treat Medicare patients, thus creating problems of access to medical care for Medicare patients. The problem would be especially acute in rural areas where if one doctor discontinues Medicare practice, another doctor might be many miles away. The bill would create the biggest problems for primary care physicians who treat high numbers of elderly patients, and it is those physicians who are the most important to beneficiaries. The bill's proponents cite a Government Accounting Office (GAO) report as evidence that access problems have not developed as a result of mandatory assignment laws in the four states that have enacted them; however, others dispute the GAO findings, noting the report's brief study period, criticizing its methodology, and maintaining that access problems exist in areas of the four states, especially Massachusetts. To many, it seems clear that Michigan, too, would risk problems of access to medical care being disrupted as a result of a bill that required physicians to accept inadequate payment for treating Medicare patients.

Response: The GAO studied the effects of mandatory assignment laws in the four states that have them and found no increased problems of access to medical care as a result of those laws; the number of physicians in Massachusetts, for example, is up. In addition, any tendencies to reduce Medicare practice in areas where physician shortages may exist would be offset by new federal provisions that will offer bonus payments for physicians serving such areas.

Against:

The bill would apply to all Medicare patients, regardless of income. It is a fallacy that senior citizens are necessarily poor; in fact, many senior citizens are comfortably well-off. If balance billing is a problem, the solution should be limited to those Medicare patients who cannot afford the additional charges.

Response: Any sort of means test in the bill would violate the basic principles under which Medicare was created. Medicare is a social insurance program whose benefits are equally available to all, not a welfare program for the needy. Even if a means test was not philosophically abhorrent, it would present various logistical problems of getting patients to admit to neediness, of ensuring that those with moderate income plus high medical expenses were helped, and of penalizing doctors who serve the poor. Means testing would do nothing to solve the problem of rising physician fees, up some 60 percent in recent years. In addition, while many older people are affluent, many are not; according to advocates for seniors, about 25 percent of older people live near or below the poverty level.

Against:

Data from several sources suggest that it is the highly-paid specialists (anesthesiologists, gynecologists, otolaryngologists, surgeons) who are responsible for the problems with balance billing. With primary care physicians, charges are lower and there is time for a patient to consider alternatives and find a physician who accepts Medicare assignment. The bill would do better to exempt office visits from the balance billing prohibition.

Response: People have a tendency not to question medical authority and to stay with a physician, rather than "shop around." A Medicare beneficiary should not have to choose a physician based on whether assignment is accepted. More to the point, if office visits are exempted, costs are likely to be shifted elsewhere, raising fees for other services.

Against:

The bill smacks of price control. There is nothing preventing a patient from being a good consumer and leaving an overpriced physician for one whose fees are more reasonable. Medicare fees are notoriously inadequate; under the bill, doctors would be forced to recoup their costs by charging higher fees to non-Medicare patients. Patients not on Medicare would subsidize Medicare beneficiaries.

Response: People do not choose a physician on the basis of price alone. The idea of market forces does not apply when it comes to choosing medical care. As for the possibility of cost-shifting, the GAO found little or no evidence that mandatory assignment laws have cause physicians to offset reducing bills for covered beneficiaries by increasing bills for non-covered beneficiaries.

POSITIONS:

Access to Health Care in Michigan supports the bill. (3-20-90)

AFSCME International and AFSCME Council 25 support the bill. (3-20-90)

The American Association of Retired Persons, Michigan State Legislative Committee, supports the bill. (3-20-90)

Citizens for Better Care supports the bill. (3-21-90)

The Michigan Citizens Lobby supports the bill. (3-20-90)

The Michigan Manufacturers Association supports the bill. (3-20-90)

The UAW supports the bill. (3-21-90)

The Area Agencies on Aging Association supports mandatory Medicare assignment legislation. (3-20-90)

The Michigan Primary Care Association supports the concept of the bill. (3-20-90)

Blue Cross and Blue Shield of Michigan is neutral on the bill. (3-20-90)

The Michigan Academy of Family Physicians opposes the bill. (3-21-90)

The Michigan State Medical Society opposes the bill. (3-21-90)