



Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

Senior
Citizens

THE APPARENT PROBLEM:

Managed care plans have been integral in holding down the rising costs of medical care in recent years. However, stories have surfaced nationwide through television and radio news stories and magazine and newspaper articles citing examples of physicians being prohibited by health care plans of which they are participating providers from informing patients of certain treatment options not covered by the plans, and of physicians being offered financial incentives to withhold referrals to specialists and orders for certain tests. Physicians who make too many specialist referrals, order too many expensive tests, or discuss treatment options not offered by a specific plan in violation of the plan's "gag rule" may find themselves facing financial penalties, having to pay for a patient's treatment out of their own pocket, or being removed as a provider from the plan -- thus losing a segment of their patient base. In response, many states have adopted some form of prohibition on gag rules that restrict physicians from discussing treatment options with a patient, advocating on behalf of patients when a treatment or payment is denied, or from disclosing information on how physicians are compensated. A New York Times article dated September 17, 1996 reported that 16 states had adopted such laws in 1996. At the federal level, legislation has been introduced in the form of HR 586, the Patient Right to Know Act, to prohibit restrictions on medical communications between physicians and their patients.

Michigan, on the other hand, does not appear to have the problem with gag rules reported by other states in managed care or other health and insurance plans. According to the Insurance Bureau staff, no plan containing gag rule clauses has been filed with the bureau, and to their knowledge, no plans currently operating in the state contain gag rules. A survey conducted recently by the Michigan State Medical Society also failed to uncover any gag rules imposed on Michigan providers. However, since there is no prohibition on HMOs and other health plans from restricting certain communications between a physician

DOCTOR/PATIENT COMMUNICATION

Senate Bill 501 as passed by the Senate First Analysis (6-18-97)

Sponsor: Sen. Dale L. Shugars
Senate Committee: Health Policy and

House Committee: Health Policy

and patient, and since self-funded employer plans are not state regulated, a possibility does exist that a health care plan in the state may contain a gag rule, or could impose such gag rules in the future. Earlier this year, the House passed a package of bills to prohibit licensed health plans from restricting certain communications between physicians and their patients. (For more information, see the House Legislative Analysis Sections's analysis of House Bills 4392-4394 dated 5-7-97.) A complementary Senate bill has been proposed to prohibit Blue Cross and Blue Shield of Michigan from placing any ban on doctor/patient communications regarding the disclosure of treatment options, quality assurance plans, and certain financial information.

THE CONTENT OF THE BILL:

The bill would amend the Nonprofit Health Care Corporation Reform Act (MCL 550.1101 et al.) to prohibit Blue Cross and Blue Shield of Michigan (BCBSM) from prohibiting or discouraging a health care provider from advocating on behalf of an subscriber in accordance with applicable grievance procedures or discussing any of the following with an subscriber or provider:

- * Health care treatments and services.
- * Quality assurance plans required by law, if applicable.
- * Financial relationships between BCBSM and the health care provider that would include the following, if applicable:
 - Whether a fee-for-service arrangement exists (where the provider is paid a specified amount for each covered service rendered to the participant).
 - Whether a capitation arrangement exists (where a fixed amount is paid to the provider for all covered services that are or may be rendered to each covered individual or family).

Senate Bill 501 (6-18-97)

-- Whether payments to providers are made based on standards relating to cost, quality, or patient satisfaction.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill is not anticipated to have any significant fiscal impact on the state or local government, as it is not current practice for Blue Cross and Blue Shield of Michigan's policies to contain gag rule clauses. Gag rules are already prohibited under the Medicaid program and proposed federal legislation would prohibit all other health insurance plans from gag rule clauses in provider contracts. (6-9-97)

ARGUMENTS:

For:

Though the Department of Community Health reports that it finds no evidence of gag rules in Michigan, and does not anticipate any problems in the future, it does oppose any restrictions on speech between doctors and patients. Many industry members also echo the belief that doctor/patient communications should be protected and encouraged. In essence, the bill would be putting current practice into law. The bill would prohibit any BCBSM plan from restricting doctors from freely discussing treatment options or disclosing the kind, if any, of financial incentives (rewards or punishments) that the plan imposes on a doctor. The bill would not, however, apply to self-funded employer plans. Reportedly, there is no evidence at this time of any problems with self-funded employer plans containing gag rules. In addition, the bill would allow physicians to advocate on behalf on their patients, especially in cases where a recommended treatment or payment for a service has been denied. It is reported that without such protection in the law, many physicians are hesitant to help patients with appeals for fear of reprisals from the health care plan.

Further, according to a representative from Blue Cross/Blue Shield of Michigan, Blue Care Network, the language in the bill concerning financial arrangements would be broad enough to enable doctors to talk in general terms that could answer a patient's question regarding a physician's motivation, rather than in exact dollar amounts which may not be relevant to patient care. Patients would be assured of continued open communication with their doctors, and doctors would not have to be concerned that they would be punished for disclosing prohibited treatment options.

Response:

Though the bill does send a strong message that communications between a physician and patient must be unrestricted, some feel that they would not protect

physicians from "implied" gag rules or prevent a so-called "carrot approach" whereby doctors could get increased financial incentives if they do not discuss certain treatment options. Provisions to give added protection to physicians should be adopted.

POSITIONS:

The Department of Community Health supports the bill. (6-10-97)

The Michigan Health and Hospital Association supports the bill. (6-17-97)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.