

House Bill 4080 (Substitute H-3)
First Analysis (7-3-97)

Sponsor: Rep. Penny Crissman
Committee: Insurance

THE APPARENT PROBLEM:

All across the country, health care consumers, hospitals, emergency room physicians, and others have complained about the denial of coverage of health services provided in emergency rooms by some managed care plans and other health insurance entities. According to a recent Washington Post article (June 30, 1997), as of mid-June, 16 states had responded by enacting legislation requiring coverage of emergency room services, and federal legislation on the issue is under consideration. To illustrate the kinds of complaints that have led to legislation, consider the case of a person who believes he is having a heart attack and so seeks out care at the nearest emergency room. Upon examination, the patient is diagnosed as merely suffering from gastritis or indigestion. As a result, because the final diagnosis suggests that this was not in fact an emergency, the health plan refuses to cover the cost of services provided. In another case, a health plan might refuse to pay because the patient did not obtain prior authorization for an emergency room visit. Other kinds of examples could be cited, but at bottom the issue revolves, often, around the differing perception of an "emergency" by the person in distress (or parents, neighbors, or co-workers when someone else is in distress) and the insurance entity, and the willingness of emergency providers to provide care but the refusal of insurers either to pay the provider or reimburse the patient for the cost of the care. While it is understood that the emergency room should not be used as a doctor's office, and that some insurers' rules are meant to prevent that costly and wasteful practice, health care consumers and providers have argued for legislation that would base payment on the appearance of symptoms of an emergency and the reasonable expectations of those presenting themselves for care.

While there is not agreement over how often such conflicts over the payment for emergency services arises and which entities are most likely to be at fault, there seems to be general agreement that such conflicts do happen, and some people believe they should be resolved legislatively. Legislation has been introduced in Michigan to address this issue as it involves health maintenance organizations, and future legislation is expected to address other kinds of insurance entities.

THE CONTENT OF THE BILL:

The bill would amend the HMO Act within the Public Health Code to provide a definition of "emergency health services." These services are among those a health maintenance organization (HMO) is required to provide as part of a health maintenance contract.

Under the bill, the term "emergency health services" would mean medically necessary services provided to an enrollee for the sudden onset of a medical condition that manifests itself by signs and symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health, or to a pregnancy in the case of a pregnant woman, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

An HMO would be prohibited from denying payment for emergency health services up to the point of stabilization provided to an enrollee because of the final diagnosis or because prior authorization had not been given by the HMO before emergency health services were provided. The term "stabilization" would mean the point at which no material deterioration of a condition is likely, within a reasonable medical probability, to result from or occur during transfer of the patient.

MCL 333.21004

FISCAL IMPLICATIONS:

There is no information at present.

ARGUMENTS:

For:

The bill places a clear, practicable definition of "emergency health services" within the act governing HMOs. This bill does not impose a new health care mandate, as that term is usually understood. HMOs are currently required as part of their basic contract to provide emergency health services to customers, but that term has until now remained undefined. The bill will help to resolve disputes over when services

provided in an emergency setting will be covered. If the definition is met, an HMO could not deny coverage based on the final diagnosis (e.g., indigestion not a heart attack) or based on the fact that prior authorization for such treatment had not been provided. The definition requires the "sudden onset" of a medical condition that manifests itself by "signs and symptoms of sufficient severity, including severe pain." It requires payment of services "up to the point of stabilization." This means that transfer of the patient to another setting would be permitted at the point at which no material deterioration of a condition was likely, within reasonable medical probability, to result from or during transfer. Proponents say this language is similar to that being contemplated at the federal level, and it has widespread support among the interested parties that have been holding discussions on this issue.

■ 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.

Against:

Some people have argued that a bill addressing HMOs should not be dealt with alone, but that companion legislation covering Blue Cross and Blue Shield of Michigan and commercial health insurance companies should move at the same time. Proponents of this approach say that the problem, according to information from surveys of General Motors employees, is more pronounced among customers of indemnification plans and preferred provider plans than among customers of HMOs.

Response:

Legislation addressing coverage of emergency services by other kinds of insurance entities is anticipated in the near future. HMOs are a special case in some ways because their governing act requires the provision of emergency medical services as a part of the basic contract.

POSITIONS:

Among those who indicated their support for this bill to the House Insurance Committee were: The Michigan Association of Health Plans (representing HMOs), Blue Cross and Blue Shield of Michigan, the Michigan College of Emergency Physicians, the Michigan State Medical Society, the Michigan Osteopathic Association, the Michigan State Chamber of Commerce, the American Cancer Society, the Michigan Health and Hospital Association, William Beaumont Hospital, and the Detroit Medical Center. (7-3-97)

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