

Senate Fiscal Agency
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SFA



BILL ANALYSIS

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Senate Bill 501 (as enrolled)
House Bill 4392 (as enrolled)
House Bill 4394 (as enrolled)
Sponsor: Senator Dale L. Shugars (Senate Bill 501)
Representative Mary Schroer (House Bill 4392)
Representative Joseph Palamara (House Bill 4394)
Senate Committee: Health Policy and Senior Citizens
House Committee: Health Policy

PUBLIC ACT 68 of 1997
PUBLIC ACT 67 of 1997
PUBLIC ACT 66 of 1997

Date Completed: 8-1-97

RATIONALE

In any form of managed health care system, whether under Blue Cross and Blue Shield of Michigan (BCBSM), a health maintenance organization (HMO), or a private insurance company policy, generally the policy contract will specify the responsibilities and rights of the patients under the health plan. Likewise, contracts with providers specify the rights and responsibilities of health care providers under a plan. There have been reports recently that in some states some health care agreements have contained "gag rules"; that is, clauses in the provider contracts that prohibit or restrict participating health care providers from informing patients of certain treatment options, or clauses that offer financial incentives to providers to withhold referrals to specialists or orders for certain tests. Many people feel that this interferes with the doctor/patient relationship and might adversely affect the quality of care. Reportedly, several states have adopted some form of prohibition on gag rules. Though the Michigan Department of Community Health reported that no provider contract that it reviewed has contained a gag clause, it was pointed out that nothing in statute specifically restricted the practice. It was suggested that the statutes that govern BCBSM, HMOs, and disability insurers be amended to prohibit these entities from restricting health providers' discussion of treatment options or financial arrangements with patients.

prohibiting or discouraging a health professional: from discussing with a subscriber, an insured, or an enrollee certain treatments, services, or financial arrangements; or from advocating on behalf of a subscriber, insured, or enrollee for appropriate medical treatment options, pursuant to the grievance procedures specified in the Act or Code.

The bills provide that BCBSM, an HMO, or a disability insurer may not prohibit or discourage a health professional from discussing with a subscriber health care treatments and services; quality assurance plans required by law, if applicable; or the financial relationships between BCBSM, the HMO, or the insurer, and the health care provider. Financial relationships between BCBSM, the HMO, or the insurer, and the provider include whether:

- There exists a fee-for-service arrangement, under which the provider is paid a specified amount for each covered service rendered to the participant.
- There exists a capitation arrangement, under which a fixed amount is paid to the provider for all covered services that are or may be rendered to each covered individual or family.
- Payments to providers are made based on standards relating to cost, quality, or patient satisfaction.

CONTENT

Senate Bill 501 amended the Nonprofit Health Care Corporation Reform Act, and House Bills 4392 and 4394 amended the Public Health Code and the Insurance Code, respectively, to forbid BCBSM, an HMO, or a disability insurer from

MCL 500.1501b (S.B. 501)
333.21052a (H.B. 4392)
500.3407a (H.B. 4394)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

In other states there have been reports that physicians are 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 are being offered financial incentives to withhold referrals to specialists and orders for certain tests. The practice by some health insurance plans to include these “gag rules” in provider contracts creates conflict of interest issues for physicians and undermines the trust and communication in doctor/patient relationships, which in turn may affect quality of care. Although gag clauses do not seem to be a current problem in Michigan, there has been no specific statutory prohibition against restricting physicians from discussing treatment options or financial arrangements with plan participants. The bills clearly prohibit the use of gag clauses in provider contracts, and thus will eliminate possible future problems and ensure that there are no barriers to communication between physicians and patients. In addition, the bills will ensure that physicians may continue to advocate on behalf of their patients, especially in cases in which a recommended treatment or payment for a service is denied. Arguably, without such protection in the law, many physicians could be hesitant to help patients with appeals for fear of reprisals from the health care plan.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: J. Walker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.