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INSURERS: PROHIBIT REQUIRING THE TRANSFER OF PATIENTS BEFORE STABILIZATION

House Bill 4965 as introduced
Sponsor: Rep. Stephen Ehardt

House Bill 4966 as introduced
Sponsor: Rep. Lisa Wojno

Committee: Health Policy

First Analysis (12-3-03)

THE APPARENT PROBLEM:

In order to reduce health care costs, most health plans require their insureds to seek medical care only from health care providers that participate with the health plan's approved panel of providers. Similarly, some health plans authorize their members or subscribers to utilize only certain hospitals. If an insured seeks medical treatment at an unauthorized hospital, payment by the health plan is generally denied. However, Michigan law allows a person, in an emergency, to go to the nearest hospital, whether it is an authorized facility or not. According to one of the bill sponsors, incidents have occurred in which physicians in emergency rooms have been pressured by health insurers to transfer patients to an authorized hospital before the emergency room physicians deem the patients stabilized.

In one such incident, a patient was treated in an emergency room for chest pains with the standard medical protocol for that condition. The patient's health maintenance organization required the hospital to obtain authorization for treatment. When the hospital contacted the insurer for authorization, the physician who worked for the health plan wanted the patient transferred to the hospital with which the health plan had a contract. When the emergency room physician disagreed with the decision to transfer, the physician was informed that the insurer would not pay for services rendered after that point.

Some feel that the law should be amended to prohibit an insurer from pressuring or requiring a treating physician to transfer a patient to a hospital that participates with the health plan before the treating physician deems the patient stabilized sufficiently for safe transfer.

THE CONTENT OF THE BILLS:

Currently, Michigan law requires health insurers that provide coverage for emergency health services to also provide coverage for medically necessary services for certain medical conditions that have a sudden onset, and it prohibits the insurer from denying payment for emergency health services provided to an insured up to the point of stabilization because of the final diagnosis or because prior authorization was not given by the insurer before the services were provided. The bills would amend the Insurance Code and the act that regulates Blue Cross Blue Shield of Michigan to additionally prohibit an insurer from requiring a physician to transfer a patient before the physician determined that the patient had reached the point of stabilization. "Stabilization" is defined in both acts as the point at which no material deterioration of a condition is likely, within reasonable medical probability, to result from or occur during transfer of the patient.

House Bill 4965 would amend the Insurance Code (MCL 500.3406k) to apply to commercial insurers and to specify that the provision also applies to health maintenance organizations (HMOs). House Bill 4966 would amend the Nonprofit Health Care Corporation Act (MCL 550.1418) to apply to Blue Cross Blue Shield of Michigan.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the fiscal impact on either the state or local units of government is indeterminate. It could be assumed that if the bills provide either cost savings or additional costs to health insurers, those savings or added costs would be reflected by changing premiums. At this time, savings or additional costs

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cannot be projected. The state, as well as most local units of government, provide some form of health care coverage and therefore may be affected by the bills. (12-1-03)

ARGUMENTS:

For:

Though it is understandable that health plans contract or negotiate with a particular hospital in an area in order to contain health care costs, in cases of emergencies, the last thing that a patient needs is fear that his or her health plan will deny payment for care received in an unauthorized hospital. Likewise, an emergency room physician is responsible for accurately diagnosing and treating an emergency room patient, not balancing concerns regarding a patient's health with the patient's wallet. Further, unlike the staff physician for an insurance company, an emergency room physician is liable for the medical services he or she provides to a patient. In case of a poor outcome, it is the treating provider's career and possibly license that is on the line. Therefore, it is imperative that the sole decision-making responsibility rest with the emergency room physician as to whether a patient has been medically stabilized and can be safely transported to the authorized hospital. Under the bills, a health plan would be prevented from interfering with an emergency room physician's decision as to the status of a patient and prohibited from denying payment for services rendered up to the point that the physician determined the patient was stable and ready for transfer.

Against:

The bill is not needed. A federal law called the Emergency Medical Treatment and Active Labor Act (EMTALA) already prohibits the transfer of an emergency patient to another facility before he or she is medically stable. Since it would fall to the treating physician to make the decision regarding the patient's medical status, this federal law should suffice to protect a patient and his or her emergency physician from undue pressure or interference on the part of the health insurer.

Response:

There already is a precedent for state law to mirror federal law. No harm would be done by including a provision in state law to prevent insurers from denying payment for services rendered in an authorized facility after an emergency room physician disagreed with the insurer's in-house physician as to the patient's status regarding transfer.

POSITIONS:

A representative of the Michigan College of Emergency Physicians indicated support for the bills. (12-2-03)

A representative of the Michigan Association of Health Plans (MAHP) indicated support for the bills. (12-2-03)

A representative of William Beaumont Hospitals indicated support for the bills. (12-02-03)

A representative of the Michigan Health and Hospital Association (MHA) indicated support for the bills. (12-2-03)

The Office of Financial and Insurance Services is neutral on the bills. (12-2-03)

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.