House
Legislative
Analysis
Section

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

PERMISSIVE COVERAGE OF NEW OPTOMETRIC SERVICES

House Bills 4569 and 4570 as enrolled
Public Acts 436 and 437 of 1994
Sponsor: Rep. David M. Gubow

House Bills 4571-4573 as enrolled
Public Acts 438-440 of 1994
Sponsor: Rep. John Jamian

Second Analysis (1-5-95)

House Committee: Public Health
Senate Committee: Health Policy

THE APPARENT PROBLEM:

Under Michigan's Insurance Code, if a health insurance policy offers reimbursement for a service within the scope of practice of certain licensed health professionals, the policy is required to offer reimbursement for all services within the professional's legal scope of practice. Health insurers and large purchasers of health insurance (such as businesses and labor unions) typically oppose increases in the scope of practice of health professionals, arguing that increases in legal scopes of practice will result in increases in their health care costs because increasing a legal scope of practice has the effect of mandating that insurance policies pay for these expanded services.

Public Act 384 of 1994 (enrolled House Bill 4331), expanded the scope of practice of optometrists to allow them to use topical therapeutic drugs to treat certain conditions of the front of the eye (such as "pink eye"). Companion legislation has been introduced to specify that if optometrists' scope of practice were to be expanded after May 20, 1992, insurance coverage for these new services would be optional, not mandatory.

THE CONTENT OF THE BILLS:

In general, the bills would exempt third party health insurance payers -- including health maintenance organizations, worker's compensation, prudent purchaser organizations, and Blue Cross and Blue Shield of Michigan -- from having to pay for expanded optometric services that would be allowed by House Bill 4331.

If legislation were enacted expanding the scope of chiropractic practice, the bills also would make coverage of "the use of therapeutic sound or electricity, or both, in the correction of spinal subluxation in a chiropractic service" permissive, rather than mandatory.

More specifically, each of the bills would do the following:

* House Bill 4569 would amend the Public Health Code (MCL 333.21053) to say that if a health maintenance organizations (HMO) contract covered services that were within the scope of practice of optometry, the HMO would not be required to cover optometric services that weren't included in the definition of "practice of optometry" as of May 20, 1992.

If Senate Bill 493 (which passed the Senate but died in the House Committee on Public Health) or House Bill 4494 (which was never taken up by the House Committee on Public Health) were enacted into law, the bill also would not require HMOs whose contracts covered services within the scope of practice of chiropractic to cover "the use of therapeutic sound or electricity, or both, for the reduction or correction of spinal subluxation in a chiropractic service."

* House Bill 4570 would amend the Worker's Disability Compensation Act (MCL 418.315) to allow employers to elect to not cover either (a) charges for optometric services that weren't included in the definition of the practice of

optometry as of May 20, 1992, or (b) the use of therapeutic sound or electricity, or both, for the reduction or correction of spinal subluxation in a chiropractic service. The bill would not take effect unless Senate Bill 493 were enacted into law.

* House Bill 4571 would amend sections of the Insurance Code (MCL 500.2243 et al.) dealing with insurance contracts, casualty insurance rates, motor vehicle protection, disability insurance policies, group and blanket disability, and group health to exempt from mandatory coverage or reimbursement optometric services not included in the Public Health Code definition of "practice of optometry" after May 20, 1992, and -- if Senate Bill 493 were enacted into law -- the use of therapeutic sound or electricity, or both, for the reduction or correction of spinal subluxation in a chiropractic service.

* House Bill 4572 would amend the Prudent Purchaser Act (MCL 550.53) to say that if a prudent purchaser agreement covered services within the scope of practice of optometry, the bill wouldn't require that coverage or reimbursement be provided for "a practice of optometric service" unless that service had been included in the Public Health Code's definition of "practice of optometry" as of May 20, 1992.

If Senate Bill 493 were enacted into law, the bill also would specify that it wouldn't require prudent purchaser agreements that covered services within the scope of chiropractic to cover or reimburse the use of therapeutic sound or electricity, or both, for the reduction or correction of spinal subluxation in a chiropractic service.

* House Bill 4573 would amend the Nonprofit Health Care Corporation Act (the "Blue Cross and Blue Shield Act") specify that Blue Cross and Blue Shield of Michigan wouldn't have to cover optometric services added to the definition of "practice of optometry" after May 20, 1992.

Unless Senate Bill 493 or House Bill 4494 were enacted into law, the bill also wouldn't require Blue Cross and Blue Shield of Michigan to cover the use of therapeutic sound or electricity, or both, for the reduction or correction of spinal subluxation in a chiropractic service.

Note: Since Senate Bill 493 was not enacted, House Bill 4570, although enacted, cannot take effect. However, even though none of the changes proposed in House Bill 4570 can take effect, its enactment still is necessary for House Bill 4331 (which expanded the scope of optometric practice) to take effect.

BACKGROUND INFORMATION:

Section 2243 of the Insurance Code currently says:

"(1) Notwithstanding any provision of a policy or contract of group accident, group health or group accident and health insurance, executed subsequently to the effective date of this provision, whenever such policy or contract provides for reimbursement of any optometric service which is within the lawful scope of practice of a duly licensed optometrist, a subscriber to such group accident, group health, or group accident and group health insurance policy or contract shall be entitled to reimbursement for such service, whether the said service is performed by a physician or a duly licensed optometrist. Unless such policy or contract of group accident, or group health or group health or group accident and health insurance shall otherwise provide, there shall be no reimbursement for ophthalmic materials, lenses, spectacles, eyeglasses, or appurtenances.

(2) Whenever a subscriber contract shall provide for and offer optometric services, the subscriber shall have freedom of choice to select either a physician or an optometrist to render such services. Unless such subscriber contract shall otherwise provide, there shall be no reimbursement for ophthalmic materials, lenses, spectacles, eyeglasses, or appurtenances." (MCL 500.2243)

FISCAL IMPLICATIONS:

A Senate Fiscal Agency analysis says that the bills would have no fiscal impact on the Medicaid program, as federal Medicaid regulations generally require reimbursement for necessary medical services rendered by licensed providers to people eligible for Medicaid. However, there could be an increase in out-of-pocket costs to the public since insurance coverage would be permissive, rather than mandatory, for the expanded optometric services allowed under House Bill 4331; if medical insurers decided not to provide coverage for these services and patients obtained these services from optometrists rather than physicians, then the patients would be responsible for paying for these services themselves. (12-1-94)

ARGUMENTS:

For:

Proponents of the bills argue that without the bills, health care costs would rise even higher and faster than at present. What is more, since state-required health insurance payments are a key factor in why many Americans -- especially the working poor -- do not have health insurance, the bills would be a step in the direction of making health insurance affordable for more people. Small employers are disproportionately affected as the major group that actually buy health insurance (since large employers usually are self-insured, federal law exempts them from state requirements), and the people most likely to be adversely affected by increased insurance costs tend to be the employees of small businesses and some of the elderly, poor, and disabled (the last three of whom, technically, don't have health insurance because Medicaid and Medicare are direct entitlement programs).

Current state laws, in various insurance statutes, have the effect of requiring payments to optometrists for all of their services authorized in their scope of practice (under the Public Health Code). Technically, the statutory requirements apply only if an insurance policy covers the same services when provided by any other licensed health professional, but since all known health insurance policies cover all diseases of the eyes, increasing the scope of practice of optometrists without these bills would trigger mandated payments for these additional services since the only way to avoid this trigger would be to exclude eyes from health insurance policies. The bills would amend the insurance statutes so that the automatic payment requirements would not apply to the pending effort to expand the optometric scope of practice, while at the same time the bills would not change state required payments for the present responsibilities of optometrists.

For:

The state should not be involved in mandating what health services should be paid for in the first place. What is legal for optometrists to do (that is, their legal scope of practice) is appropriate for the state to determine in the interests of protecting public safety. However, what health service should be pre-paid under health insurance is something that the purchasers of the policies -- and not the state government -- should decide. Tie-barring the optometric expansion of scope of practice bill (House Bill 4331) to these bills would allow the state to decide whether optometrists have the training and experience to safely diagnose and treat certain eye diseases with certain therapeutic drugs, but it also would allow purchasers of health care to decide whether or not they wanted to pay for these services. That is, employers, by themselves or through collective bargaining with employees (as well as individuals) would have the freedom to choose those health benefits that they believed to be most important and appropriate to their needs. Optometrists would legally be able to perform additional services, but they would have to persuade purchasers of the value of these new optometric services, both in terms of their appropriateness and cost-effectiveness.

Against:

If the state should not be mandating which services should be covered, then why not simply eliminate the existing mandates and allow market forces to regulate the health insurance industry?

Response:

Politically, there would be a firestorm of opposition if the existing mandated benefits were to be eliminated. But at the very least, the state should not add to the impact of these required payments by mandating coverage for expanded scopes of practice, whether for optometrists or the other health professionals (such as chiropractors, dentists, Ph.D. psychologists, and podiatrists) who benefit from the existing state insurance code provisions.

Against:

It is unfair to single out optometrists for exemption of insurance payments for expanded scope of service practices. At the very least, the bills should cover the other health professions falling under existing state requirements.

Response:

Optometrists and chiropractors currently are the only two health professions under these special insurance payment requirements that are trying to expand their scope of practice (and thus add to the extension of these state required insurance payments).

Against:

Optometrists argue that it is questionable whether or not expansion of optometric scope of practice -- and the concomitant expansion of mandatory health insurance payments -- actually would increase overall health care costs. In fact, they argue that

costs will be reduced because instead of having to refer optometric patients to physicians (some of whom may not be as well-trained in eye care as optometrists, who specialize in eyes), primary care can be provided for such conditions as "pink eye," the initial management of glaucoma, certain corneal abrasions, and other common eye disorders. The expansion in scope of practice for optometrists will increase the number of primary care providers for certain eye services, eliminating the need for secondary (and costly) referrals, loss of work time, and so forth. Finally, the expansion in the scope of practice for optometrists would result in increased costs only if one assumes that there will be duplication of services rather than substitution of services for the same conditions, an assumption that has yet to be proven.