EMERGENCY SERVICES COVERAGE

House Bill 5076 as introduced
Sponsor: David Gubow

House Bill 5135 as introduced
Sponsor: Rep. Penny Crissman

Committee: Insurance
First Analysis (10-14-97)

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, some 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.

There is disagreement over how often conflicts over the payment for emergency services arise in Michigan, and which entities are most likely to be at fault, but some people allege that such conflicts do sometimes happen and believe they should be resolved legislatively. The House has passed legislation affecting HMOs (House Bill 4080), and now legislation has been proposed affecting Blue Cross and Blue Shield of Michigan and commercial health insurance companies.

THE CONTENT OF THE BILLS:

The bills would require that certificates of Blue Cross and Blue Shield of Michigan and policies of commercial health insurance companies that provide coverage for emergency health services must provide medically necessary services 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.

BCBSM and commercial insurers would be prohibited from denying payment for emergency health services up to the point of stabilization provided to a member or an insured because of the final diagnosis or because prior authorization had not been given by the corporation or company 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.

House Bill 5076 would amend the Nonprofit Health Care Corporation Act (MCL 550.1418) to apply to Blue Cross and Blue Shield of Michigan, and House Bill 5135 would amend the Insurance Code (MCL 500.3406j) to apply to an expense-incurred hospital, medical, or surgical policy or certificate delivered, issued for delivery, or renewed in the state.

FISCAL IMPLICATIONS:

The Insurance Bureau has reported that the bills would have no fiscal or budgetary impact on the bureau. (Bill analysis dated 10-8-97)

ARGUMENTS:

For:

The bills would place a clear, practicable standard of "emergency health services" within the acts governing Blue Cross and Blue Shield and commercial health insurers. A similar bill, House Bill 4080, has already passed the House addressing this issue for HMOs. This legislation does not impose a new health care mandate, as that term is usually understood. It only applies in cases where emergency services are already covered under a certificate or policy. The bills will help to resolve disputes over when services provided in an emergency setting will be covered. If the standard is met, a health plan 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 enacted at the federal level, and it has widespread support among the interested parties that have been holding discussions on this issue. It is not intended that people should use the emergency room as a physician's office.

Against:

The bills ignore the reality that commercial health insurers provide market-driven products. Insurers attempt to offer their customers products they want and can afford. Demanding in statute that certain services must be covered limits the flexibility of insurance companies to offer affordable health insurance products. This particularly affects customers who must pay for their own coverage (rather than receiving it as a employee benefit). Philosophically, this kind of legislation is a bad idea. Further, there is not much evidence of a problem in this area in the state. To the extent that it permits people to use emergency rooms for non-emergencies, the legislation will drive up health costs.

POSITIONS:

The Golden Rule Insurance Company supports the bill. (10-8-97)

The Michigan Osteopathic Association supports the bills. (10-8-97)

The Michigan Health and Hospital Association has indicated its support for the bills. (10-8-97)

Representatives of the Economic Alliance for Michigan and General Motors testified in support of the bills. (10-8-97)

A representative of Blue Cross and Blue Shield has testified that the corporation supports the bills if the standard is the same for all. (10-8-97)

The Insurance Bureau does not oppose the bills. (10-8-97)

A representative of American Community Mutual Insurance testified in opposition to the bill. (10-8-97)

Analyst: C. Couch

■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.