Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 501 (as passed by the Senate)
House Bills 4392 and 4394 (as reported without amendment)
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 (House Bills 4392 and 4394)

Date Completed: 6-18-97

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 reports that no provider contracts that it has reviewed have contained gag clauses, it has been pointed out that there is nothing in statute specifically to restrict the practice. It has been 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.

CONTENT

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

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

Proposed MCL 550.1501b (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 is no specific statutory prohibition against restricting physicians from discussing treatment options or financial arrangements with plan participants. The bills clearly would prohibit the use of gag clauses in provider contracts, thus eliminating possible future problems and ensuring that there would be no barriers to communication between physicians and patients. In addition, the bills would ensure that physicians could continue to advocate on behalf of their patients, especially in cases in which a recommended treatment or payment for a service has been denied. Arguably, without such protection in the law, many physicians might be hesitant to help patients with appeals for fear of reprisals from the health care plan.

Legislative Analyst: G. Towne

FISCAL IMPACT

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

Fiscal Analyst: J. Walker

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