SENATE BILL REPORT
SB 6400

As of January 21, 2010

Title: An act relating to payment for emergency services rendered by nonparticipating providers in hospitals.

Brief Description: Concerning emergency services provided by nonparticipating providers in hospitals.

Sponsors: Senator Keiser.

Brief History:
Committee Activity: Health & Long-Term Care: 1/21/10.

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Staff: Mich'l Needham (786-7442)

Background: Current insurance law defines emergency services as those covered heath care services medically necessary to evaluate and treat an emergency provided in a hospital emergency department. Current law allows health carriers to impose differential cost sharing for emergency services rendered by a non-participating provider that should not exceed $50. However, the law does not prevent the non-participating provider from billing the patient beyond the amount paid by the health carrier. Health carrier contracts with contracting or participating providers typically prevent any balance billing of the patient for covered services, but there is no contract in place with non-participating providers. Patients that receive care in emergency departments of their participating hospital are finding that services may be rendered by non-participating providers, which then generate surprising bills.

Medicare prohibits participating providers from balance billing, and limits the balance billing for non-participating providers to no more than 9.25 percent of the Medicare fee schedule received by participating physicians. At least 11 states have some language that attempts to prevent balance billing for some patients and providers, through a variety of approaches.

Summary of Bill: The insurance definition of emergency services is modified to include covered health care services medically necessary to evaluate and treat an emergency provided in a hospital. On or after January 1, 2011, health carriers and programs offered through the Health Care Authority must pay for covered emergency services rendered by a non-participating provider in a participating hospital at 140 percent of the rate paid by

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Medicare for the same covered service to a similarly licensed provider, or the rate the carrier would pay in the same geographic area for the same service to a similarly licensed participating provider, whichever is greater. Managed care plans that contract with Medicaid must pay the claim for covered emergency services by a non-participating provider in a participating hospital at a rate no greater than the Medicaid fee-for-service rate for comparable services. Upon request, carriers must disclose the reimbursement rate.

Health carriers may continue to impose applicable copayments, coinsurance and deductibles, but the reference to the $50 differential for services rendered by a non-participating provider is removed. Language limiting differential cost-sharing for emergency services provided at non-participating hospitals is removed.

The amount paid by the health carrier, with the applicable cost-sharing paid by the covered person, must be considered payment in full. Any attempt by a provider to balance bill the patient constitutes unprofessional conduct under the uniform disciplinary act.

Appropriation: None.

Fiscal Note: Requested on January 13, 2010.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Consumers are getting surprised with bills for emergency services. Hospitals have contracted out so many services it is not possible to know who is contracted with the insurance for every service that is provided. In an emergency situation, patients do not have a choice of providers and should not be expected to pick and choose services based on whether they may be covered as participating providers. No one is speaking up for the consumer - we need to be focused on protecting the consumer. The Office of the Insurance Commissioner (OIC) is enforcing the current statutory limits on cost-sharing and all the insurance are in compliance with that language, and they do not impose differential benefit cost-sharing. They do pay benefits at in-network rates at in-network allowable rates. Nothing in statute defines what the allowable fee is, and nothing prevents non-contracted providers from billing above the allowable rates. Providers and carriers both need incentives to contract and negotiate in good faith. Emergency service charges are escalating faster than other physician charges and it is a real concern for controlling overall cost escalation. Carriers need the tools to contract with providers. If the state mandates a third party to pay for all services, there needs to be a cap or limit of some sort, or costs will just escalate as we've seen in prior decades.

CON: We passed the emergency law that went on the books in 1997 and it provides good language to clarify that emergency services should be provided like in-network benefits. The prudent layperson language added in 1997 took care of most of the emergency service billing problems. We believe the existing statutory language provides the base needed to prevent balance billing of patients and we believe the OIC could enforce it differently. The emergency system is not working now and needs to be fixed but this bill is not the right fix. This is pure price fixing and it strikes at the heart of negotiation. Tying the rates to Medicare

is especially bad since Washington is paid less than other states already, and Congress is cutting Medicare reimbursement. This could have severe impacts on emergency departments and trauma care. It is already hard to get enough to get coverage by emergency providers and on-call specialists, and this will just make it harder. Most emergency physician groups are independent practices, not employees of the hospital, and they are not able to share costs across the hospital to cover the losses of uninsured patients, high malpractice insurance, and other business expenses. There will be no incentive for carriers to negotiate a fair and reasonable payment rate.

Persons Testifying: PRO: Senator Keiser, prime sponsor; Beth Berendt, OIC; Bill Akers, Premera Blue Cross; Joe Gifford, Regence Blue Shield.

CON: Debra Senn and Dr. Deb Harper, Washington State Medical Association; Dr. John Milne, Dr. Steve Marshall, Washington Chapter of American College of Emergency Physicians; Lisa Thatcher, Washington State Hospital Association; Dr. David Fitzgerald, Proliance Surgery.