

HOUSE BILL REPORT

HB 2779

As Reported by House Committee On:
Health Care & Wellness

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: Representative Cody.

Brief History:

Committee Activity:

Health Care & Wellness: 1/21/10, 2/2/10 [DPS].

Brief Summary of Substitute Bill

- Prohibits differential cost sharing for emergency services rendered by non-participating providers.
- Requires health carriers and public employee health plans to count payments to non-participating providers against a covered person's deductible.
- Changes the definition of "emergency services" for purposes of the state insurance law.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Cody, Chair; Driscoll, Vice Chair; Ericksen, Ranking Minority Member; Bailey, Campbell, Clibborn, Green, Herrera, Hinkle, Kelley, Moeller, Morrell and Pedersen.

Staff: Jim Morishima (786-7191).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A health carrier must cover "emergency services" necessary to screen and stabilize a covered person without prior authorization if a prudent layperson would reasonably have believed an emergency medical condition existed. If the emergency services were provided in a non-participating hospital, the health carrier must cover emergency services necessary to screen and stabilize a covered person if a prudent layperson would reasonably have believed use of a participating hospital would result in a delay that would worsen the emergency or if use of a specific hospital is required by federal, state, or local law. Likewise, a health carrier may not require prior authorization of emergency services in a non-participating hospital if a prudent layperson acting reasonably would have believed that an emergency medical condition existed and use of a participating hospital would result in a delay that would worsen the emergency.

If an authorized representative of the health carrier authorizes coverage for emergency services, the carrier may not retract the authorization after the services have been provided or reduce payment for services provided in reliance on the approval. The carrier may retract the authorization or reduce payment, however, if the approval was based on a material misrepresentation about the covered person's health condition made by the provider.

Coverage of emergency services may be subject to applicable copayments, coinsurance, and deductibles. A health carrier may also impose reasonable differential cost-sharing arrangements for emergency services rendered by non-participating providers. However, the difference between cost-sharing amounts for participating and non-participating providers may not exceed \$50. Differential cost-sharing may not be applied when a covered person utilizes a non-participating hospital emergency department when the carrier requires pre-authorization for post-evaluation and post-stabilization emergency services if:

- the covered person was unable to go to a participating hospital in a timely fashion without serious impairment to the person's health due to circumstances beyond the person's control; or
- a prudent layperson possessing an average knowledge of health and medicine would have reasonably believed the person would be unable to go to a participating hospital in a timely fashion without serious impairment to the person's health.

"Emergency services" are defined as otherwise covered health services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department.

Summary of Substitute Bill:

Health carriers and public employee health plans are prohibited from imposing differential cost-sharing for emergency services rendered by non-participating providers. Any amount a covered person pays to a non-participating provider must be counted toward the person's deductible.

The definition of "emergency services" is expanded to include otherwise covered health services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital (as opposed to a hospital emergency department).

Substitute Bill Compared to Original Bill:

The substitute bill:

- removes provisions in the original bill that prohibited "balance billing" and set maximum payment rates for non-participating providers;
- prohibits differential cost sharing for emergency services rendered by non-participating providers; and
- requires any amounts paid to non-participating providers to be credited against the covered person's deductible.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) More and more people are going to the emergency room and experiencing balance billing in the form of unexpected bills from non-participating providers. Patients who go to a participating emergency department are fulfilling their responsibilities and should not be required to pay excess charges. Patients are not in a position to address this issue themselves. The costs of non-contracted physicians are often borne by the patients. Charges from emergency department physicians are increasing faster than charges from other types of physicians. The emergency department environment leads to fewer choices and less competition. Current law takes away the physicians' incentive to be contracted because carriers must generally pay charges for emergency services. If the state prohibits balance billing, there must be a cap on how much the carriers must pay.

(With concerns) Patients should be protected from balance billing. The current law is being enforced, but does not give the Insurance Commissioner the ability to regulate what providers charge for their services. There must be leverage on both sides to negotiate, but neither this bill nor the current law does this. The provisions in the bill that require carriers to disclose pricing information will hurt the carriers in negotiations with providers.

(Opposed) The public's frustration with balance billing is understandable, but this bill is not the solution. This problem could be resolved if the current law were to be enforced properly. The payment rates in this bill amount to price fixing. Physicians must have the ability to be non-contracted in order to negotiate fair rates. This bill gives insurance companies the advantage over physicians and will cause health carriers to cease negotiating. Emergency department physicians provide care 24 hours a day, seven days a week, to anyone who comes in regardless of ability to pay. This bill will make it harder to attract physicians to the emergency department, which will stretch the thin resources in the emergency department even thinner. This bill places the burden of this problem solely on physicians. This bill will ultimately harm patients.

Persons Testifying: (In support) Representative Cody, prime sponsor; Bill Akers, Premera Blue Cross; Roberta Riley, Northwest Health Law Advocates, and Parents Organizing for Welfare and Economic Rights; and Joe Gifford, Regence Blue Shield.

(With concerns) Beth Berent, Office of Insurance Commissioner; and Joe King, Group Health Cooperative.

(Opposed) Deb Harber, Washington State Medical Association; John Milne and Steve Marshall, Washington Academy of Emergency Physicians; Deborah Senn, Washington State Medical Association; Lisa Thatcher, Washington State Hospital Association; Erik Penner, Olympia Emergency Physicians; and David Fitzgerald, Proliance Surgeons.

Persons Signed In To Testify But Not Testifying: None.