SENATE BILL REPORT
SB 6532

As Reported by Senate Committee On:
Health & Long-Term Care, February 1, 2010

Title: An act relating to holding consumers harmless for balance bills generated when emergency services are rendered by nonparticipating providers in participating hospitals.

Brief Description: Concerning payment for emergency services.

Sponsors: Senators Pflug and Keiser.

Brief History:
Committee Activity: Health & Long-Term Care: 1/21/10, 2/01/10 [DPS-WM, DNP, w/ oRec].

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 6532 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.
Signed by Senators Keiser, Chair; Franklin, Vice Chair; Pflug, Ranking Minority Member; Fairley and Murray.

Minority Report: Do not pass.
Signed by Senator Marr.

Minority Report: That it be referred without recommendation.
Signed by Senators Becker and Parlette.

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.

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.

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 (Recommended Substitute): Beginning January 1, 2011, health insurance carriers and the Health Care Authority programs must ensure the benefit level provided to a covered person is the same for covered emergency services provided in a participating hospital, whether provided by a participating provider or non-participating provider. Services must be covered at no greater cost to the covered person.

If a health plan or a provider of emergency services cannot reach agreement on negotiated fees or allowable costs, either party may initiate binding arbitration. Providers may not balance bill the patient for the difference between the plan payment and the provider charges. Any attempt to recover additional charges from the covered person constitutes unprofessional conduct under the Uniform Disciplinary Act.

Health insurance carriers may continue to impose applicable copayments, coinsurance, and deductibles for emergency services, 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 Insurance Commissioner may adopt rules to implement this act.

EFFECT OF CHANGES MADE BY HEALTH & LONG-TERM CARE COMMITTEE (Recommended Substitute): The proposed change in the emergency services definition is removed. References to the Uniform Disciplinary Act unprofessional conduct are corrected. If a health plan or a provider of emergency services cannot reach agreement on negotiated fees or allowable costs, either party may initiate binding arbitration. Emergency services as used in the Health Care Authority section refers to the emergency services provided in the hospital emergency department, consistent with the definition provided in RCW 48.43.005. The Insurance Commissioner may adopt rules to implement these changes.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: 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. A number of other states have prevented balance billing of the patient.

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. The emergency system is not working now and needs to be fixed, but this bill is not the right fix. This could have severe impacts on emergency departments and trauma care. It is already hard 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 and high malpractice insurance and other business expenses. The overall cost is escalating and charges for emergency services are increasing faster that other providers. This approach just adds to the cost structure and essentially requires the plans to pay billed charges. There will be no incentive to contract for fair rates and no cost controls for billing.

Persons Testifying: PRO: Senator Pflug, prime sponsor.

CON: Deborah Senn, Dr. Deb Harper, Washington State Medical Association; John Milne, Steve Marshall, Washington Chapter of American College of Emergency Physicians; Lisa Thatcher, Washington State Hospital Association; Dave Fitzgerald, Proliance Surgeons; Joe Gifford, Regence Blue Shield; Bill Akers, Premera Blue Cross.