SENATE BILL REPORT
SB 6651

As Reported By Senate Committee On:
Health & Long-Term Care, February 4, 2004

Title: An act relating to requiring the department of social and health services to establish an evidence-based medical necessity definition and decision-making process for its medical assistance programs.

Brief Description: Mandating the creation of a medical necessity definition.

Sponsors: Senators Deccio and Parlette.

Brief History:
Committee Activity: Health & Long-Term Care: 2/3/04, 2/4/04 [DP, DNP].

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: Do pass.
Signed by Senators Deccio, Chair; Winsley, Vice Chair; Brandland and Parlette.

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

Staff: Jonathan Seib (786-7427)

Background: Typically, both public and private health insurance programs reimburse enrollees only for services and supplies that are "medically necessary." Thus, how that term is defined is a substantial determinant of the exact benefits an enrollee will receive and the overall cost to the program of providing coverage.

In late 2002, the Department of Social and Health Services' (DSHS) Medical Assistance Administration initiated rule-making in order to change the definition of "medically necessary" used by the state's Medicaid programs. Proposed rules were filed in November 2003. According to DSHS, the change is intended "to include the use of scientific evidence in the department's coverage and service determinations; to help ensure the department's clients will not be harmed or injured by inappropriate service utilization ...; to help ensure that available resources are spent in the most effective manner to improve the health of clients; and to help expedite service determinations."

In the meantime, the 2003 Legislature passed HB 1299. This bill directs state agencies to develop and implement uniform policies across all state-purchased health care programs, including to the extent possible a common definition of "medical necessity." The Health Care Authority and the Department of Labor and Industries have, or are in the process of, adopting a definition consistent with that proposed by DSHS. All three agencies have based their modifications on a model definition developed by the Center for Health Policy at Stanford University.

It was recently determined, however, that previous court orders issued in response to legal action brought on behalf of Medicaid enrollees prohibit DSHS from adopting its proposed rules. These orders, in actions brought challenging Medicaid's prior approval process, restrict the department's authority to modify key definitions unless certain conditions are met. Among the conditions that would allow the rules to be adopted is the enactment of legislation explicitly directing that the definition be changed.

Summary of Bill: By September 1, 2004, DSHS must establish by rule a medical necessity definition and decision-making process for its Medicaid programs, conditioned as follows: (1) the department is the authority for all medical necessity service determinations; (2) the definition must be established on evidence-based standards; (3) the rule must also define complementary terms; (4) the department must consider model definitions developed by academic health centers and under consideration nationally; and (5) the definition should complement uniform policy directives established in HB 1299.

To the extent the new definition and decision-making process differs from the definitions, conditions, and processes provided in court orders, the new definitions and procedures shall control.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: The current medical necessity definition is too vague and permits too much discretion. There has been interest in changing it for over a decade. Adequate wording, developed by Stanford University, was not available until recently. Nineteen states have adopted a definition based on this model. The new definition will allow MAA to improve its service determination process, allowing public dollars to be spent in the most cost-effective and efficient manner to improve the health status of clients. The legislation will allow adoption of the new definition without fear of litigation.

Testimony Against: The new definition of medical necessity would allow non-treating physicians to overturn the decisions of treating physicians. The bill would affect a Medicaid patient's right to an outside review of treatment decisions, which is unfair and a denial of equal protection to some of our most vulnerable citizens. The existing definition is adequate to handle evidence-based decision-making. The new definition is quite vague and would restrict services available to Medicaid enrollees. It would be particularly problematic regarding children's care. The issue would be better considered over the interim.

Testified: PRO: Doug Porter, DSHS Medical Assistance Administration. CON: Loren Freeman; Andrew Dolan, Washington State Medical Association; Tom Ashton; Janet Varon, Northwest Health Law Advocates; Kevin Glackin-Coley, Children's Alliance; Phil Jordan, Washington Protection and Advocacy System.