

A PREVIEW OF LEGISLATIVE PRIORITIES – CO-PAYS AND DEDUCTIBLES

IF YOU HAVE QUESTIONS REGARDING THIS MATTER, PLEASE CONTACT:



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The Texas Legislature meets every two years. Many of the issues that form the basis of the legislation that will be considered during the 2007 legislative session are currently under consideration by Senate and House committees. These legislative committees are charged by the Senate and House, respectively, to study certain topics during the interim and to report findings to the Legislature as a whole. The reports filed by these Committees often form the basis for proposed legislation. Between now and the beginning of the 2007 legislative session, *Health Industry Online* will review and report on testimony provided to the various committees as such testimony relates to healthcare issues.

The Senate Committee on State Affairs (Committee) was charged with a review of issues related to insurance payment concerns. The Committee recently held a hearing in Austin to take testimony on the following question:

Interim Charge 5B

Study the discounting and/or waiving of co-pays, deductibles and co-insurance by physicians and health care providers. Specifically, how this practice can impact the cost to private and public health plans and the impact to acute, multi-service hospitals, including safety net hospitals.

The purpose for co-pays, deductibles and co-insurance is the belief that they will restrict unnecessary utilization of healthcare services because they require a payment by the insured. Correspondingly, it is thought that any waiver of these payments by physicians and providers may result in the unnecessary utilization of healthcare services. Texas statutory and regulatory provisions have been adopted to address such waivers by physicians and providers.

Section 1204.055(b) of the Texas Insurance Code (TIC) provides that the payment of benefits under an assignment does not relieve a covered person of a contractual obligation to pay a deductible or co-pay. A physician or other healthcare provider may not waive a deductible or co-pay by the acceptance of an assignment. The Texas Department of Insurance (TDI) provided written testimony during the Committee hearing that TDI has had limited success in enforcing this provision. The lack of a specific penalty for waivers and TDI's limited authority over physicians and other healthcare providers were advanced as impediments to TDI's full enforcement of the TIC's proscription of waivers.

TDI also testified that it had unsuccessfully attempted to use Section 552.003 of the TIC to refer waiver cases for prosecution. Section 552.003 imposes a criminal penalty for charging a higher price for a service based on the fact that an insurer will pay all or part of the bill.

TDI further offered written testimony that the Texas Department of State Health Services (TDSHS) has attempted to prevent waivers through the use of its administrative rules that allow TDSHS to suspend or revoke the license of a hospital that has aided, abetted, or permitted the commission of an illegal act. TDSHS has issued warning letters under this rule to hospitals warning them to not violate the provisions of Section 1204.055(b), but this TIC provision does not have specific penalties.

TDI also testified that the Texas Medical Board has adopted a rule that prohibits advertising by physicians that represents that healthcare insurance deductibles or co-pays may be waived or are not applicable to healthcare services to be provided if the deductibles or co-pays are otherwise required under the insured's plan. This rule, though, only addresses physician advertising and not the actual waiver of the payment.

State agencies are not allowed to champion legislation to the legislature. The role of TDI in the Committee hearings was to serve as a resource for the Committee. However, the clear implication of TDI's written testimony is that legislation is needed to add effective penalties for the enforcement of the prohibitions of waivers of co-pays and deductibles.

During the 2005 regular legislative session, an attempt was made to provide consolidated enforcement authority for co-pay and deductible waivers through SB 1738, which passed the Senate but was killed in the House Calendars Committee. The bill was an omnibus bill designed to address issues like balance billing and price transparency, in addition to co-pay and deductible waivers. The Committee staff has indicated that a similar bill will be introduced in the 2007 legislative session that will likely cede power to TDSHS to enforce the prohibition against the waiver of co-pays and deductibles. This expected legislation will cover many important points regarding healthcare payments and price transparency. The healthcare industry should closely watch the development of this legislation

Federal issues exist related to the waiver of co-pays and deductibles for Medicare. The Office of Inspector General ("OIG") for the U.S. Department of Health and Human Services addressed these issues through written guidance published in February 2004. Waivers of co-pays and deductibles for Medicare beneficiaries are prohibited except in a limited number of circumstances related to financial need. Waivers of Medicare co-pays and deductibles that do not meet the guidelines potentially subject the waiving hospital or physician to significant civil and criminal penalties. Therefore, care should always be exercised when

deciding to waive co-pays and deductibles, regardless of the payment source.

In addition to Interim Charge 5B noted above, the Committee was given a related charge regarding balance billing. The balance billing issue will be the subject of a future HIO article.