



OREGON LEGISLATIVE POLICY & RESEARCH OFFICE

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Health and Human Services Team

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Basics on . . . **BALLOT MEASURE #35**

TITLE: RESTRICTS BASIS FOR PROVIDERS TO RECEIVE PAY FOR HEALTH CARE

Be it enacted by the People of the State of Oregon:

PREAMBLE: Because patients have the right to be protected from unscrupulous practices which reward health care providers for withholding standard patient care, the following is enacted:

SECTION 1. A health care provider shall not be directly or indirectly compensated, except by an individual or family, for the delivery of health care according to any standard other than one or more of the following:

- (A) Work Performed
- (B) An hourly wage
- (C) Prearranged salary/benefits
- (D) Bonuses based upon work performed
- (E) Reimbursement for expenses

Section 2. After December 31, 1997, any health care provider who has not complied with Section 1 of this act shall have their business and professional license suspended until compliance is achieved.

SECTION 3. For the purposes of this Act, the following are defined:

- (A) Health Care Provider
 - (i) Any individual or entity, including health care professionals and employers/contractors of health care professionals, directly or indirectly involved in the delivery of health care, but excluding insurers.
- (B) Worked Performed
 - (i) The delivery of health care for specifically diagnosed/treated individual patient health care needs.

SECTION 4. These sections shall supersede any other provision of the Oregon Revised Statutes with which they conflict. If any subsection, clause or part of these sections is held invalid under the United States Constitution or Oregon Constitution as to any person or circumstance by any court of competent jurisdiction, the remaining subsections, clauses and parts shall not be affected and shall remain in full force and effect.

What does Ballot Measure #35 do?

Passage of Ballot Measure 35 would limit statutorily methods of healthcare provider compensation. The statute would permit provider compensation based on one or more of the following: 1) work performed; 2) hourly wage; 3) prearranged salary and benefits; 4) bonuses based on work performed; and 5) reimbursement for expenses. Providers would be required to be in compliance by December 31, 1997, or face license suspension.

The debate on this measure has focused on *capitation* as a means of provider compensation. Capitation is not included in the list of allowable forms of compensation.

What is capitation?

Capitation is a means of provider compensation. Insurance companies collect premiums from their members to cover the member's healthcare costs. Under *capitation*, the insurance company contracts with the primary care physicians, paying the physician a set amount per member per month in exchange for supplying healthcare services to the member. The physician receives this contracted amount, or *capitated rate*, whether or not the member visits the physician. At the same time, no additional payment is made to the physician if the member requires services costing more than the monthly capitated rate would cover.

There are various degrees of capitation and numerous forms of contractual arrangements between insurance companies and physicians. Some plans may capitate only primary care physicians and other plans may fully capitate all physicians and services. In some agreements a portion of the capitated rate is paid directly to the primary care physician and the remaining money is allocated

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to a fund to cover hospital costs and specialist visits. At the end of a typical one year contract period, money left in the pooled fund may be shared between the insurer and the physicians, used to reduce premiums, or used for other purposes as determined by the contract.

Example:

HMO HealthCare, a health insurance company, has a capitated rate of \$100 per member per month. Dr. Welby is a primary care physician who contracts with HMO HealthCare. Dr. Welby receives \$15 per member (that chooses him as their primary care physician) per month and the other \$85 is allocated to cover hospital and specialist visits. Regardless of whether the member never visits Dr. Welby or visits numerous times and requires extensive care, Dr. Welby receives \$15 per month.

Managed care plans often compensate physicians through capitation as a way to control costs while traditional health insurance plans compensate physicians through fee-for-service.

What is fee-for-service?

Fee-for-service is another means of provider compensation. Under fee-for-service, an insurance company reimburses the physician or hospital for each covered service provided. If a member does not visit the physician, the physician does not receive money for that member. If the member visits the physician and requires a number of tests and surgery, the physician and hospital are paid for each service provided.

Example:

Dr. Welby also sees members of NorthwestHealth, a fee-for-service health insurance plan. NorthwestHealth has a fee schedule which lists all the covered services and the corresponding fees paid to physicians. Dr. Welby will receive no money from NorthwestHealth if the member does not come in for an office visit. If the member visits three times and requires surgery, Dr. Welby will be paid for three office visits and surgery.

A major difference between capitation and fee-for-service is the bearing of risk. Under capitation, the insurance company can somewhat predict its expenditures by multiplying the number of members by the capitated rate. The physician shares in the risk for the health of the member since the physician receives the same amount whether the member requires a multitude of services or no services. Under fee-for-service, the risk is assumed by the insurance company. The physician is compensated for each service provided and the insurance company can only estimate what their expenditures will be for each member.

What is managed care?

Managed care is a type of healthcare delivery system designed to provide appropriate care while controlling healthcare costs. Members of a managed care plan choose a primary care physician who provides primary and preventive care and refers the member to other services when needed. Managed care entities often use a combination of methods including peer review, gatekeepers, utilization boards, preventive medicine, and capitation to assure necessary care is provided while recognizing limited resources. Capitation is not synonymous with managed care. Capitation is only one tool that managed care systems use to control costs. Health Maintenance Organizations (HMOs) are one example of a managed care system.

DEBATE

Proponents' Arguments

Proponents of the ballot measure argue:

- capitation creates a financial incentive for physicians to withhold care and discourage referrals in order to receive a larger amount from the pooled fund at the end of the contract year
- capitation encourages physicians to join together in large clinics to spread the financial risks and this creates a corporate mind-set driven by profit and not the patient's best interest
- under a fee-for-service arrangement the patient decides what services they will receive (a patient-driven system) whereas under capitation the insurance company decides what services will be provided

Opponents' Arguments

Opponents of the ballot measure argue:

- capitation financially encourages physicians to emphasize wellness, prevention, and early treatment of illnesses and avoid the costly later stage treatments
- under capitation, physicians have a financial incentive to provide services that are often not reimbursed under fee-for-service plans, such as follow-up telephone call and preventive outreach programs
- physicians who withhold care for financial gain would only be receiving short term gains since later stage treatments are often more costly and physicians with numerous complaints have difficulty renewing their contracts
- while capitation may or may not be the "best" means of compensation, it should be a legal option

What will the fiscal impact be?

The Oregon Secretary of State's Office, through a committee made up of the Secretary of State, the State Treasurer, the director of the Department of Revenue, and the director of the Department of Administrative Services, provides fiscal impact estimates for direct government revenues/expenditures due to ballot measures, and does not provide estimates for private firms or the public. The Secretary of State's Office anticipates an increase in healthcare costs, based on existing cost differences between managed care and indemnity plans (INDEMNITY PLANS ARE NOT DEFINED ANYWHERE), should this ballot measure pass. State government expenditures are expected to increase \$57 million annually and local government expenditures are expected to increase \$22 million annually to cover increased employee healthcare costs in terms of premium increases. Included in this estimate is the anticipated \$35 million increase in expenditures for the Oregon Health Plan.

The two sides disagree over the potential financial impact on managed care systems. Proponents argue that the cost of healthcare services is the same regardless of the provider payment system (capitation vs. fee-for-service). In other words, if a member requires an X-ray, the cost of that X-ray is the same

whether the member is insured by a capitated plan or a fee-for-service plan. Proponents contend that healthcare costs will increase only if currently capitated physicians are withholding services (i.e., not providing the X-ray due to the cost). Opponents of the ballot measure argue that fee-for-service plans financially encourage physicians to provide too many services while capitation financially encourages physicians to keep patients healthy and discourages costly over-utilization of services. Opponents therefore argue that premiums for previously capitated plans will increase if capitation is no longer allowed.

CONTACTS:

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**** Please Note: Ballot Measure 35 was rejected by Oregon voters in November 1996**