Murdo, Patricia

From: Murdo, Patricia
Sent: Tuesday, March 11, 2008 5:39 PM
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Cc: 'dweinberg@centurytel.net'; Dutton, Ernie; 'boglusa@int.net'
Subject: revisions of draft bills related to economic credentialing, conflict of interest, and specialty hospitals

Importance: High

Attachments: sj15_lc38_new.pdf; sj15_lc8888_revised.pdf

Hi - Here are the revised bill drafts, one marked LC38-new (dated March 10) and LC8888-revised (dated March 10).

I know that I didn't address everyone's concerns in revising these, but we can address the issues again on Monday, March 17, when the subcommittee meets in Room 137 of the State Capitol from 8 a.m. to noon. The goal is to complete work on **both** proposals.

COMMENTS ON LC38-revised:
Section 1 - would be put into TItle 37, which regulates licensed/certified health care professionals, requiring disclosure of investment or employment relationships.

Section 2 - also would be put into Title 37. This allows any lawful contractual relationships for a health care practitioner, forbids referrals or volume of referrals as the basis for being an investor or an employee. States that the primary responsibility is to the patient except where public health is the primary responsibility. Says a health care provider may not engage in intentional conduct that is detrimental to a patient's health. -- This latter has been flagged as a potential for increased malpractice premiums. It seems common sense to me, and is part of an ethics issue, but if there's grief over it...

Section 3 - This would go into Title 50, regulating health care facilities. Also states that the patient's welfare is the primary responsibility, except where public health predominates. Sets out an arbitration procedure if there are accusations of conflict of interest -- and the conflict of interest impacts the patient's welfare. Requires disclosure of information to arbitrator and lets the arbitrator use failure to provide info as a deciding factor.

Section 4 - removes temporary language and also takes out specific reference to podiatrists. (not sure why the specific language is there but new definition of health care provider incorporates podiatrists.)

Section 5 - revises economic credentialing statute, including subsection (2), and adds new language. There's an attempt here to take into consideration the case of when a physician, by virtue of being elected chief of the medical staff also has a position on the board. But a new subsection also would allow denial of privileges if due process of law and arbitration provide an abusive referral pattern. Language may need fixing to reflect above statement. Defines abusive referral pattern, conflict of interest using the language provided by Dr. McMahon but adding the abusive referral pattern language. I have a question about the extent of that language -- could acceptance of freebies from pharmaceutical companies end up indicating a conflict of interest? Removes the "medical staff on-call arrangements" because of legislators' concerns about that being used to punish health care providers, which is also the reason for the new language in Subsection (3) on exclusive contracts. Changes the language regarding medical staff policies to reflect those that a majority of the medical staff agreed to. (Otherwise there could be coercion from the hospital, if I'm understanding some of the comments correctly). Changes definition of health care facility to delete existing "diagnostic facilities" because these are not defined and, if not already within the definition of health care facilities, would be hard to find.

Section 6 - removes temporary language

Section 7 - provides for enforcement by AG under unfair trade practices.

COMMENTS ON LC8888- specialty hospitals

Section 1. Subsection (55) - I left self-attestation because that's something the department wants. Otherwise, the department has to decide, based on available information, what type of hospital this is. Easy enough for an applicant group to say what they are.
Took out the references in (ii) and (iii) to joint ventures and substituted that the hospital had to meet the licensing requirements of 50-5-245. Reference to 35% deleted, because how would someone know in advance, and what if a regular hospital ended up having that type of procedural ratio -- department request.

Section 2 - the applicant makes a copy of letters sent/received regarding "offering for a joint venture" -- intended to answer Dr. Khaliqi's concern about nonprofit hospitals holding up the application.
The language on joint ventures and charity care stays the same, but the open-ended statement on specialty hospitals that are not a joint venture now says the charity care policy has to meet a basic standard. (this will need to be discussed by the committee -- or removed if they don't want to have a basic standard.)
Transfer agreement stayed the same.

New subsection (1) (d) outlining a conflict of interest policy -- this is where the 2% investment interest by physicians goes and the prohibition against using dummy corporations. I didn't put in the part about family members because I still am concerned that that violates discrimination based on marital status under Montana's human rights laws.

New section 3 - adds effective date, so it goes into place as soon as the moratorium lapses.

COMMENTS ON THE EARLIER BILL DRAFT ARE ON THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE website under SJR 15 study:
http://leg.mt.gov/css/committees/interim/2007_2008/child_fam/meeting_documents/materials.asp
or
http://leg.mt.gov/css/committees/interim/2007_2008/child_fam/assigned_studies/sjr15.asp#comments

sj15_lc38_new.pdf (45 KB)

sj15_lc8888_revised.pdf (46 KB...