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**REPORT ON LEGISLATION
BY THE LEGAL PROBLEMS OF THE AGING COMMITTEE,
HEALTH LAW COMMITTEE
AND THE SOCIAL WELFARE LAW COMMITTEE**

A.2007-A / S.1507 – A (Budget Article VII) – Part C, §§ 2-3

Enacts into law major components of legislation necessary to implement the state health and mental hygiene budget for the 2019-2020; to amend the social services law in relation to supplemental Medicaid managed care payments.

THIS PROVISION IS OPPOSED

The 2019-20 New York State Executive Budget for Health and Mental Hygiene, Part C §§ 2-3 will reduce financial assistance for services provided to low income Medicare beneficiaries, compromising access to health care.

Medicare Part B pays for outpatient medical care, treatments like chemotherapy and dialysis, as well as ambulance costs and other services, for seniors and people with disabilities. For each of these, Medicare requires the patient to pay a share of the cost, or purchase supplemental private insurance, known as a Medigap policy or Medicare Supplement Health Insurance, to pay on their behalf. However, at a cost of more than \$200 per month, low-income patients simply cannot afford a Medigap policy. A low-income patient's only option is to enroll in the Qualified Medicare Beneficiary program (QMB) or Medicaid for meaningful access to care.

The Governor's proposal threatens access to care by reducing the amount of cost-sharing assistance provided by QMB and Medicaid. Only four years ago, New York reduced the amount of cost-sharing assistance by paying the "lesser-of" Medicaid or Medicare rates, with some exceptions. The Governor now wants to extend the "lesser-of" rule further, by applying it to: [1] the annual Part B deductible, and [2] psychologists and ambulance services.

Because Federal law bars providers from "balance billing" QMBs for these unpaid costs,¹ a provider must absorb the loss. As a result, the Governor's proposal will cause providers to refuse to treat Medicaid or QMB patients altogether, thereby reducing access to health care for hundreds of thousands of low income seniors and people with disabilities.² Moreover, other providers who must accept Medicaid, such as outpatient clinics and community health centers, will be hurt by the Governor's proposal, which will result in an elimination of services to the low income patient community.

I. THE BUDGET PROPOSES TO CUT MEDICARE COST-SHARING ASSISTANCE

a. Annual Part B Deductible

Each year, a Medicare beneficiary must meet the Part B deductible before Medicare will pay any Part B bills. This means that Medicare will not pay doctors or other outpatient Part B bills until the beneficiary has first shouldered Medicare approved charges totaling \$185 (the Medicare Part B deductible in 2019). The beneficiary is liable for 100% of the Medicare approved charge until the deductible is met. The Governor’s current proposal seeks to subject assistance with the Medicare Part B deductible to the Medicaid lesser-of rule. In other words:

NOW – If the service in the example below was the first one a patient received in the calendar year, Medicare would not pay any of the approved charge of \$185 because the patient must first meet her deductible. Medicaid pays the full deductible, that is, the entire Medicare approved charge of **\$185**. The patient has now met the annual Part B deductible, the provider is paid in full, and the low-income patient can get needed care without worry.

PROPOSED CHANGE – Under the Governor’s proposed change, Medicaid would pay only the Medicaid approved rate of **\$100**. The Part B deductible is still met even though the full Medicare approved charge of \$185 will not be paid. The provider must absorb the loss of \$85. This loss will lead providers, many of whom are already reluctant to accept Medicaid because of low reimbursement rates, to refuse to accept Medicaid at all. While providers may not legally bill the patient for the balance (known as “balance billing”), many do so anyway. Providers who must accept Medicaid, like outpatient clinics and community health centers, will be hurt by the loss in reimbursement, affecting their ability to serve low-income patients. In short, access to care for low income seniors and people with disabilities suffers.

EXAMPLE: Medicare Cost-Sharing		
<i>Medicare</i> approved charge is	\$185	<i>Medicaid</i> rate is \$100
<u>Medicare pays 80%</u>	<u>\$148</u>	
Coinsurance (20%)	\$ 37	

Medicaid pays no coinsurance (\$37) because the Medicaid rate (\$100) is less than the amount Medicare paid (\$148). Provider may not bill patient for coinsurance due to Federal balance-billing protection. If provider does not accept Medicaid, provider may refuse to treat patient altogether, threatening reduced access for low income Medicare beneficiaries.

b. Psychologist and Ambulance Services Would No Longer be Held Harmless

In 2016, an exception was enacted ensuring that New York Medicaid paid the 20% coinsurance at the full Medicare approved rate for two services – psychologists and ambulances. The Governor now proposes to repeal those exceptions and pay only the lesser Medicaid rate.

Patients already have difficulty finding a psychologist who accepts Medicare, a problem that will worsen as these providers see their reimbursements drop for QMB or Medicaid patients, since the 20% coinsurance will not be paid.

Also, ambulance companies, some of which already exhibit aggressive billing practices, will likely continue to bill QMBs for cost-sharing, despite federal prohibitions. In addition, lower reimbursement will make it difficult for those who require regular ambulance transportation—such as those who are homebound and require dialysis—to access the transportation they need to get care. This will be especially true in rural areas where fewer ambulance companies operate.

Reduced access to providers willing to treat this population is a documented reality, confirmed in a July 2015 report by the U.S. Center for Medicare & Medicaid Services (CMS).³ This report was issued *before* New York cut its Part B reimbursement to the Medicaid rates. The proposed reduction in coverage of the Medicare Part B deductible will impact access to primary care physicians and specialists, and many other health providers. The removal of the exception enacted in 2016 for ambulance and psychologists only compounds the harm.

Based on the foregoing, we oppose this legislation.

Legal Problems of the Aging Committee
Britt Burner, Chair

Health Law Committee
Brian McGovern, Chair

Social Welfare Law Committee
Susan E. Welber, Chair

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¹ Section 1902(n)(3)(B) of the Social Security Act (the Act), as modified by section 4714 of the Balanced Budget Act of 1997; see CMS Medicare Learning Network Bulletin, *Prohibition Billing Dually Eligible Individuals Enrolled in the Qualified Medicare Beneficiary (QMB) Program*, rev. June 2018, <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/downloads/SE1128.pdf> (All websites cited in this letter were last visited on March 5, 2019.)

² Statewide QMB and Medicaid enrollment, more than half of which lives in the five boroughs of New York City, as recently as December 2017, <https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/DataStatisticalResources/Downloads/MME enrolleeStateandCountyEnrollmentSnapshotsAnnual122017Data12018.xlsx>

³ See “Access to Care Issues Among Qualified Medicare Beneficiaries,” [https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Downloads/Access to Care Issues Among Qualified Medicare Beneficiaries.pdf](https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Downloads/Access%20to%20Care%20Issues%20Among%20Qualified%20Medicare%20Beneficiaries.pdf).

* This report was reviewed and approved by the Legal Problems of the Aging, Health Law, and Social Welfare Committees of the New York City Bar Association. With permission from the New York State Bar Association, this report adopts language from NYSBA’s February 14, 2019 report in opposition to the proposal.