

MEDICAID TECHNICAL CORRECTIONS RELATING TO  
PHYSICIANS' SERVICES

SEPTEMBER 24, 1996.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce,  
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 1791]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 1791) to amend title XIX of the Social Security Act to make certain technical corrections relating to physicians' services, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. TECHNICAL CORRECTIONS RELATING TO PHYSICIANS' SERVICES.**

(a) **CORRECTING REFERENCE TO UNIQUE IDENTIFIER SYSTEM.—**

(1) **IN GENERAL.—**Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended, in the paragraph redesignated as paragraph (59) by section 13623(a)(6) of the Omnibus Budget Reconciliation Act of 1993 and inserted by section 4752(c)(1)(C) of the Omnibus Budget Reconciliation Act of 1990, by striking “subsection (v)” and inserting “subsection (x)”.

(2) **EFFECTIVE DATE.—**The amendment made by paragraph (1) shall be effective as if included in the enactment of the amendments made by section 4752(c)(1) of the Omnibus Budget Reconciliation Act of 1990.

(b) **CORRECTION IN MINIMUM QUALIFICATIONS FOR BILLING FOR PHYSICIANS' SERVICES TO CHILDREN AND PREGNANT WOMEN.—**

(1) **IN GENERAL.—**Section 1903(i) of the Social Security Act (42 U.S.C. 1396b(i)) is amended, in the paragraph redesignated as paragraph (12) by section 13631(c)(3) of the Omnibus Budget Reconciliation Act of 1993 and inserted by section 4752(a)(2)(B) of the Omnibus Budget Reconciliation Act of 1990—

(A) in subparagraph (A)(i), by inserting “or is certified in family practice or pediatrics by the medical specialty board recognized by the American Osteopathic Association” before the comma at the end;

(B) in subparagraph (B)(i), by inserting “or is certified in family practice or obstetrics by the medical specialty board recognized by the American Osteopathic Association” before the comma at the end; and

(C) in each of subparagraphs (A) and (B)—

(i) by striking “or” at the end of clause (v),

(ii) in clause (vi), by inserting “(or certified by the State in accordance with policies of the Secretary)” after “Secretary”,

(iii) by redesignating clause (vi) as clause (vii), and

(iv) by inserting after clause (v) the following new clause:

“(vi) delivers such services in the emergency department of a hospital participating in the State plan approved under this title, or”.

(2) **EFFECTIVE DATE.—**The amendments made by paragraph (1) shall apply to physicians' services furnished on or after January 1, 1992.

**PURPOSE AND SUMMARY**

H.R. 1791 makes technical corrections to title XIX of the Social Security Act relating to payments for physician services in the Medicaid program. Because of an unintended omission in the Omnibus Reconciliation Act of 1990, osteopathic physicians were not included in provisions concerning Medicaid reimbursement for medical services furnished to children and pregnant women. This bill corrects that omission by adding legislative language that Medicaid can expend funds for services provided to children and pregnant women by physicians certified by the American Osteopathic Association.

**BACKGROUND AND NEED FOR LEGISLATION**

As part of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990), Congress amended title XIX of the Social Security Act to include minimum standards that physicians are required to meet in order to receive payment for the health care services that they provide to pregnant women and children under the age of 21 under the Medicaid program. Those standards included physicians board certified in pediatrics, family practice, and obstetrics by the medical specialty board recognized by the American Board of Medical Specialties.

The physicians captured in these criteria, however, included only those in the allopathic (M.D.) profession. Osteopathic physicians (D.O.s) receive certification by the medical specialty boards recognized by the American Osteopathic Association, which was inadvertently omitted from the OBRA 1990 physicians standards. By favorably reporting H.R. 1791, the Committee seeks to rectify this omission.

#### HEARINGS

The Committee on Commerce has not held hearings on the legislation.

#### COMMITTEE CONSIDERATION

On September 19, 1996, the Committee on Commerce met in open markup session and ordered H.R. 1791, a bill to amend title XIX of the Social Security Act to make certain technical corrections relating to physicians' services, reported to the House, as amended, by a voice vote, a quorum being present.

#### ROLLCALL VOTES

Clause 2(1)(2)(B) of rule XI of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with ordering H.R. 1791 reported or in adopting the amendment. The voice votes taken in Committee are as follows:

Bill: H.R. 1791, a bill to amend title XIX of the Social Security Act to make certain technical corrections relating to physicians' services.

Unanimous consent request: Unanimous Consent Request by Mr. Bliley to discharge the Subcommittee on Health and Environment from further consideration of H.R. 1791 and to proceed to its immediate consideration by the Full Committee.

Disposition: Agreed to, without objection.

Amendment: Amendment in the Nature of a Substitute offered by Mr. Barton.

Disposition: Agreed to, by a voice vote.

Motion: Motion by Mr. Bliley to order H.R. 1791, as amended, reported to the House.

Disposition: Agreed to, by a voice vote.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation.

#### COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(1)(3)(B) of Rule XI of the Rules of the House of Representatives, the Committee states that H.R. 1791 would result in no new or increased budget authority or tax expenditures or revenues.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 23, 1996.*

Hon. THOMAS J. BLILEY, Jr.,  
*Chairman, Committee on Commerce,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1791, as ordered reported by the Committee on Commerce on September 19, 1996. The bill would designate as Medicaid providers for children and pregnant women physicians certified by the American Osteopathic Association or by a state (in accordance with the policies of the Secretary of Health and Human Services) and physicians delivering services in an emergency department of a hospital participating in a state plan. CBO estimates that H.R. 1791 would have no budgetary impact.

Under current law, certified Medicaid providers for children and pregnant women are doctors who are certified by the American Board of Medical Specialties, work at a Federally-qualified health center, are members of the National Health Service Corps, have a consultation and referral arrangement with a Medicaid provider, hold admitting privileges at participating hospitals, or are certified by the Secretary as qualified. In regulations, the Secretary has defined doctors licensed by their state as qualified providers. This provision would have no budgetary impact because osteopaths and physicians in emergency rooms must be licensed by their state to practice and consequently are already Medicaid-qualified providers.

This bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) and would impose no costs on state, local, or tribal governments.

If you wish for further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jean Hearne.

Sincerely,

JUNE E. O'NEILL, *Director.*

## INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that H.R. 1791 would have no inflationary impact.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

## SECTION 1. TECHNICAL CORRECTIONS RELATING TO PHYSICIANS' SERVICES

Under current law, Federal Medicaid matching funds are not available for State spending for any Medicaid services delivered by physicians to children under 21 years of age, or to pregnant women, unless the physician meets at least one of a number of specified criteria in addition to licensure by the State.

With respect to services to children under 21, the physician must meet any one of the following criteria: (1) hold admitting privileges to a hospital participating in Medicaid; (2) be certified in family practice or pediatrics by an appropriate specialty board; (3) have a formal consultation and referral arrangement with a certified pediatrician or family practitioner; (4) be employed by, or affiliated with, a Federally-qualified health center; (5) be a member of the National Health Service Corps; or (6) be certified by Secretary of Health and Human Services (HHS) as qualified to deliver care to children.

With respect to services to pregnant women, the physician must meet any one of the following criteria: (1) hold admitting privileges to a hospital participating in Medicaid; (2) be certified in family practice or obstetrics by an appropriate specialty board; (3) have a formal consultation and referral arrangement with a certified obstetrician or family practitioner; (4) be employed by, or affiliated with, a Federally-qualified health center; (5) be a member of the National Health Service Corps; or (6) be certified by the Secretary of HHS as qualified to deliver care to pregnant women.

The Committee bill clarifies that, for purposes of physician qualifications for serving Medicaid-eligible children and pregnant women, certification in family practice or pediatrics or obstetrics can occur if granted by a medical specialty board recognized by the American Osteopathic Association, not just by a board recognized by the American Board of Medical Specialists.

The Committee bill also adds to the list of qualifying criteria. If a physician meets none of the current qualifying criteria, Federal Medicaid funds would still be available for services provided to children under 21 years of age, or to pregnant women, if the physician delivers such services in the emergency department of a hospital participating in Medicaid.

Finally, the bill provides that services delivered by physicians to children or pregnant women may qualify for Federal matching payments if the physician is certified by the State in accordance with policies of the Secretary of HHS. The Committee intends that these

policies be developed with input from practitioners as well as consumers, and that they be designed to prevent the exposure of children and pregnant women to substandard care.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

**SOCIAL SECURITY ACT**

\* \* \* \* \*

**TITLE XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS**

\* \* \* \* \*

**STATE PLANS FOR MEDICAL ASSISTANCE**

SEC. 1902. (a) A State plan for medical assistance must—

(1) \* \* \*

\* \* \* \* \*

(59) maintain a list (updated not less often than monthly, and containing each physician's unique identifier provided under the system established under subsection **[(v)]** *(x)*) of all physicians who are certified to participate under the State plan;

\* \* \* \* \*

**PAYMENT TO STATES**

SEC. 1903. (a) \* \* \*

\* \* \* \* \*

(i) Payment under the preceding provisions of this section shall not be made—

(1) \* \* \*

\* \* \* \* \*

(12) with respect to any amount expended for physicians' services furnished by a physician on or after January 1, 1992, to—

(A) a child under 21 years of age, unless the physician—

(i) is certified in family practice or pediatrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or pediatrics *or is certified in family practice or pediatrics by the medical specialty board recognized by the American Osteopathic Association,*

(ii) is employed by, or affiliated with, a Federally-qualified health center (as defined in section 1905(1)(2)(B)),

(iii) holds admitting privileges at a hospital participating in a State plan approved under this title,

(iv) is a member of the National Health Service Corps,

(v) documents a current, formal, consultation and referral arrangement with a pediatrician or family practitioner who has the certification described in clause (i) for purposes of specialized treatment and admission to a hospital, **[or]**

*(vi) delivers such services in the emergency department of a hospital participating in the State plan approved under this title, or*

**[(vi)]** *(vii) has been certified by the Secretary (or certified by the State in accordance with policies of the Secretary) as qualified to provide physicians' services to a child under 21 years of age; or*

(B) to a pregnant woman (or during the 60 day period beginning on the date of termination of the pregnancy) unless the physician—

(i) is certified in family practice or obstetrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or obstetrics *or is certified in family practice or obstetrics by the medical specialty board recognized by the American Osteopathic Association,*

(ii) is employed by, or affiliated with, a Federally-qualified health center (as defined in section 1905(l)(2)(B)),

(iii) holds admitting privileges at a hospital participating in a State plan approved under this title,

(iv) is a member of the National Health Service Corps,

(v) documents a current, formal, consultation and referral arrangement with an obstetrician or family practitioner who has the certification described in clause (i) for purposes of specialized treatment and admission to a hospital, **[or]**

*(vi) delivers such services in the emergency department of a hospital participating in the State plan approved under this title, or*

**[(vi)]** *(vii) has been certified by the Secretary (or certified by the State in accordance with policies of the Secretary) as qualified to provide physicians' services to pregnant women; or*

\* \* \* \* \*

ADDITIONAL VIEWS OF REPRESENTATIVE HENRY A.  
WAXMAN

As introduced, H.R. 1791 clarified that certification by a medical specialty board recognized by the American Osteopathic Association would be sufficient to qualify a family practitioner, pediatrician, or obstetrician to receive Medicaid reimbursement for delivering care to children under 21 or pregnant women, respectively. In addition, H.R. 1791 as introduced would have clarified that physicians delivering care to children or pregnant women in the emergency departments of hospitals participating in Medicaid could qualify for Medicaid payments. These clarifications were thoughtful, constructive, and consistent with the prudent expenditure of Federal funds.

During Committee consideration, a provision was added allowing physicians serving children and pregnant women also to qualify for Medicaid payments so long as they are "certified by the State in accordance with policies of the Secretary." This provision was adopted to avoid disruption in implementation of the underlying provision. In adopting this provision, I posed a question to the majority to receive assurance that this action in no way was intended to weaken the quality protections of current law. I received assurances that this was the case. Therefore, it is clear to me that, in implementing this option, the Secretary should assure that the policies established meet the basic goal of the underlying provision: assuring quality services for children and pregnant women.

Historically, in order to participate in Medicaid, a physician (other than one excluded for fraud or abuse) was only required to be licensed in the State in which he or she practiced. The assumption was that State licensure would protect Medicaid beneficiaries from poor quality providers. As a result of oversight hearings conducted in the 101st Congress by the Government Operations Subcommittee chaired by the late Ted Weiss, we learned that this assumption was not always well-founded. The Weiss Subcommittee hearings demonstrated how "Medicaid mills" thrived financially (mostly at Federal expense) by providing poor quality care even though staffed by licensed physicians.

In order to protect children and pregnant women from poor quality physicians, whether in Medicaid mills, managed care plans, or other settings, and in order to prevent Federal Medicaid funds from financing substandard care in these settings, this Committee in 1990 authored a provision that set a higher standard than State licensure for physician participation. Specifically, the Committee required that, in order for Federal Medicaid matching funds to be made available for payment for services provided by a physician to children under 21, the physician must meet just one of the following criteria: (1) hold admitting privileges to a hospital participating in Medicaid; or (2) be certified in family practice or pediatrics by

an appropriate specialty board; or (3) have a formal consultation and referral arrangement with a certified pediatrician or family practitioner; or (4) be employed by, or affiliated with, a Federally-qualified health center; or (5) be a member of the National Health Service Corps; or (6) be certified by the Secretary as qualified to deliver care to children.

Similarly, in order to protect pregnant women from substandard physicians, the Committee required that, in order to qualify for Federal Medicaid matching funds, physician services delivered to pregnant women had to be delivered by practitioners who meet just one of the following criteria: (1) hold admitting privileges to a hospital participating in Medicaid; or (2) be certified in family practice or obstetrics by an appropriate specialty board; or (3) have a formal consultation and referral arrangement with a certified obstetrician or family practitioner; or (4) be employed by, or affiliated with, a Federally-qualified health center; or (5) be a member of the National Health Service Corps; or (6) be certified by the Secretary of HHS as qualified to deliver care to pregnant women.

These minimum Federal quality standards were sensible then and remain sensible now.

This bill merely corrects an oversight—failure to explicitly acknowledge that certification by a specialty board recognized by the American Osteopathic Association should qualify an osteopath to be treated like a physician for Medicaid purposes. This, in fact, is HCFA's practice, and the Committee wanted to confirm the view that osteopaths provide the same quality care as physicians.

The bill also recognizes that emergency room physicians need separate recognition because of their unique circumstances.

Finally, in regard to inclusion of State certification in accordance with the Secretary's policies, I fully expect the Secretary to carry this out in such a way as to maintain the intent of assuring quality that forms the basis for the current law and to fashion policies that will assure that children and pregnant women do not receive poor quality care at the hands of licensed physicians practicing in Medicaid mills or substandard managed care plans that are financed with Federal taxpayer funds. To do otherwise would be contrary to the intent of this Committee in adopting this legislation.

HENRY A. WAXMAN.