New York State Bar Association

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Memorandum in Opposition

ELDER LAW AND SPECIAL NEEDS SECTION

February 14, 2019

Elder #1

S. 1507, Part C,§§ 2-3	By: BUDGET
A. 2007, Part C,§§ 2-3	By: BUDGET
	Senate Committee: Finance
	Assembly Committee: Ways and Means

SUMMARY: THE ELDER LAW AND SPECIAL NEEDS SECTION OPPOSES THE REDUCTION OF COST-SHARING ASSISTANCE FOR LOW-INCOME MEDICARE BENEFICIARIES (Part C §§ 2-3)

The 2019-20 New York State Executive Budget for Health and Mental Hygiene, Part C §§ 2-3 will reduce the amount of cost-sharing assistance that New York provides to seniors and people with disabilities who have Medicare, for services covered by Medicare Part B. These include physician's services, outpatient care including chemotherapy, ambulance costs, and other outpatient services. Medicare beneficiaries with means can afford a private "Medigap" supplemental policy that pays these out-of-pocket costs, but with premiums over $250/month, the lowest income Medicare beneficiaries cannot afford them. Instead, the lowest income Medicare beneficiaries enroll in the Qualified Medicare Beneficiary (QMB) program or Medicaid, which *used to* assure meaningful access to Medicare services by paying the Medicare deductibles and cost-sharing, as well as for Medicare Part B premiums.

However, access to Medicare providers is threatened because of proposed cutbacks in the amount of cost-sharing assistance Medicaid would provide. This continues a pattern which began in 2015, when New York reduced cost-sharing assistance by paying the "lesser-of" Medicaid or Medicare rates, with some exceptions. Now the Governor proposes to eliminate those exceptions, so that providers will no longer receive the full Medicare-approved charge during the annual Part B deductible period. Also, psychologists and ambulance services would no longer be exempt from the "lesser-of" payment limit. Meanwhile, federal law bars providers from "balance billing" QMB enrollees for any unpaid cost-sharing.[i] As a result, a provider has to absorb the loss from unpaid Medicare coinsurance. We believe this will lead many providers to refuse to serve Medicaid recipients or QMBs, thereby reducing access to routine and specialty health care among QMB and Medicaid enrollees.

Opinions expressed are those of the Section/Committee preparing this memorandum and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.

The Governor proposes to extend cuts to NYS Medicare cost-sharing assistance in 2 ways:

1. **Annual Part B Deductible.**

Each year, a Medicare beneficiary must first meet the Part B deductible. This means that Medicare will not begin paying any doctors or other outpatient Part B bills until the beneficiary has incurred bills for which the Medicare approved charges total $185 (2019). The beneficiary is liable for 100% of the Medicare approved charge until the deductible is met. In the example above, if this service was the first one received in the calendar year, Medicare would not pay any of the approved charge of $185. The bill meets the Part B deductible of $185, so Medicare would start paying bills following this one. What will Medicaid pay for a NY QMB or Medicaid recipient? See the example below:

a. **NOW** - Medicaid pays the entire Medicare approved charge of $**185**, so that the beneficiary meets the annual Part B deductible, and the provider is paid in full.

b. **PROPOSED change** – Medicaid would pay only the Medicaid approved rate of $**100**. While the Part B deductible is met by the Medicare approved charge of $185--even if unpaid-- the provider must absorb the loss of $85. This loss will lead providers, many of whom are already reluctant to accept Medicaid because of the low reimbursement rates, refuse to accept Medicaid at all. Though providers may not legally bill the recipient for the balance, in reality they do, causing stress for the elderly and a rift between provider and patient. 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.

Example of Current Cost-Sharing Limits

Medicare approved charge is	$185	***Medicaid*** rate is $100
Medicare pays 80%	$148	
Coinsurance (20%)	$ 37	

Medicaid pays **none** of the coinsurance ($37) because the Medicaid rate ($100) is less than the amount Medicare paid ($148). Provider may not legally bill the patient for the coinsurance – but if the provider does not accept Medicaid, the provider *may refuse to serve the individual altogether* – threatening reduced access for low income Medicare beneficiaries.

2. 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 critical services – psychologists and ambulances. Now, the Governor proposes to repeal those exceptions and pay only the lesser Medicaid rate. People with Medicare already have difficulty finding a psychologist who accepts Medicare, a problem that will only worsen as these providers see their reimbursements drop for patients with QMB or Medicaid, since the 20 percent 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.

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The specter of QMB beneficiaries having reduced access to providers willing to treat them is not just speculative. In a July 2015 report, the U.S. Center for Medicare & Medicaid Services (CMS) confirmed finding these patterns in research studies. See "Access to Care Issues Among Qualified Medicare Beneficiaries." [ii] This report was issued *before* New York cut its Part B reimbursement to the Medicaid rates. The harm from the proposed reduction in reimbursing for the full 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, the Elder Law and Special Needs Section OPPOSES this legislation.

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[i] 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, available at https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/downloads/SE1128.pdf

[ii] Available at 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