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RUSSELL B. LONG, *Chairman*

PART 3

MEDICARE-MEDICAID

Professional Standards Review Organizations

AMENDMENT 851

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PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

Professional Standards Review Organizations
(The Substance of Amendment 851, Introduced by Senator Bennett)

Problem

There are indications that a significant amount of health services that are provided and that are paid for under Medicare and Medicaid are in excess of those that under appropriate professional standards would be found to be medically necessary. Furthermore, in some instances professional services provided are of unsatisfactory quality.

Present Law

The controls provided for under present law to avoid payment for unneeded services include a requirement of utilization review by physician staff committees in hospitals and extended care facilities of their own services, and review of claims received by intermediaries

and carriers with some questioning of problem cases under supervision of carrier physicians. While these processes have shown improvement over time they have not reached a satisfactory level of achievement and they have a number of inherent defects: utilization review tends to suffer from conflict of interest, and claims review by carriers and intermediaries is not coordinated over multiple programs; present processes do not review the totality of services together (institutional and non-institutional); they are not based upon an adequate development of norms of care; and they do not have sufficient professional participation, support and acceptance. Furthermore, only institutional services are subject to quality control under Medicare. Quality control of hospital services is primarily through medical staff committees, such as the tissue committee. Essentially the same problems exist under Medicaid.

Proposal

The basic idea in the proposal is to authorize the establishment of new independent professional organizations which would assume primary responsibility for the review of services provided under Federal and State programs for purposes of determining whether: (a) such services were medically necessary; (b) the quality of such services meet professional standards; and (c) such services could be more effectively or economically provided in an alternative manner.

While the organizations would be expected to protect the legitimate interests of patients and non-physician health care suppliers, they need professional composition since only physicians can determine the services appropriate for physicians

to order or provide. The Professional Standards Review Organization would also be expected to arrange for appropriate coordination with intermediaries, carriers and other agencies under Medicare and with the States under Medicaid. Rotating physician membership of review committees on an extensive and continuing basis would be favored because of the educational benefit and development of physician acceptance of the process. They would agree to operate economically, efficiently, and effectively. The PSRO would eventually assume responsibility for review and review arrangements for all types of services covered under the public programs. During the initial years, at a minimum, physicians' services and institutional services, the major services covered by Medicare and Medicaid would be given review priority.

This is in essence the approach advanced by Senator Bennett and embodied in proposed Senate amendment No. 851 to H. R. 17550. However, several modifications, designed to facilitate the orderly development of and transition to the new mechanisms it envisions, are suggested by the staff and the Department. The more significant modifications are indicated below.

Timing of Implementation

As printed, the amendment would require the Secretary to designate a Professional Standards Review Organization in every area of the country by January 1, 1972. It is expected that the Secretary will act with dispatch where it is possible to do so without hastily entering into arrangements with organizations not prepared to carry out PSRO functions. It is suggested,

that the January 1, 1972, deadline be dropped to avoid forcing precipitous arrangements which might discredit the PSRO concept in an area without a fair test. Instead the Secretary will be required to at least have tentatively defined the PSRO areas by January 1, 1972.

Prior Approval of Services: As originally advanced, the amendment would have required the PSRO to establish means of requiring and providing prior approval of all elective non-emergency institutional care and costly out-of-institution elective procedures and services. While such prior approval is desirable, the new organization should not be over-burdened with prior approval workloads where potential overutilization is likely to be minimal. For this reason, it is suggested that the amendment be modified

to permit the PSRO, in consultation with the Secretary, to select the circumstances (such as certain diagnoses or the admissions to certain institutions or by practitioners in which it might require and provide advance approval).

Composition of the National PSRO Council: The amendment provides for a National Professional Standards Review Organization Council to review PSRO operations, advise the Secretary on their effectiveness and make recommendations for their improvement. As introduced, the Council would be composed entirely of physicians, a majority of whom had been nominated by national organizations representing practicing physicians. However, in response to concerns for broader

representation, it is suggested that the amendment be modified to permit the membership of the council to include physicians recommended by consumer groups and other health care interests; however, the majority of the National Council would be selected from among physicians recommended by organized medicine.

Synopsis

The professional standards review mechanism would take effect along the following lines:

1. The Secretary of Health, Education, and Welfare would, after consultation with national and local health professions and agencies, designate appropriate PSRO areas throughout the Nation. Areas may cover an entire State (particularly those with smaller populations) or parts of a State, but generally a minimum of three hundred practicing doctors would be included within one PSRO area. Tentative area designations could be modified if, as the system was placed into practice, changes seemed desirable. The Secretary would also, in consultation with professional and other concerned organizations and interests, develop prototype review plans and would aid in the development of such plans with the view to securing acceptable arrangements for PSRO's in all areas and to gain experience with several patterns.

2. Organizations representing substantial numbers of physicians in an area, such as medical foundations and medical societies, would be invited and encouraged to submit plans meeting the requirements of the programs. Where the Secretary finds that such organizations are not willing or cannot reasonably be expected to develop capabilities to carry out PSRO functions in an effective, economical and timely manner, he may then enter into PSRO agreements with such other agencies or organizations with professional competence as he finds are willing and capable of carrying out PSRO functions. Formal plans should specify the extent and nature of cooperating arrangements with all agencies necessary to proper administration of the program.

3. It is expected that an acceptable plan will be one which encompasses in its proposed activities and responsibilities to the greatest extent possible physicians engaged in all types of practice in the PSRO area, i. e. solo, group, hospital and medical school-based practice, etc.

4. The Secretary would approve those plans which can reasonably be expected to improve and expand the professional review process. The initial approval shall be made on a conditional basis, not to exceed two years, with the review organizations operating concurrently with the present review system. During the transitional period, carriers and intermediaries (in the case of Medicare) are expected to abide by the decision of the PSRO where the PSRO has acted. This reliance will permit a more complete appraisal of the effectiveness of the conditionally-approved PSRO.

5. In areas where no adequate plan was initially submitted, the Secretary would seek to aid in the improvement and expansion of plans offered and to develop plans through his own efforts, based upon organizations with professional competence such as State or local health agencies or claims paying organizations such as carriers and intermediaries if necessary.

6. Once an organization is accepted, the Secretary with the assistance of the Statewide organization and the National Advisory Council would monitor the performance of the PSRO plans using statistical and other appropriate means of evaluation. Where performance of an organization was determined unsatisfactory, and his efforts to bring about prompt necessary improvement fail, he could terminate its participation, after appropriate notice and opportunity for administrative hearing by the Secretary, if requested.

7. Provider, physician and patient profiles and other relevant data would be collected and reviewed on an ongoing basis to the maximum extent feasible to identify persons and institutions that provide services requiring more extensive review. Regional norms of care shall be used in the review process as routine checkpoints in determining when excessive services may have been provided. The norms would be used in determining the point at which physician certification of need for continued institutional care would be made and reviewed. The physician, provider and patient profiles and other data would be collected in ways determined by the Secretary to be most efficient. Initial priority in assembling and using data and profiles would be assigned to those areas most productive in pinpointing problems so as to conserve physician time and maximize the

productivity of physician review. The PSRO would be permitted to employ the services of qualified personnel, such as registered nurses who could, under the direction and control of physicians, aid in assuring effective and timely review.

8. Where advance approval by the review organizations for institutional admission is required (see page 6), such approval would provide the basis for a presumption of medical necessity for purposes of Medicare and Medicaid benefit payments. However, if the review organization finds that ancillary services provided subsequent to its approval are excessive, payment under Medicare and Medicaid would be denied with respect to such excessive services.

9. Failure of a physician, institution or other health care supplier to seek advance approval where required may be considered cause for disallowance of affected claims.

10. In addition to acting on its own initiative, the review organization would report on matters referred to it by the Secretary. It would also recommend appropriate action against persons responsible for gross or continued overuse of services, use of services in an unnecessarily costly manner, or for inadequate quality of services; and would act to the extent of its authority or influence to correct improper activities.

11. The Secretary would be authorized to assess a monetary penalty reasonably related to the significance of the acts or conduct involved -- but not to exceed $5, 000 -- against persons or

institutions found to be at fault. In addition, the cost of excessive services -- up to $5,000 -- could be recovered from the practitioner, supplier or institution at fault.

12. A National Professional Standards Review Council -- composed of physicians with a majority selected from nominees of national organizations representing practicing physicians, and in addition physicians recommended by consumers and other health care interests -- would be established by the Secretary to review the operations of the local area review organizations, advise the Secretary on their effectiveness and make recommendations for their improvement.

13. Those persons engaged in review activities would be exempt from liability for actions taken in the proper performance of these duties. In addition, physicians, providers and

others involved in the delivery of care would be exempt from liability arising from conformity to the recommendations of such review organizations.

14. The Secretary would be authorized to pay the PSRO (in advance or as reimbursement) reasonable expenses with appropriate pro-rating to programs involved.

15. For a further explanation of the details of the Professional Standards Review Organization amendment, see statements by Senator Bennett in the Congressional Record of August 20, 1970, and September 21, 1970, page S16033.