

June 20, 2018

Item Name: State Regulation of Kidney Dialysis Clinics: Limits Charges for Patient Care. Initiative Status Eligible for the November 2018 General Election.

Program: Health Benefits – State Ballot Initiative

Item Type: Action

Recommendation

Consider adopting a position on the Fair Pricing for Dialysis Act, an initiative eligible for the November 2018 general election. The initiative has the potential to impact increasing dialysis treatment cost trends.

Executive Summary

If approved by voters, the Fair Pricing for Dialysis Act (the Act) will require chronic dialysis clinics (CDCs) to calculate the sum of direct patient care costs and health care improvement costs, and refund any charged amount above 115 percent to the patient or insurer. It also prohibits CDCs from discriminating against patients based on the source of payment for care and requires them to report annually to the California Department of Public Health (CDPH) regarding clinic costs, patient charges, and revenue. The CDPH would be authorized to impose penalties for excessive charges.

Strategic Plan

This item supports the CalPERS 2017-22 Strategic Plan Goal to improve Health Care Affordability by transforming health care purchasing and delivery, to make it affordable while providing the best value in health care to our members.

Background

CDCs provide treatment to patients suffering from end stage renal disease (ESRD), a medical condition in which the kidneys, which filter the blood to remove waste and excess water, are no longer able to function unassisted at a level needed for day-to-day life. Patients diagnosed with ESRD need long-term dialysis treatment or kidney transplant to live. ESRD patients typically visit a dialysis clinic three times per week and receive treatment for about four hours each visit, during which their blood is removed, cleaned through a dialysis machine, and pumped back into their body. The most common causes of ESRD are diabetes and high blood pressure. In California, there are currently more than 66,000 dialysis patients and about 580 CDCs licensed and inspected by CDPH.

Most patients at CDCs are covered by Medicare or Medi-Cal. Under current law, individuals with ESRD are eligible for Medicare regardless of their age. However, ESRD patients with health care coverage through an employer, like CalPERS members, can become eligible for Medicare after a three-month waiting period and a 30-month coordination period. For a CalPERS member, during the three-month waiting period, CalPERS pays for the dialysis treatment. After

the waiting period, CalPERS continues to pay for the dialysis treatment as the primary payer, and Medicare pays as the secondary payer for another 30 months. After 33 months, Medicare becomes the primary payer for CalPERS members, and CalPERS becomes the secondary payer.

Last year, the Legislature considered a proposal to cap CDCs' profits. Assembly Bill 251 (Bonta) would have established a medical loss ratio for CDCs by requiring these clinics to spend at least 85 percent of their revenue on direct patient care, health care quality improvement, and taxes and license fees. If the CDCs did not meet this ratio, they would have been required to issue rebates to non-government payers in an amount sufficient to meet the minimum spending of 85 percent. The bill is currently on the Senate inactive file.

Recently, CalPERS dialysis treatment costs have been increasing. At the May 15, 2018, Pension and Health Benefits Committee meeting, CalPERS health team members presented an overview of dialysis treatment utilization and costs by members enrolled in CalPERS Basic and Medicare plans. In plan year 2017, a total of 1,550 CalPERS members received dialysis treatments at a cost of \$62 million, which represents a 10.7 percent cost increase from the \$56 million spent the prior year. Of the 1,550 members receiving dialysis, 998 were enrolled in a Medicare plan and 552 were enrolled in a Basic plan.

CalPERS Basic plan members utilized 33 percent of the treatment, but accounted for 58 percent of the total cost. The proponents of the ballot initiative indicate that non-Medicare members receiving dialysis may experience decreases in the cost of these services should the initiative pass and become law.

Analysis

1. Proposed Changes:

The Act would add sections to the Health and Safety Code to do the following:

- Limit the amounts CDCs may charge for patient care to the fair treatment payment amount which is the amount equal to 115 percent of the sum of all direct patient care services costs and all health care quality improvement costs incurred by a governing entity and its CDCs.
- Require, beginning January 1, 2019, CDCs to:
 - calculate the "unfair excess charged amount," which shall be the amount, if any, by which treatment revenue from treatments provided by all of the governing entity's CDCs exceeds the fair treatment payment amount.
 - issue rebates to payers (other than Medicare, other federal, state, county, city, or local government payers) in amounts that total the unfair excess charged amount.
- Impose a penalty for excessive charges in an amount equal to five percent of the unfair excess charged amount, provided that the penalty not exceed \$100,000.
- Require CDCs to submit an annual report to CDPH detailing the number of treatments performed, clinic costs, patient charges, and revenue;
- Prohibit CDCs from discriminating against patients based on the source of payment for care.

2. Potential Health Care Market Impacts

The proponents' intent is to ensure that CSCs provide quality and affordable patient care to people suffering from ERSD.



The Legislative Analyst's Office (LAO), in its May 15, 2018, report to the Joint Initiative Hearing of the Senate and Assembly Committees on Health (Attachment 3), indicated that many CDCs and governing entities have revenues that exceed the Act's 115 percent revenue cap and would therefore trigger its rebate provisions. However, the Act's effect on the quality, access, and affordability of CDC services will depend on the operational changes made by governing entities in response. The LAO analysis goes on to identify three potential responses:

- Modify revenue and cost structures to avoid paying rebates and penalties, including negotiating lower rates with commercial health insurers to bring total revenue below the 115 percent cap, or increasing the portion of costs used to establish the cap.
- Seek upward adjustments to the revenue cap through court challenges, or
- Cease operations.

In the first example, the LAO believes the CDCs may attempt to increase spending on direct services and quality improvements while lowering management and overhead costs not used to determine the revenue cap. This would raise their revenue cap and the effective rates they could charge commercial health insurers, without triggering the Act's rebate requirements.

3. Unclear to What Extent CalPERS is Eligible for Rebates

As indicated previously, the Act requires CDCs to calculate the unfair excess charge amount and refund anything above that amount to either patients or the insurance companies that paid their bills. However, the Act prohibits CDCs from issuing rebates to government payers such as Medicare, and federal, state, county, city, or local governments.

As a purchaser of health benefits for the State and participating schools and local governments in their capacity as employers, CalPERS contracts with commercial health maintenance organization (HMO) plans to, among other things, negotiate the cost of dialysis services with CDC providers and pay for treatments. When CDCs issue rebates to CalPERS HMO health plans, the HMOs may, but are not required under the Act, to pass the rebates on to CalPERS. The extent to which CalPERS may experience health program savings would depend on its future HMO plan contract negotiations.

However, CalPERS is also a direct purchaser of health care services, including CDC services, under its PERS Select, PERSCare, and PERS Choice preferred provider organization (PPO) health plan options. As a direct payor, the Act may exempt CDCs from paying rebates for services provided to enrollees in these plans. This would also limit CalPERS ability to negotiate lower treatment costs with CDC providers. It is unclear whether proponents intended for these health plans to be excluded from rebates under this Act. CalPERS team members will continue to analyze this initiative and various means of resolving this issue of rebate eligibility.

4. Alignment with CalPERS Health Care Beliefs

Adopting a position on the Act could influence the state policy landscape and will require considering the Act's alignment with various CalPERS Health Beliefs, including Sustainability, Affordability, Comprehensive Care, Competitive Plan Choice, and Quality Program Administration.

Potential cost savings seem to align with the Sustainability and Affordability beliefs, but the response CDCs might have to regulation, although difficult to predict, could potentially have a negative impact on members' access to dialysis services. An impact to access would not align with Comprehensive Care and Competitive Plan Choice beliefs.



It is also important to note that some CalPERS' stakeholders support the Act and some oppose it (see Attachment 2). Taking a position on the Act would therefore not meet the needs of all CalPERS' stakeholders, but could meet the needs of some.

Budget and Fiscal Impacts

Consistent with the LAO analysis, CalPERS team members have been unable to quantify potential savings the Act may provide to the Health Care Fund. According to the LAO's analysis of the Act, "commercial health insurers that provide health benefits for state and local government employees—if they are considered eligible under the measure—would likely pay lower rates for dialysis treatment, either through receiving rebates or by negotiating lower prices...How much these lower rates might reduce health insurance premiums paid by state and local governments for their employees is uncertain."

More specific to CalPERS, the LAO analysis describes how CalPERS contracts with commercial health plans to provide coverage to CalPERS members, including for dialysis treatment, and goes on to state: "We assume that there could be a significant reduction in these costs under the initiative. Some portion of these savings could be retained by the health plans, with the remainder of the savings passed on as reductions in employer health insurance premiums paid by state and local governments."

Benefits and Risks

Benefits:

According to proponents, the Act may:

- Lower the cost for dialysis treatments which could result in savings that can be used to reduce premiums for employers.
- Incentivize dialysis corporations to invest more in the treatment of patients with kidney failure and improve conditions in their clinics.

Risks:

If the Act becomes law, it may cause:

- An artificially low reimbursement rate, which might not cover the actual cost of providing care at a clinic and could lead to a reduction of services.
- Reduced access to dialysis care which could force dialysis patients to seek treatment in emergency rooms and drive up the cost of healthcare.

Attachment 1 – Initiative Text

Attachment 2 – Support and Opposition

Attachment 3 – LAO Analysis

Brad W. Pacheco
Deputy Executive Officer

Marcie Frost
Chief Executive Officer