

Remarks: Health legislation trends in the 97th Congress

Senator Spark M. Matsunaga Papers

Senate, Public relations, Speeches, Organizations, Box PR76, Folder 46

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HEALTH LEGISLATION TRENDS IN THE 97TH CONGRESS
REMARKS OF U. S. SENATOR SPARK MATSUNAGA
AT A DINNER AT THE HAWAII MEDICAL ASSOCIATION BUILDING
HONOLULU, HAWAII
FRIDAY, SEPTEMBER 3, 1982

THANK YOU VERY MUCH, FRED (GILBERT). I VERY MUCH APPRECIATE BEING INVITED TO HAVE DINNER WITH YOU TONIGHT AND TO DISCUSS TRENDS IN HEALTH LEGISLATION AT THE FEDERAL LEVEL.

AS YOU NO DOUBT KNOW FROM READING THE NEWSPAPERS AND FROM REPORTS PROVIDED BY THE MEDICAL ASSOCIATION, THE ATTENTION OF CONGRESS AND THE ADMINISTRATION HAS BEEN PRIMARILY DEVOTED TO THE FEDERAL BUDGET DURING THE LAST TWO YEARS. WHILE EFFORTS TO CHECK INFLATION HAVE BEEN RELATIVELY SUCCESSFUL, AND WHILE THE ADMINISTRATION ACHIEVED ITS GOAL OF \$45 BILLION IN FEDERAL SPENDING CUTS IN FISCAL YEAR 1982, THE FEDERAL DEFICIT HAS CLIMBED TO UNPRECEDENTED LEVELS. THIS IS DUE IN PART TO OVERLY-OPTIMISTIC ECONOMIC PROJECTIONS MADE BY THE NEW ADMINISTRATION IN 1981, AND, IN PART, TO CONTINUED HIGH INTEREST RATES AND A DEEPENING RECESSION WHICH REDUCED REVENUES FROM TAXES AND REQUIRED INCREASED OUTLAYS IN RELIEF PROGRAMS SUCH AS UNEMPLOYMENT COMPENSATION.

THE INCREASING COST OF HEALTH CARE IN AMERICA HAS, OF COURSE, BEEN A MATTER OF CONCERN TO CONGRESS FOR MORE THAN TWO YEARS AND IT WILL COME AS NO SURPRISE TO YOU TO LEARN THAT FEDERALLY FUNDED PROGRAMS HAVE BEEN SUBJECTED TO VERY CLOSE SCRUTINY AND HAVE TAKEN THEIR SHARE OF FUNDING REDUCTIONS. IT IS WORTH NOTING, HOWEVER, THAT SOME OF THE ADMINISTRATION'S MORE INNOVATIVE AND REVOLUTIONARY PROPOSALS FOR REDUCING THE FEDERAL ROLE IN HEALTH CARE HAVE YET TO BE CONSIDERED AND ACTED ON BY THE CONGRESS. PROPOSALS DESIGNED TO REDUCE REGULATION AND INCREASE COMPETITION AMONG INSURERS AND PROVIDERS OF HEALTH SERVICES, FOR EXAMPLE, WERE THE SUBJECT OF HEARINGS IN THE HOUSE WAYS AND MEANS COMMITTEE LAST YEAR BUT HAVE NOT YET BEEN REPORTED. AN ADMINISTRATION PROPOSAL TO PHASE OUT THE HEALTH PLANNING PROGRAM AUTHORIZED UNDER TITLE XV OF THE PUBLIC HEALTH SERVICE ACT HAS YET TO BE ACTED ON BY CONGRESS AND MAY BE REJECTED. IN FACT, LEGISLATION TO RE-AUTHORIZE THE PROGRAM, ALBEIT AT A SMALLER AND LESS COSTLY LEVEL, IS AWAITING CONSIDERATION IN THE HOUSE. FINALLY, THE ADMINISTRATION'S RECOMMENDATION THAT 21 CATEGORICAL HEALTH

PROGRAMS BE CONSOLIDATED INTO THREE BLOCK GRANTS HAS BEEN ONLY PARTIALLY IMPLEMENTED. THE ESTABLISHMENT OF A (1) MATERNAL AND CHILD HEALTH BLOCK GRANT, (2) A PREVENTIVE HEALTH AND HEALTH SERVICES BLOCK GRANT, AND (3) A PRIMARY CARE BLOCK GRANT WAS AUTHORIZED UNDER THE PROVISIONS OF THE BUDGET RECONCILIATION ACT OF 1981, PUBLIC LAW 97-35, BUT, IN MANY CASES, THE SPECIFIC LEGISLATION TO IMPLEMENT THESE PROPOSALS HAS NOT BEEN PRESENTED TO CONGRESS.

INSTEAD, CONGRESS HAS CONTINUED ITS ATTACK ON WASTE AND FRAUD IN FEDERALLY FUNDED HEALTH PROGRAMS AND HAS SOUGHT TO MAKE SUCH PROGRAMS MORE COST EFFECTIVE. THE SAME BUDGET RECONCILIATION ACT OF 1981, SIGNED INTO LAW LAST AUGUST, INCLUDED A NUMBER OF SPENDING REDUCTIONS FOR MEDICARE AND MEDICAID, THE GOVERNMENT'S TWO HEALTH INSURANCE PROGRAMS. MEDICARE NOW COVERS 26 MILLION ELDERLY PEOPLE AND THREE MILLION DISABLED INDIVIDUALS. WITH RESPECT TO MEDICARE, P. L. 97-35, THE BUDGET RECONCILIATION ACT OF 1981:

- (1) LOWERED THE INPATIENT ROUTINE NURSING SALARY COST

DIFFERENTIAL FROM 8½ PERCENT TO FIVE PERCENT;

(2) LOWERED THE REIMBURSEMENT LIMITS ON HOSPITAL INPATIENT GENERAL ROUTINE OPERATING COSTS FROM 112 PERCENT TO 108 PERCENT OF THE MEAN COSTS FOR COMPARABLE HOSPITALS;

(3) ABOLISHED THE EXEMPTION FOR HOSPITALS WITH OCCUPANCY RATES ABOVE 80 PERCENT FROM RECEIVING REDUCED PAYMENT FOR SERVICES PROVIDED AT A LOWER LEVEL OF CARE IF THERE IS AN EXCESS OF BEDS IN THE AREA WHICH COULD BE CONVERTED TO LONG-TERM CARE BEDS;

(4) INCREASED THE MEDICARE PART B DEDUCTIBLE TO \$75;

(5) REQUIRED THE SECRETARY OF HEALTH AND HUMAN SERVICES TO ASSESS THE RELATIVE PERFORMANCE OF EACH PROFESSIONAL STANDARDS REVIEW ORGANIZATION (PSRO) AND AUTHORIZED THE TERMINATION OF UP TO 30 PERCENT OF EXISTING PSROs;

(6) PROVIDED THAT MEDICARE WOULD BECOME THE SECONDARY PAYOR FOR THE FIRST 12 MONTHS AFTER AN INDIVIDUAL HAS BEEN DETERMINED TO BE ELIGIBLE FOR MEDICARE END-STAGE RENAL DISEASE BENEFITS IF THE INDIVIDUAL HAS PRIVATE HEALTH

INSURANCE;

- (7) LIMITED PAYMENTS FOR OUTPATIENT SERVICES;
- (8) LOWERED HOME HEALTH CARE REIMBURSEMENT LIMITS; AND
- (9) AUTHORIZED CIVIL PENALTIES FOR PERSONS FILING
FRAUDULANT CLAIMS.

WITH RESPECT TO MEDICAID, A FEDERALLY-FUNDED, STATE-OPERATED PROGRAM OF MEDICAL ASSISTANCE FOR LOW INCOME PERSONS, THE 1981 BUDGET RECONCILIATION ACT AUTHORIZED CIVIL PENALTIES FOR PERSONS FILING FRAUDULENT CLAIMS. IN ADDITION, THE ACT INCLUDED REDUCTIONS IN FEDERAL MEDICAID MATCHING PAYMENTS TO THE STATES OF THREE PERCENT IN FISCAL YEAR 1982, FOUR PERCENT IN FISCAL YEAR 1983, AND FIVE PERCENT IN FISCAL YEAR 1984. HOWEVER, IN AUTHORIZING THIS SPENDING REDUCTION, CONGRESS ACTED TO PROVIDE INCENTIVES FOR THE STATES TO MAKE THEIR MEDICAID PROGRAMS MORE COST-EFFECTIVE. THE REDUCTIONS IN MATCHING GRANTS COULD BE LOWERED IF A STATE (1) OPERATES A QUALIFIED HOSPITAL COST REVIEW PROGRAM, (2) HAS AN UNEMPLOYMENT RATE EXCEEDING 150 PERCENT OF THE NATIONAL AVERAGE, AND (3) VIGOROUSLY PURSUES EFFORTS TO RECOVER PAYMENTS MADE ON

FRAUDULENT CLAIMS. STATES WERE ALSO GIVEN INCREASED FLEXIBILITY IN SETTING ELIGIBILITY REQUIREMENTS FOR THE MEDICAID PROGRAM AND IN PURCHASING MEDICAL SERVICES FOR THE PROGRAM.

DURING THE SECOND SESSION OF THE 97TH CONGRESS, THIS YEAR, ADDITIONAL SPENDING REDUCTIONS HAVE BEEN MADE IN THE MEDICARE AND MEDICAID PROGRAMS. THE RECENTLY PASSED REAGAN ADMINISTRATION TAX INCREASE BILL IS FAMOUS PRIMARILY BECAUSE OF THE NEW TAXES IT INCLUDED. HOWEVER, THE MEASURE ALSO INCLUDED A PACKAGE OF LEGISLATIVE CHANGES DESIGNED TO ACHIEVE A SAVINGS OF \$14,448 MILLION IN MEDICARE/MEDICAID EXPENDITURES IN FISCAL YEARS 1983, 1984, AND 1985. THE PREVIOUSLY ENACTED LIMIT ON MEDICARE PAYMENTS TO A HOSPITAL FOR ROUTINE OPERATING COSTS WAS EXPANDED TO INCLUDE ANCILLARY SERVICES SUCH AS LABORATORY WORK OR DRUGS, AND TO AVERAGE COST-PER-CASE. IN ADDITION, THE TAX BILL

--IMPOSES A SECOND LIMIT WHICH WOULD RESTRICT THE OVERALL ANNUAL RATE OF INCREASE IN A HOSPITAL'S PAYMENTS FOR OPERATING COSTS, CALCULATED ON A PER CASE BASIS. PAYMENTS WOULD BE THE SAME AS THE PREVIOUS YEAR'S AMOUNT, INCREASED BY THE SAME

PERCENTAGE THAT AN INDEX OF HOSPITAL WAGES AND PRICES INCREASED, PLUS ONE PERCENT. HOSPITALS WOULD BE REWARDED FOR KEEPING COSTS LOW; A HOSPITAL WHOSE COSTS ROSE LESS THAN THE AMOUNT CALCULATED BY THIS FORMULA COULD KEEP PART OF THE DIFFERENCE.

--PERMITS THE SECRETARY OF HEALTH AND HUMAN SERVICES TO CALCULATE MEDICARE PAYMENTS UNDER STATE STANDARDS INSTEAD OF THE NEW FEDERAL STANDARDS IF THE STATE HAS AN APPROVED COST CONTROL PROGRAM.

--REQUIRES THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO SUBMIT TO CONGRESS FOR CONSIDERATION A PLAN FOR "PROSPECTIVE" PAYMENTS TO HOSPITALS AND NURSING HOMES. UNDER SUCH A PLAN, PAYMENTS TO HOSPITALS AND NURSING HOMES WOULD BE A SET AMOUNT EACH YEAR BASED ON THE ANTICIPATED COST OF CARING FOR MEDICARE PATIENTS.

PRESENTLY, CHARGES ARE CALCULATED AFTER SERVICES ARE RENDERED.

--REQUIRES THE SECRETARY OF HEALTH AND HUMAN SERVICES

TO IMPLEMENT EXISTING LAW TO END THE PRIVATE ROOM
SUBSIDY FOR HOSPITALS, CREATE A SINGLE PAYMENT
LIMIT FOR NURSING FACILITIES AND HOME HEALTH
SERVICES, AND END DUPLICATE PAYMENTS FOR OUTPATIENT
SERVICES.

--REQUIRES THE SECRETARY OF HEALTH AND HUMAN
SERVICES TO IMPLEMENT EXISTING LAW ON PAYMENTS TO
HOSPITAL BASED DOCTORS. THE LAW RESTRICTS
PAYMENTS MADE UNDER PART B OF MEDICARE TO SERVICES
PROVIDED DIRECTLY BY DOCTORS AND REQUIRES PART A
RATES FOR RELATED SERVICES SUCH AS LABORATORY WORK
NOT PERFORMED DIRECTLY BY DOCTORS.

--BARS PAYMENTS FOR SERVICES CALCULATED ON A
PERCENTAGE BASIS UNLESS PERCENTAGE PAYMENTS ARE
CUSTOMARY OR PROVIDE INCENTIVES FOR EFFICIENCY.

--CANCELLED THE FIVE PERCENT DIFFERENTIAL ADDED
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--BARS REIMBURSEMENT OF HOSPITALS AND SKILLED NURSING FACILITIES FOR CHARITY CARE PROVIDED TO FULFILL THE REQUIREMENTS OF THE HILL-BURTON ACT, WHICH PROVIDES HOSPITAL CONSTRUCTION FUNDS.

--PROHIBITS REIMBURSEMENTS FOR SURGICAL ASSISTANTS IN TEACHING HOSPITALS EXCEPT IN UNUSUAL MEDICAL CIRCUMSTANCES. (IN TEACHING HOSPITALS, RESIDENTS NORMALLY SERVE AS SURGICAL ASSISTANTS FOR EDUCATIONAL PURPOSES AND AN ADDITIONAL SURGEON IS NOT NECESSARY.)

--REQUIRES HEALTH CARE PROVIDERS TO PAY INTEREST ON MEDICARE OVER-PAYMENTS WHEN THEY DELAY RETURNING THESE FUNDS TO THE GOVERNMENT.

--AUTHORIZED PROSPECTIVE PAYMENTS TO PREPAID HEALTH PLANS (HEALTH MAINTENANCE ORGANIZATIONS) THAT ENROLL MEDICARE BENEFICIARIES.

--AUTHORIZES PAYMENTS FOR HOSPICE SERVICES FOR TERMINALLY ILL PATIENTS.

--AUTHORIZES THE SECRETARY OF HEALTH AND HUMAN

SERVICES TO END A REQUIREMENT THAT A PATIENT MUST BE HOSPITALIZED FOR AT LEAST THREE DAYS IN ORDER TO QUALIFY FOR MEDICARE COVERAGE OF TREATMENT IN A SKILLED NURSING FACILITY.

--BARS MEDICARE AND MEDICAID PAYMENTS FOR DRUGS THAT DO NOT MEET FEDERAL STANDARDS FOR EFFECTIVENESS.

--STIPULATES THAT PREMIUM RATES FOR MEDICARE PART B COVERAGE SHOULD BE SET TO ENSURE THAT PREMIUMS WOULD COVER 25 PERCENT OF PROGRAM COSTS. PART B PREMIUMS WOULD RISE FROM THE CURRENT \$12.70 TO \$13.70 ON JULY 1, 1983 AND TO \$15.30 ON JULY 1, 1984.

THE TAX BILL ALSO PROVIDED ADDITIONAL FLEXIBILITY TO STATES IN THE ADMINISTRATION OF MEDICAID PROGRAMS. STATES WOULD BE PERMITTED TO REQUIRE MEDICAID BENEFICIARIES TO PAY NOMINAL FEES FOR MEDICAL SERVICES (WITH THE EXCEPTION OF CHILDREN AND PREGNANT WOMEN AND IN CASES OF MEDICAL EMERGENCIES). IN ADDITION, STATES WOULD BE PERMITTED TO PLACE LIENS ON THE PROPERTY OF PERMANENTLY

INSTITUTIONALIZED BENEFICIARIES TO RECOVER THE COSTS OF MEDICAL SERVICES IN CERTAIN CASES. THE BILL WOULD ALSO PERMIT STATES TO PROVIDE MEDICARE COVERAGE ON AN OUTPATIENT BASIS FOR DISABLED CHILDREN WHO NOW MUST BE HOSPITALIZED IN ORDER TO QUALIFY FOR COVERAGE.

FINALLY, THE TAX BILL ABOLISHED THE EXISTING PSRO PROGRAM AND AUTHORIZED THE SECRETARY OF HEALTH AND HUMAN SERVICES TO PROVIDE FOR PEER REVIEW OF MEDICARE AND MEDICAID CLAIMS BY CONTRACTING FOR SUCH REVIEWS WITH ORGANIZATIONS COMPOSED LARGELY OF PRACTICING PHYSICIANS.

IN MAKING THESE CHANGES IN THE MEDICARE AND MEDICAID PROGRAMS, CONGRESS HAS KEPT FIRMLY IN MIND THE FACT THAT THE ELDERLY ARE THE MOST FREQUENT CONSUMERS OF HEALTH CARE AND THAT THE BENEFICIARIES OF MEDICAID ARE FREQUENTLY CHILDREN AND THEIR MOTHERS. WE HAVE FOUGHT HARD TO PROTECT THESE BENEFICIARIES WHILE STILL PROVIDING FOR LEANER AND MORE EFFICIENT PROGRAMS. WHILE I ANTICIPATE THAT THERE WILL BE CONTINUED REDUCTIONS IN HEALTH CARE SPENDING DURING THE NEXT TWO YEARS, I EXPECT THAT THE FEDERAL GOVERNMENT WILL CONTINUE TO PLAY A MAJOR ROLE IN THIS AREA.

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Check:

Req. requires certification on patient condition on exact day of specified intervals -- even if no change expected -- If no certification no payment.