

Provider Cuts Lead to Denials of Care

The Subcommittee on Health Hearing: IPAB - The Controversial Consequences for Medicare and Seniors

July 13, 2011

Chairman Joe Pitts (R-PA) questions the Secretary of Health and Human Services, Kathleen Sebelius:

Pitts: I have a couple of questions I would like you to respond, yes or no. I am very concerned about IPAB. And assuming the cap is reached, suppose we reach a situation where IPAB then kicks in, I would like to walk through a couple of potential scenarios. Is it possible for IPAB to cut provider payments for dialysis, yes or no, if we reach that situation?

Sebelius: Mr. Chairman, the IPAB is directed by law to take into account any cut in provider services before they make recommendations.

Pitts: But the answer is, yes, they may cut provider payments...

Sebelius: They don't make any cuts, whatsoever, they make recommendations to Congress.

Pitts: For cuts in dialysis? So, if they make a recommendation for cuts for payments in dialysis, if those occurred, would at least some providers no longer be able to provide dialysis services? Yes or no?

Sebelius: Mr. Chairman, I have no idea what the scenario is, what the recommendations are or what Congress would do with those recommendations, but I assume um, that we would have that information if we had a real example.

Pitts: If those recommendations took place, would...

Sebelius: What are the recommendations, sir, and what is the payment cut and what is the rate at which providers would be repaid and what scenario and over what kind of period of time? I have no idea.

Pitts: Is it possible that some providers could be cut?

Sebelius: By?

Pitts: If those recommendations took place?

Sebelius: If Congress accepted the recommendations and made a decision that cuts in dialysis were appropriate, I assume that there could be some providers who would decide that that would not be a service they would any longer deliver, the same way they do with insurance coverage each and every day that providers make determinations...

Pitts: If that occurred, would fewer providers- as you have suggested could occur – mean that some seniors will have to wait longer for dialysis? Yes or no?

Sebelius: Mr. Chairman, as you know, any cut in services – certainly cost shifting to beneficiaries – could mean huge reductions in care that seniors would have the opportunity to receive. What we have right now is guaranteed benefits. What I think the House Republican plan would do is shift that to a guaranteed contribution, which would dramatically change the ability for seniors to access care.

Pitts: Yes, in this case we're talking about the law, not a proposal in the Republican budget. IPAB is commanded to save money by cutting reimbursements. They will have to make the decisions about which services are more or less 'critical', what patients can wait longer, uh – is that not rationing?

Sebelius: Mr. Chairman, IPAB is not directed to make recommendations based on cuts and reimbursements. It's directed to make recommendations based on what ways to reduce costs overall, if indeed Medicare spending targets per capita exceeds what the actuary hits as a target goal. I think that there are a variety of areas and one is the work we're currently doing in the partnership for patients, where you actually go after costs that are unnecessary and being paid right now in the system. Fifty billion dollars worth of costs with care that should have never been realized in the first place. Those are the kind of recommendations I think are significant and make a huge impact...

Pitts: Let me ask you again about the statute. Where in the statute is there a prohibition on IPAB making recommendations that could reduce access to breast cancer treatment- say mammograms.

Sebelius: IPAB is forbidden by law to make recommendations that would ration care and I would say any kind of prohibition on accessing treatment would be rationing care.

Pitts: Are there any provisions in the law that would explicitly state IPAB cannot reduce access to those treatments like that?

Sebelius: They may not – by law - ration care. And I think anyone would suggest that a reduction or an elimination of a treatment is rationing care. That is forbidden by law.

Pitts: Suppose someone believes, in fact, that IPAB has rationed care. What redress does that person have to challenge the Board's decision?

Sebelius: A court challenge.

Pitts: Are the Board's recommendations exempt from judicial or administrative review?

Sebelius: The judicial, um, oversight, that is limited is really – I think regarding my, or any future Secretary of HHS implementation of recommendations when they have followed the law. I don't think anyone – certainly our general council feels very strongly that nothing would, uh, that language is consistent with language that's currently in the Medicaid statute – I mean Medicare statute – as they move forward. Nothing would certainly give, either the IPAB or a future Secretary of HHS or the current Secretary of HHS any ability to violate the law. And that would always be subject to judicial review.

Pitts: Chair thanks Gentle Lady...