

HOUSE BILL 736

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CF SB 722

By: Delegates Tarrant, Bromwell, Costa, Cullison, Elliott, Frank, Kach, A. Kelly, Krebs, Morhaim, Murphy, Nathan-Pulliam, Pena-Melnyk, Ready, Reznik, ~~and V. Turner~~ V. Turner, Donoghue, Hammen, Hubbard, Kipke, McDonough, Oaks, and Pendergrass

Introduced and read first time: February 10, 2011

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2011

CHAPTER _____

1 AN ACT concerning

2 **Electronic Health Records – Incentives for Health Care Providers –**
3 **Regulations**

4 FOR the purpose of ~~exempting a certain group model health maintenance organization~~
5 ~~from the definition of “carrier” for purposes of certain regulations relating to~~
6 ~~electronic health records; requiring certain regulations relating to electronic~~
7 ~~health records to require incentives for the adoption and use of electronic health~~
8 ~~records for each of certain types of health care providers; requiring certain~~
9 ~~regulations to permit certain health care providers to specify to a~~
10 ~~State-regulated payor the form of incentive the health care provider will~~
11 ~~receive; requiring certain regulations to include an option for the health care~~
12 ~~provider to specify that the incentive shall be limited to a certain monetary~~
13 ~~payment~~ requiring certain incentives for the adoption and use of electronic
14 health records to be paid in cash, unless a certain payor and health care
15 provider agree on an incentive of equivalent value; prohibiting certain
16 regulations from requiring a group model health maintenance organization from
17 providing a certain incentive to a certain health care provider; requiring the
18 regulations to allow a State-regulated payor to request certain information and,
19 under certain circumstances, reduce an incentive amount; authorizing the
20 Maryland Health Care Commission to audit a State-regulated payor and a
21 health care provider and, under certain circumstances, request corrective
22 action; requiring the Commission to conduct a certain study and report on its

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 findings to certain committees of the General Assembly on or before a certain
 2 date; and generally relating to electronic health records.

3 BY repealing and reenacting, without amendments,
 4 Article – Health – General
 5 Section 19–142(a), ~~(b)~~, (c), (d), (e), and (h)
 6 Annotated Code of Maryland
 7 (2009 Replacement Volume and 2010 Supplement)

8 BY repealing and reenacting, with amendments,
 9 Article – Health – General
 10 Section ~~19–142(b) and~~ 19–143(d)
 11 Annotated Code of Maryland
 12 (2009 Replacement Volume and 2010 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article – Health – General**

16 19–142.

17 (a) In this Part IV of this subtitle the following words have the meanings
 18 indicated.

19 (b) “Carrier” means:

20 (1) An insurer;

21 (2) A nonprofit health service plan;

22 (3) A health maintenance organization, ~~OTHER THAN A GROUP~~
 23 ~~MODEL HEALTH MAINTENANCE ORGANIZATION AS DEFINED IN § 19-713.6 OF~~
 24 ~~THIS TITLE~~; or

25 (4) Any other person that provides health benefit plans subject to
 26 regulation by the State.

27 (c) “Electronic health record” means an electronic record of health–related
 28 information on an individual that:

29 (1) Includes patient demographic and clinical health information; and

30 (2) Has the capacity to:

31 (i) Provide clinical decision support;

- 1 (ii) Support physician order entry;
- 2 (iii) Capture and query information relevant to health care
3 quality; and
- 4 (iv) Exchange electronic health information with and integrate
5 the information from other sources.

6 (d) (1) “Health benefit plan” means a hospital or medical policy, contract,
7 or certificate issued by a carrier.

8 (2) “Health benefit plan” does not include:

- 9 (i) Coverage for accident or disability income insurance;
- 10 (ii) Coverage issued as a supplement to liability insurance;
- 11 (iii) Liability insurance, including general liability insurance and
12 automobile liability insurance;
- 13 (iv) Workers’ compensation or similar insurance;
- 14 (v) Automobile or property medical payment insurance;
- 15 (vi) Credit-only insurance;
- 16 (vii) Coverage for on-site medical clinics;
- 17 (viii) Dental or vision insurance;
- 18 (ix) Long-term care insurance or benefits for nursing home care,
19 home health care, community-based care, or any combination of these;
- 20 (x) Coverage only for a specified disease or illness;
- 21 (xi) Hospital indemnity or other fixed indemnity insurance; or
- 22 (xii) The following benefits if offered as a separate insurance
23 policy:
- 24 1. Medicare supplemental health insurance, as defined
25 in § 1882(g)(1) of the Social Security Act;
- 26 2. Coverage supplemental to the coverage provided
27 under Chapter 55 of Title 10, U.S.C.; or

1 3. Similar supplemental coverage provided to coverage
2 under an employer–sponsored plan.

3 (e) (1) “Health care provider” means:

4 (i) A person who is licensed, certified, or otherwise authorized
5 under the Health Occupations Article to provide health care in the ordinary course of
6 business or practice of a profession or in an approved education or training program;
7 or

8 (ii) A facility where health care is provided to patients or
9 recipients, including:

- 10 1. A facility, as defined in § 10–101(e) of this article;
- 11 2. A hospital, as defined in § 19–301 of this title;
- 12 3. A related institution, as defined in § 19–301 of this
13 title;
- 14 4. An outpatient clinic;
- 15 5. A freestanding medical facility, as defined in
16 § 19–3A–01 of this title;
- 17 6. An ambulatory surgical facility, as defined in
18 § 19–3B–01 of this title; and
- 19 7. A nursing home, as defined in § 19–1401 of this title.

20 (2) “Health care provider” does not include a health maintenance
21 organization as defined in § 19–701 of this title.

22 (h) (1) “State–regulated payor” means:

23 (i) The State Employee and Retiree Health and Welfare
24 Benefits Program; and

25 (ii) A carrier issuing or delivering health benefit plans in the
26 State.

27 (2) “State–regulated payor” does not include a managed care
28 organization as defined in Title 15, Subtitle 1 of this article.

29 19–143.

1 (d) (1) On or before September 1, 2011, the Commission, in consultation
2 with the Department, payors, and health care providers, shall adopt regulations that
3 require State-regulated payors to provide incentives to health care providers to
4 promote the adoption and meaningful use of electronic health records.

5 (2) Incentives required under the regulations:

6 (i) Shall have monetary value;

7 (ii) Shall facilitate the use of electronic health records by health
8 care providers in the State;

9 (iii) To the extent feasible, shall recognize and be consistent with
10 existing payor incentives that promote the adoption and meaningful use of electronic
11 health records;

12 (iv) Shall take into account:

13 1. Incentives provided to health care providers under
14 Medicare and Medicaid; and

15 2. Any grants or loans that are available to health care
16 providers from the federal government; ~~and~~

17 (v) May include:

18 1. Increased reimbursement for specific services;

19 2. Lump sum payments;

20 3. Gain-sharing arrangements;

21 4. Rewards for quality and efficiency;

22 5. In-kind payments; and

23 6. Other items or services to which a specific monetary
24 value can be assigned; AND

25 (VI) SHALL BE PAID IN CASH, UNLESS THE
26 STATE-REGULATED PAYOR AND THE HEALTH CARE PROVIDER AGREE ON AN
27 INCENTIVE OF EQUIVALENT VALUE.

28 (3) The regulations ~~[need not]~~ ~~SHALL~~

1 ~~(H)~~ require incentives for the adoption and meaningful use of
 2 electronic health records, for each type of health care provider listed in § 19-142(e) of
 3 this subtitle;

4 ~~(H) PERMIT THE HEALTH CARE PROVIDER TO SPECIFY TO A~~
 5 ~~STATE-REGULATED PAYOR THE FORM OF INCENTIVE THE HEALTH CARE~~
 6 ~~PROVIDER WILL RECEIVE; AND~~

7 ~~(H) INCLUDE AN OPTION FOR THE HEALTH CARE PROVIDER~~
 8 ~~TO SPECIFY THAT THE INCENTIVE SHALL BE LIMITED SOLELY TO A DIRECT~~
 9 ~~MONETARY PAYMENT.~~

10 (4) If federal law is amended to allow the State to regulate payments
 11 made by entities that self-insure their health benefit plans, regulations adopted under
 12 this section shall apply to those entities to the same extent to which they apply to
 13 State-regulated payors.

14 **(5) REGULATIONS ADOPTED UNDER THIS SUBSECTION:**

15 **(I) MAY NOT REQUIRE A GROUP MODEL HEALTH**
 16 **MAINTENANCE ORGANIZATION, AS DEFINED IN § 19-713.6 OF THIS TITLE, TO**
 17 **PROVIDE AN INCENTIVE TO A HEALTH CARE PROVIDER WHO IS EMPLOYED BY**
 18 **THE MULTISPECIALTY GROUP OF PHYSICIANS UNDER CONTRACT WITH THE**
 19 **GROUP MODEL HEALTH MAINTENANCE ORGANIZATION; AND**

20 **(II) SHALL ALLOW A STATE-REGULATED PAYOR TO:**

21 **1. REQUEST INFORMATION FROM A HEALTH CARE**
 22 **PROVIDER TO VALIDATE THE HEALTH CARE PROVIDER'S INCENTIVE CLAIM; AND**

23 **2. IF THE STATE-REGULATED PAYOR DETERMINES**
 24 **THAT A DUPLICATE INCENTIVE PAYMENT OR AN OVERPAYMENT HAS BEEN**
 25 **MADE, REDUCE THE INCENTIVE AMOUNT.**

26 **(6) THE COMMISSION MAY:**

27 **(I) AUDIT THE STATE-REGULATED PAYOR OR THE HEALTH**
 28 **CARE PROVIDER FOR COMPLIANCE WITH THE REGULATIONS ADOPTED UNDER**
 29 **THIS SUBSECTION; AND**

30 **(II) IF IT FINDS NONCOMPLIANCE, REQUEST CORRECTIVE**
 31 **ACTION.**

32 SECTION 2. AND BE IT FURTHER ENACTED, That:

1 (a) The Maryland Health Care Commission, in consultation with the
2 Department of Health and Mental Hygiene, payors, and health care providers, shall
3 study whether the scope of health care providers that may receive incentives for the
4 adoption and use of electronic health records from State-regulated payors should be
5 expanded beyond primary care providers.

6 (b) On or before January 1, 2013, the Maryland Health Care Commission
7 shall report on its findings under subsection (a) of this section to the Senate Finance
8 Committee and the House Health and Government Operations Committee, in
9 accordance with § 2-1246 of the State Government Article.

10 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
11 effect July 1, 2011.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.