

Chapter 533

(House Bill 736)

AN ACT concerning

Electronic Health Records – Incentives for Health Care Providers – Regulations

FOR the purpose of ~~exempting a certain group model health maintenance organization from the definition of "carrier" for purposes of certain regulations relating to electronic health records; requiring certain regulations relating to electronic health records to require incentives for the adoption and use of electronic health records for each of certain types of health care providers; requiring certain regulations to permit certain health care providers to specify to a State-regulated payor the form of incentive the health care provider will receive; requiring certain regulations to include an option for the health care provider to specify that the incentive shall be limited to a certain monetary payment; requiring certain incentives for the adoption and use of electronic health records to be paid in cash, unless a certain payor and health care provider agree on an incentive of equivalent value; prohibiting certain regulations from requiring a group model health maintenance organization from providing a certain incentive to a certain health care provider; requiring the regulations to allow a State-regulated payor to request certain information and, under certain circumstances, reduce an incentive amount; authorizing the Maryland Health Care Commission to audit a State-regulated payor and a health care provider and, under certain circumstances, request corrective action; requiring the Commission to conduct a certain study and report on its findings to certain committees of the General Assembly on or before a certain date; and generally relating to electronic health records.~~

BY repealing and reenacting, without amendments,

Article – Health – General
Section 19–142(a), (b), (c), (d), (e), and (h)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,

Article – Health – General
Section ~~19–142(b)~~ and 19–143(d)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

19–142.

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

(b) “Carrier” means:

- (1) An insurer;
- (2) A nonprofit health service plan;

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

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

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

- (1) Includes patient demographic and clinical health information; and
- (2) Has the capacity to:
 - (i) Provide clinical decision support;
 - (ii) Support physician order entry;
 - (iii) Capture and query information relevant to health care quality; and
 - (iv) Exchange electronic health information with and integrate the information from other sources.

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

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

- (i) Coverage for accident or disability income insurance;
- (ii) Coverage issued as a supplement to liability insurance;

(iii) Liability insurance, including general liability insurance and automobile liability insurance;

(iv) Workers' compensation or similar insurance;

(v) Automobile or property medical payment insurance;

(vi) Credit-only insurance;

(vii) Coverage for on-site medical clinics;

(viii) Dental or vision insurance;

(ix) Long-term care insurance or benefits for nursing home care, home health care, community-based care, or any combination of these;

(x) Coverage only for a specified disease or illness;

(xi) Hospital indemnity or other fixed indemnity insurance; or

(xii) The following benefits if offered as a separate insurance policy:

1. Medicare supplemental health insurance, as defined in § 1882(g)(1) of the Social Security Act;

2. Coverage supplemental to the coverage provided under Chapter 55 of Title 10, U.S.C.; or

3. Similar supplemental coverage provided to coverage under an employer-sponsored plan.

(e) (1) "Health care provider" means:

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

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

1. A facility, as defined in § 10-101(e) of this article;

2. A hospital, as defined in § 19-301 of this title;

3. A related institution, as defined in § 19–301 of this title;
4. An outpatient clinic;
5. A freestanding medical facility, as defined in § 19–3A–01 of this title;
6. An ambulatory surgical facility, as defined in § 19–3B–01 of this title; and
7. A nursing home, as defined in § 19–1401 of this title.

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

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

- (i) The State Employee and Retiree Health and Welfare Benefits Program; and
- (ii) A carrier issuing or delivering health benefit plans in the State.

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

19–143.

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

(2) Incentives required under the regulations:

- (i) Shall have monetary value;
- (ii) Shall facilitate the use of electronic health records by health care providers in the State;
- (iii) To the extent feasible, shall recognize and be consistent with existing payor incentives that promote the adoption and meaningful use of electronic health records;

(iv) Shall take into account:

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

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

(v) May include:

1. Increased reimbursement for specific services;

2. Lump sum payments;

3. Gain-sharing arrangements;

4. Rewards for quality and efficiency;

5. In-kind payments; and

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

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

(3) The regulations ~~need not~~ SHALL:

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

~~(II) PERMIT THE HEALTH CARE PROVIDER TO SPECIFY TO A STATE REGULATED PAYOR THE FORM OF INCENTIVE THE HEALTH CARE PROVIDER WILL RECEIVE; AND~~

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

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

(5) REGULATIONS ADOPTED UNDER THIS SUBSECTION:

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

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

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

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

(6) THE COMMISSION MAY:

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That:

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

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

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

Approved by the Governor, May 19, 2011.