Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 758 (Delegate Eckardt, *et al.*)
Health and Government Operations

Health Care Facilities - Reporting and Reimbursement for Never Events

This bill requires hospitals, nursing homes, and long-term care facilities to report a "never event" to the Secretary of Health and Mental Hygiene and the federal Centers for Medicare and Medicaid Services (CMS) under specified conditions. The bill also prohibits payments to those facilities for treatment related to the never event.

Fiscal Summary

State Effect: Office of Health Care Quality (OHCQ) expenditures increase by $135,300 in FY 2010 for personnel and one-time contractual expenses related to reporting of never events. A 50% federal match is anticipated for personnel expenses only. Medicaid expenditures (50% general funds, 50% federal funds) decrease by a potentially minimal amount to the extent payment is prohibited for never events beginning in FY 2010. Future years reflect annualization and inflation. No effect on revenues.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Revenues	$0	$0	$0	$0	$0
GF Expenditure	85,900	72,200	75,600	79,100	82,800
FF Expenditure	49,300	67,000	70,200	73,700	77,300
Net Effect	($135,300)	($139,200)	($145,800)	($152,800)	($160,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Small business health care facilities may lose reimbursement from Medicaid for never events.

Analysis

Bill Summary: "Never event" refers to serious errors in medical care that are clearly identifiable, preventable, and serious in their consequences for patients, and that indicate a real problem in the safety and credibility of a health care facility. Examples of never events include surgery on the wrong body part, a foreign body left in a patient after surgery, mismatched blood transfusion, or major medication errors.

Hospitals and nursing homes that admit or treat a patient from a long-term care facility for a never event must report the event to the Secretary and CMS within 10 days of admission or treatment. Failure to report is a rebuttable presumption that the event occurred at the hospital or nursing home unless previously reported by the long-term care facility. Long-term care facilities that admit or readmit a patient who has experienced a never event in a hospital or nursing home must also report the event or there is a rebuttable presumption that the event occurred at the long-term care facility unless previously reported by the hospital or nursing home.

A hospital, nursing home, or long-term care facility deemed responsible for a never event may not receive reimbursement from Medicaid or Medicare for any treatment related to the event. Additionally, a long-term care facility deemed responsible for a never event must reimburse Medicaid or Medicare for any payments made by those payors to a hospital or nursing home for treatment related to the never event.

The Secretary must seek any authorizations or approvals required to implement the bill from the U.S. Department of Health and Human Services. Any action taken to enforce the bill is in addition to any other action allowed under State or federal law.

Current Law: The federal Medicare program prohibits payments for certain never events and hospital-acquired conditions. Maryland has a unique Medicare waiver that allows the State to have an "all-payor" system in which every payor for hospital care – including Medicaid, Medicare, insurance companies, and uninsured individuals – pays the same rates for hospital services. Because of this waiver, Maryland is exempt from Medicare payment regulations and thus the prohibition on payment for never events under this bill.

The Patients' Safety Act of 2001 (Chapter 318 of 2001) required the Maryland Health Care Commission (MHCC), in consultation with the Department of Health and Mental Hygiene (DHMH), to study the feasibility of developing a system for reducing the incidence of preventable adverse medical events in the State, including a reporting system.

The Code of Maryland Regulations requires hospitals to implement a patient safety program and establish a near-miss and adverse event reporting process. Hospitals must report any level 1 adverse event (an adverse event that results in death or serious disability) to OHCQ within 5 days of the hospital's knowledge that the event occurred and submit a root cause analysis and action plan for the event to OHCQ within 60 days. Failure to have a patient safety program in accordance with regulations is subject to revocation of licensure or a fine of $500 for each day that the hospital is in violation of regulations.

Background: In 1999, the Institute of Medicine (IOM) estimated that as many as 98,000 deaths each year were attributable to medical errors. IOM recommended that error-related deaths be decreased by 50% over five years. Another study, reviewing 18 types of medical events, concluded that medical errors may account for 2.4 million extra hospital days, $9.3 billion in excess charges (for all payors), and 32,600 deaths.

The Health Services Cost Review Commission (HSCRC) has been working on an all-payor approach to include incentives for hospitals to prevent hospital-acquired conditions. Using Maryland's precise hospital data systems, the incremental cost of hospital-acquired conditions can be isolated and blocked from payment. This policy will be considered for a final recommendation and commission vote at the March 2009 HSCRC meeting. If implemented, the hospital-acquired conditions policy could save between $5.0 and $9.0 million in the $8.0 billion inpatient hospital system.

In 2004, MHCC designated the Maryland Patient Safety Center to bring together health care providers to study the causes of unsafe practices and put practical improvements in place to prevent errors in hospitals and nursing homes. In fiscal 2008, the Maryland Patient Safety Program received reports of 182 level 1 adverse events, an 8.3% increase over fiscal 2007. As in the previous three years, the most frequently reported adverse events were falls. Since reporting began in March 2004, 623 level 1 adverse events have been reported by Maryland hospitals.

Effective September 1, 2008, Maryland hospitals voluntarily waive payment for the entire hospital patient stay for seven serious adverse events if the event results in serious disability lasting greater then seven days or death. These events are (1) surgery on the wrong body part; (2) surgery on the wrong patient; (3) wrong surgical procedure; (4) unintended retention of a foreign object; (5) air embolism that occurs while being treated in a hospital; (6) medication error attributable to the hospital; and (7) hemolytic reaction due to administration of incompatible blood or blood products. Beyond these specific events, Maryland hospitals individually evaluate, on a case-by-case basis, whether full or partial payment should be waived for other events that are (1) preventable; (2) within the control of the hospital; (3) the result of a mistake made in the hospital; and (4) result in patient death or serious disability.

According to OHCQ, more than 1,700 licensed Maryland health care facilities are required to report never events under the bill, including 1,416 assisted living facilities, 233 nursing homes, 69 hospitals, and 4 intermediate care facilities for the mentally retarded/State residential centers.

State Expenditures: OHCQ expenditures increase by $135,276 in fiscal 2010, which accounts for the bill's October 1, 2009 effective date. This estimate reflects the cost of hiring two full-time health facility surveyors to monitor never event reporting requirements under the bill and contractual services to upgrade OHCQ's database to handle additional reporting. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. OHCQ anticipates a 50% federal match on personnel expenses.

Positions	2
Salaries and Fringe Benefits	$98,691
Contractual Expenses	24,000
Operating Expenses	12,585
Total FY 2010 State Expenditures	**$135,276**

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover and 1% annual increases in ongoing operating expenses.

According to DHMH, Medicaid expenditures (50% general funds, 50% federal funds) may decrease by a potentially minimal amount to the extent payment is prohibited for never events beginning in fiscal 2010. The amount cannot be reliably estimated at this time but is anticipated to be negligible.

Additional Information

Prior Introductions: None.

Cross File: SB 435 (Senator Della) - Finance.

Information Source(s): Agency for Healthcare Quality and Research, Centers for Medicare and Medicaid Services, National Quality Forum, CareFirst BlueCross BlueShield, Maryland Hospital Association, Maryland Health Insurance Plan, Department of Health and Mental Hygiene, Maryland Insurance Administration, University of Maryland Medical System, Department of Legislative Services

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