Department of Legislative Services

Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 736 (Delegate Tarrant, *et al.*)

Health and Government Operations Finance

Electronic Health Records - Incentives for Health Care Providers - Regulations

This bill specifies that incentives to health care providers to promote the adoption and meaningful use of electronic health records (EHRs), as required under regulations adopted by the Maryland Health Care Commission (MHCC), must be paid in cash, unless an incentive of equivalent value is agreed upon by the State-regulated payor and the health care provider. The bill also specifies certain items that must be included in the regulations relating to the incentive.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: Special fund expenditures for MHCC increase to the extent that audits of State-regulated payors or health care providers are conducted under the bill. The required study and report can be completed by MHCC using existing budgeted resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The regulations adopted by MHCC may not require a group model health maintenance organization (HMO) to provide an incentive to certain providers under contract with the group model HMO.

The regulations must allow a State-regulated payor to request information from a provider to verify a claim and reduce the incentive amount in the event of overpayment or duplicative payment. MHCC is authorized to conduct compliance audits and request corrective action if warranted.

MHCC, in consultation with specified stakeholders, must study and report to specified committees of the General Assembly by January 1, 2013, on whether the scope of health care providers eligible for incentives should be expanded beyond primary care providers.

Current Law: Chapter 689 of 2009 requires MHCC, by September 1, 2011, to adopt regulations that require State-regulated payors to provide incentives to health care providers to promote the adoption and meaningful use of EHRs. State-regulated payors include the State plan and any insurer, nonprofit health service plan, or HMO (carriers) that issues or delivers health benefit plans in the State. Any incentives must have monetary value, facilitate the use of EHRs, recognize and be consistent with existing payor incentives regarding EHRs, and take into account incentives under Medicare and Medicaid and available federal grants or loans. Incentives may include increased reimbursement for specific services, lump-sum payments, gain-sharing arrangements, rewards for quality and efficiency, in-kind payments, and other items or services to which a specific monetary value can be assigned. The regulations need not require incentives for all health care providers defined under the bill.

Chapter 689 includes a provision that enables the Senate Finance Committee and the House Health and Government Operations Committee to have 60 days to review and comment on MHCC's proposed EHR incentive regulations.

Background: Maryland is the first state to require state-regulated payors to provide incentives of monetary value to select health care providers to promote the adoption and use of EHRs. At present, only Medicare and Medicaid offer incentives to providers for the adoption and meaningful use of EHRs. These incentives are made available to select providers under certain circumstances through the federal Health Information Technology for Economic and Clinical Health (HITECH) Act.

Based on a public meeting in September 2009 and additional stakeholder input, MHCC developed draft EHR incentive regulations as required under Chapter 689, which were published in the July 30, 2010 issue of the *Maryland Register*. MHCC intends to take final action on the regulations at its April 2011 meeting.

The draft regulations note that the EHR adoption incentive is a one-time-only incentive available to nonhospital-owned practices. Eligible practices are single groups of primary care physicians (family, general, geriatric, internal medicine, pediatric, or gynecologic practice). Payors must notify practices of the monetary incentive value, how it will be distributed, and over what period of time (up to 12 months). Under the draft regulations, eligible practices will receive an incentive of monetary value from the payor based on the payor's share of members treated by the practice. Incentives will be calculated at $8 per member with a maximum monetary value of $15,000 per practice per payor. The eligibility time period for a practice to apply for an EHR eligibility incentive is January 1, 2011, through December 31, 2014. According to MHCC, the cost to State-regulated payors for the EHR incentive program is estimated at $27.7 million based on 1,844 primary care practices in nonhospital settings across the State.

Kaiser Permanente is the only group model HMO in Maryland. Most physicians working with Kaiser exclusively contract with the organization, though a few "external" physician groups are used in some areas of the State. Kaiser reports that, under the proposed regulations, it intends to provide EHR adoption incentives to those "external" practices.

Additional Comments: HB 1146 of 2011, a Department of Budget and Management departmental bill, repeals language that requires the State plan to provide EHR incentives and instead expresses legislative intent that the State plan support the incentives through its contracts with certain third-party administrators.

Additional Information

Prior Introductions: None.

Cross File: SB 722 (Senator Rosapepe) - Finance.

Information Source(s): *House Bill 706: Electronic Health Records – Regulation and Reimbursement, Legislative Report*, Maryland Health Care Commission, December 2010; Department of Budget and Management; Maryland Health Insurance Plan; Department of Health and Mental Hygiene; Maryland Insurance Administration; Department of Legislative Services

Fiscal Note History:	First Reader - February 21, 2011
ncs/mwc	Revised - House Third Reader - March 28, 2011
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