Department of Legislative Services

Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1146 (Chair, Health and Government Operations Committee)(By Request - Departmental - Budget and Management)

Health and Government Operations | Finance and Budget and Taxation

Electronic Health Records - State Employee and Retiree Health and Welfare Benefits Program - Incentives

This departmental bill repeals language that requires the State Employee and Retiree Health and Welfare Benefits Program (State plan) to provide incentives to health care providers to promote the adoption and meaningful use of electronic health records (EHRs) and instead states that it is the intent of the General Assembly that the State plan support the incentives through contracts between the State plan and certain third-party administrators.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: Expenditures for the State plan decrease by a minimal amount beginning in FY 2012 due to a reduction in administrative expenses. Revenues are not affected.

Local Effect: None.

Small Business Effect: The Department of Budget and Management (DBM) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment as discussed below. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: Chapter 689 of 2009 requires the Maryland Health Care Commission (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 includes the State plan and any insurer, nonprofit health service plan, or HMO 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 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.*

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. MHCC intends to take final action on the regulations at its April 2011 meeting.

State Fiscal Effect: According to DBM, the bill is intended to avoid a potential increase in State employee and retiree health care benefit premiums that would be necessary to cover increased costs if the State plan is required to provide EHR adoption incentive payments directly to providers.

Based on the current proposed regulations, the State plan's share of EHR adoption incentive payments could be as much as $1.8 million, based on a maximum payment of $8 per member for Maryland residents (228,994 Maryland residents covered under the State plan).

Depending on the distribution of State plan enrollees among eligible physician practices, actual incentive payments could be less as there is a cap of $15,000 per practice per payor. Furthermore, MHCC indicates that half of the maximum incentive payment (up to $7,500) is payable to a practice when it adopts an EHR system, while the remaining payment (up to an additional $7,500) is based on a practice meeting certain quality and care delivery performance standards. In this case, the State will face initial incentive payments of as much as $915,976, with remaining incentive payments of as much as an additional $915,976, contingent upon individual practices meeting performance standards of the State plan.

In the absence of the bill, DBM will incur additional administrative expenses to establish mechanisms to negotiate and provide EHR adoption incentives directly to eligible providers. DBM is also concerned that current law potentially subjects the State plan to paying the incentives twice – once directly and once through contracts with third-party administrators. Based on the current proposed regulations, Legislative Services concludes that the State plan would only be subject to providing an incentive once – through its contracts with third-party administrators. The bill clarifies that the State plan is only required to provide incentives through its contracts; therefore, no additional administrative expenses will be incurred by the State plan.

Additional Comments: As amended, SB 722/HB 736 of 2011 specify that (1) EHR adoption incentives must be paid in cash unless an incentive of equivalent value is agreed upon by the State-regulated payor and the health care provider; and (2) 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management, Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

Fiscal Note History: First Reader - March 15, 2011
ncs/mwc Revised - House Third Reader - April 1, 2011

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Health Records – Definition of State-Regulated Payor – State Employee and Retiree Health and Welfare Benefits Program

BILL NUMBER: HB 1146

PREPARED BY: Department of Budget and Management

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

This bill would remove a source of incentives that small business health care providers are to receive toward the cost of adopting and utilizing EHRs. The estimate could be between $2 million and $15 million.