Department of Legislative Services

Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 1075 (Senator Pipkin)
Finance

State Medicare Waivers - Applications, Reapplications, Modifications, or Amendments - Legislative Approval Required

This bill prohibits the Department of Health and Mental Hygiene (DHMH) and the Health Services Cost Review Commission (HSCRC) from submitting an application, reapplication, modification, or amendment to a State Medicare waiver to the federal Centers for Medicare and Medicaid Services (CMS) until the General Assembly approves the application, reapplication, modification, or amendment through legislation enacted into law.

Fiscal Summary

State Effect: The bill could have a significant operational effect on DHMH to the extent that it delays implementation of the model design proposal recently submitted by DHMH to CMS. A delay could inhibit implementation of policies intended to control hospital utilization, volume, and cost. Any fiscal impact cannot be reliably estimated at this time.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background: Maryland's hospital rate-setting system operates under a federal Medicare waiver that requires Maryland to keep growth in Medicare inpatient per-case charges lower than the national average. HSCRC's authority to standardize hospital rates for all payors, including Medicare and Medicaid, was established in 1980 by federal legislation. At this time, Maryland is the only state with an all-payor,

rate-regulated system. To maintain the waiver, the rate of growth in Medicare inpatient per-case charges to Maryland hospitals from 1981 to the present must remain no greater than the rate of growth at hospitals nationally over the same time period. As of June 2011, the most recent data available, the cumulative growth of Maryland Medicare inpatient per-case charges has been 342.6%, compared to national growth of 362.3%. However, estimates for fiscal 2012 and 2013 project narrowing of this gap.

Status of Maryland's Medicare Waiver: HSCRC measures Maryland's waiver performance using the "waiver cushion" test. This represents the amount that Medicare inpatient per-case charges to Maryland could grow, assuming zero national growth, before the State failed to meet its waiver requirements. HSCRC has determined that 10.0% is the ideal level for the cushion. The larger the cushion, the more flexibility HSCRC has to adjust rates while simultaneously weathering Medicare payment trends. While the cushion has fluctuated below and above 10.0% over the past decade, in fiscal 2011, the cushion fell to 4.46%, and estimates indicate that it will continue to hover close to 0.0% in fiscal 2012 and 2013.

Efforts to Improve Waiver Performance: For the short term, HSCRC tightened control of the rate-setting system to improve the waiver cushion. In March 2012, HSCRC approved several emergency measures that have resulted in marginal improvement in anticipated waiver performance. To address erosion in the waiver cushion long term, HSCRC met with payors, DHMH, and hospitals to discuss modernization of the waiver. While all parties agree that a new waiver approach is necessary, there is not yet consensus on what that new approach should be.

Current Model Design Proposal: According to DHMH, the current waiver has important limitations. Namely, the focus on per-case costs does not provide incentives aligned to population health and comprehensive coordinated care across different settings. To address these limitations, on March 26, 2013, HSCRC submitted a 136-page model design proposal to CMS. The proposal seeks to modernize Maryland's rate-setting system to overcome current waiver limitations and provide an "innovative and creative solution to critical health care challenges." The proposal's hypothesis is that an all-payor system that is accountable for the total cost of care on a per-capita basis is an effective model for establishing policies and incentives to drive system progress toward achieving the three-part aim of enhanced patient experience, better population health, and lower costs.

According to the proposal, the model design would begin with accountability for the total cost of care on a per-capita basis. Over the first five years, the State would commit to limiting inpatient and outpatient hospital costs for all payors to a trend based on the State's long-term gross State product (GSP). To constrain per-capita cost growth, the State would accelerate a broad range of delivery reform efforts including gain-sharing

between hospitals and physicians, accountable care organizations, readmission programs, global budgeting, and population-based budgeting.

To encourage savings below a guaranteed expenditure ceiling, the model design introduces the concept of a "shared savings lockbox." When hospitals participate in innovative payment and delivery reform programs and achieve savings, the portion of savings returned to payors is set aside to lower overall expenditures. The rules governing the "shared savings lockbox" and other elements of the proposal will be set by HSCRC through a "transparent and public process."

The model design also includes a Medicare benchmark, which will be the projected 2014 through 2016 inpatient and outpatient growth rate of 2.5% per year, less the amount of minimum lockbox savings. DHMH anticipates a 3.57% overall per-capita hard expenditure ceiling will correspond to a 2.43% benchmark in Medicare expenditures. With the lockbox savings, the Medicare benchmark will grow 6.4% cumulatively over three years from the 2013 base, resulting in estimated total savings of $220 million from the projected historical trend.

HSCRC anticipates several months of review within CMS and other federal agencies before the model design proposal is finalized and approved. In the meantime, HSCRC plans to engage in further dialogue with stakeholders.

Stakeholders have expressed concern over the significant shift in policy envisioned under the model design proposal, whether sufficient time has been allocated to thoroughly review the proposal, and the potential impact of a capitated or per-capita system on the State's sickest populations who utilize the greatest amount of health care resources.

Although historically changes to the State's Medicare waiver have been handled directly by DHMH and HSCRC, concerns have been raised about whether legislative approval *should* be required before significant policy changes, such as those outlined in the model design proposal, are pursued.

State Fiscal Effect: The bill requires legislative approval before DHMH or HSCRC may submit an application, reapplication, modification, or amendment to a State Medicare waiver to CMS. To the extent that the bill delays implementation of the model design proposal submitted to CMS in March 2013, which HSCRC anticipates could be in place as early as January 2014, the bill could inhibit implementation of policies intended to control hospital utilization, volume, and cost. Any fiscal impact cannot be reliably estimated at this time.

Additional Comments: According to HSCRC, the model deign proposal submitted to CMS in March 2013 is not a Medicare waiver application or amendment, but rather a

CMS demonstration project that would "substitute" for the State's Medicare waiver for a limited period of time. The all-payor waiver would remain in federal statute, but the existing waiver test would be replaced with new tests under the model design. HSCRC anticipates that the proposal may be approved within the next three to six months, potentially prior to the bill's October 1, 2013 effective date. Thus, it is unclear whether the bill would impact the proposal or instead only be applicable to future applications, reapplications, modifications, or amendments to the Medicare waiver.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

Fiscal Note History: First Reader - April 1, 2013
ncs/ljm

Analysis by: Jennifer B. Chasse

Direct Inquiries to:
(410) 946-5510
(301) 970-5510