AMENDED IN SENATE AUGUST 2, 2010

AMENDED IN SENATE JULY 15, 2010

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AMENDED IN SENATE JUNE 18, 2009

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 22, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 542

Introduced by Assembly Member Feuer

February 25, 2009

An act to add Section 1279.4 to the Health and Safety Code, to add Sections 12693.56, 12699.06, and 12739.5 to the Insurance Code, and to add Article 5.5 (commencing with Section 14183) to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 542, as amended, Feuer. Hospital acquired conditions.

Existing law establishes various programs for the prevention of disease and the promotion of health, including, but not limited to, the licensing and regulation of health facilities to be administered by the State Department of Public Health. Existing law requires specified health facilities to report patient adverse events to the department within 5 days. A violation of these provisions is a misdemeanor.

This bill would require the medical director and the director of nursing of a hospital to annually report adverse events and hospital acquired conditions to its governing board.

By changing the definition of an existing crime, this bill would impose a state-mandated local program.

Existing law provides for the Medi-Cal program, administered by the State Department of Health Care Services, under which health care services are provided to qualified low-income persons.

This bill would require the State Department of Health Care Services to convene a technical working group to evaluate options for implementing nonpayment policies and practices for hospital acquired conditions for the ~~fee-for-service~~ Medi-Cal program, as specified. This bill would require the technical working group to provide the best options to the Director of Health Care Services, the Secretary of California Health and Human Services, and the Legislature by February 1, 2011. This bill would also require the department to implement nonpayment policies and procedures for hospital acquired conditions for the ~~fee-for-service~~ Medi-Cal program, as specified.

Existing law imposes various functions and duties on the Managed Risk Medical Insurance Board with respect to the regulation and administration of various insurance programs, including the Healthy Families Program.

This bill would require certain managed care plans contracting with the board to implement nonpayment policies and practices for hospital acquired conditions that are consistent with those adopted by the Medi-Cal program through their contracts with health care facilities, as defined.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Patients seeking medical treatment have a right to quality medical care delivered in a timely, safe, and appropriate manner.

(b) Licensed health facilities are vital community resources that perform life-saving procedures and ensure the health and welfare of the general public.

(c) Despite the best intentions of a health facility, when a hospital acquired condition occurs, a patient can be harmed, potentially leading to serious disability or even death.

(d) Most hospital acquired conditions can be prevented through ongoing health care provider education and established safety plans and procedures. It is the policy of the State of California to encourage constant monitoring and continuous improvement in health care quality processes to ensure patient safety.

(e) The recently enacted federal Patient Protection and Affordable Care Act (Public Law 111-148) established as a national policy that state Medicaid programs should no longer pay for hospital acquired conditions.

(f) It is the policy of the State of California that patients and purchasers of health care services should not be billed for hospital acquired conditions that are reasonably preventable by the adoption and implementation of evidence-based guidelines. It is also the policy of the State of California that hospital acquired conditions that are reasonably preventable by the adoption and implementation of evidence-based guidelines should not be reimbursed by patients or purchasers of health care services.

(g) Patients who have been harmed by a hospital acquired condition must receive the medically necessary followup care to correct or treat the complications or consequences of the hospital acquired condition, to the extent possible. Medically necessary followup care and services should be reimbursed.

(h) The development of policies and procedures for the nonbilling and nonpayment of hospital acquired conditions is a complex process that requires expertise from many sectors of the health care delivery system. While these policies and procedures are being established, the State of California encourages private sector solutions that bring improvement in the delivery of health care services and a reduction in the occurrence of hospital acquired conditions.

SEC. 2. Section 1279.4 is added to the Health and Safety Code, to read:

1279.4. (a) The medical director and the director of nursing of each health facility, as defined by subdivision (a), (b), or (f) of Section 1250, shall report annually to the board of directors or other similar governing body the following:

(1) The number of adverse events and hospital acquired conditions that occurred in the health facility in the most recent 12-month period.

(2) The outcomes for each patient involved, if known.

(3) A comparison to comparable institutions of rates of adverse events and hospital acquired conditions, if this data exists and is publicly available.

(b) No communication of data or information pursuant to this section by an officer or employee of the corporation to the governing body shall constitute a waiver of privileges preserved by Section 1156, 1156.1, or 1157 of the Evidence Code or Section 1370.

SEC. 3. Section 12693.56 is added to the Insurance Code, to read:

12693.56. (a) For purposes of this section, "health care facility" means a health care entity that is subject to the federal regulations promulgated pursuant to Section 2702 of Subtitle I of Title II of the Patient Protection and Affordable Care Act (Public Law 111-148).

(b) The board shall implement nonpayment policies and practices consistent with those adopted by the Medi-Cal program pursuant to Article 5.5 (commencing with Section 14183) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, for the program, by requiring managed care plans contracting with the board to implement nonpayment policies and practices through their contracts with health care facilities. This subdivision shall be implemented only if, and to the extent that, federal financial participation is available and is not jeopardized.

(c) A health care facility shall not ~~charge a patient~~ *accept and retain payment from a patient for* any applicable cost-sharing amounts for care and services for which payment is denied by the program, including its participating health, dental, and vision plans.

(d) The implementation of guidelines or other standards pursuant to this section shall not be construed as establishing or altering in any way the standard of care or duty of care owed by

a health care provider to his or her patient in a medical malpractice action or claim.

SEC. 4. Section 12699.06 is added to the Insurance Code, to read:

12699.06. (a) For purposes of this part, "health care facility" means a health care entity that is subject to the federal regulations promulgated pursuant to Section 2702 of Subtitle I of Title II of the Patient Protection and Affordable Care Act (Public Law 111-148).

(b) The board shall implement nonpayment policies and practices consistent with those adopted by the Medi-Cal program pursuant to Article 5.5 (commencing with Section 14183) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, for the program, by requiring managed care plans contracting with the board to implement nonpayment policies and practices through their contracts with health care facilities. This subdivision shall be implemented only if, and to the extent that, federal financial participation is available and is not jeopardized.

(c) A health care facility shall not ~~charge a patient~~ *accept and retain payment from a patient for* any applicable cost-sharing amounts for care and services for which payment is denied by the program, including its participating health plans.

(d) The implementation of guidelines or other standards pursuant to this section shall not be construed as establishing or altering in any way the standard of care or duty of care owed by a health care provider to his or her patient in a medical malpractice action or claim.

SEC. 5. Section 12739.5 is added to the Insurance Code, to read:

12739.5. (a) For purposes of this part, "health care facility" means a health care entity that is subject to the federal regulations promulgated pursuant to Section 2702 of Subtitle I of Title II of the Patient Protection and Affordable Care Act (Public Law 111-148).

(b) The board shall implement nonpayment policies and practices consistent with those adopted by the Medi-Cal program pursuant to Article 5.5 (commencing with Section 14183) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, for the program, by requiring managed care plans contracting

with the board to implement nonpayment policies and practices through their contracts with health care facilities.

(c) A health care facility shall not ~~charge a patient~~ *accept and retain payment from a patient for* any applicable cost-sharing amounts for care and services for which payment is denied by the program, including its participating health plans.

(d) The implementation of guidelines or other standards pursuant to this section shall not be construed as establishing or altering in any way the standard of care or duty of care owed by a health care provider to his or her patient in a medical malpractice action or claim.

SEC. 6. Article 5.5 (commencing with Section 14183) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 5.5. Hospital Acquired Conditions

14183. (a) (1) The department shall convene a technical working group to evaluate options for implementing nonpayment policies and procedures for hospital acquired conditions for the ~~fee-for-service~~ Medi-Cal program consistent with federal laws and regulations, including, but not limited to, Section 2702 of Subtitle I of Title II of the federal Patient Protection and Affordable Care Act (Public Law 111-148). By February 1, 2011, the technical working group shall provide recommendations to the Director of Health Care Services, the Secretary of California Health and Human Services, and the Legislature on the best options for implementing nonpayment policies and procedures for hospital acquired conditions for the ~~fee-for-service~~ Medi-Cal program consistent with federal laws and regulations, including, but not limited to, Section 2702 of Subtitle I of Title II of the federal Patient Protection and Affordable Care Act (Public Law 111-148).

(2) The technical working group convened pursuant to paragraph (1) shall include, but not be limited to, all of the following:

(A) Consumer advocates.

(B) Experts the department deems necessary for the technical working group to effectively carry out its functions.

(C) Pediatricians or physicians in current practice in California who have relevant experience in reducing the incidence of hospital acquired conditions or adverse events.

(D) Representatives of ~~children's or other specialty hospitals~~ *specialty hospitals and children's or other hospitals that are exempt from the Medicare Inpatient Prospective Payment System, as authorized pursuant to clause (v) of subparagraph (B) of paragraph (1) of subdivision (d) of Section 1886 of the Social Security Act (42 U.S.C. Sec. 1395ww).*

(E) Representatives of the department.

(F) Representatives of the Department of Managed Health Care.

(G) Representatives of health care service plans or health insurers.

(H) Representatives of large employers that purchase group health care coverage for their employees and that are neither suppliers nor brokers of health care coverage.

(I) Representatives of nonnursing, nonphysician hospital support staff.

(J) Representatives of the Office of Statewide Health Planning and Development.

(K) Representatives of private hospitals.

(L) Representatives of public hospitals.

(M) Representatives of hospitals operated by the University of California.

(3) Each member appointed to the technical working group pursuant to paragraph (2) shall have expertise in hospital reimbursement.

(4) The technical working group may consult with individuals possessing relevant clinical or other health care expertise to assist in the development of the recommendations provided pursuant to this section.

(5) The technical working group shall provide an opportunity for members of the public to submit comments to the technical working group.

(6) (A) The requirement for submitting a report imposed under this subdivision is inoperative on February 1, 2015, pursuant to Section 10231.5 of the Government Code.

(B) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(b) The department shall implement nonpayment policies and procedures for hospital acquired conditions for the ~~fee-for-service~~ Medi-Cal program that are consistent with federal regulations

promulgated pursuant to Section 2702 of Subtitle I of Title II of the federal Patient Protection and Affordable Care Act (Public Law 111-148). In implementing the nonpayment policies and procedures the department shall strongly consider the recommendations submitted pursuant to subdivision (a) by the technical working group.

(c) Medi-Cal managed care plans contracting with the department pursuant to Chapter 7 (commencing with Section 14000), Chapter 8 (commencing with Section 14200), or Chapter 8.75 (commencing with Section 14590) of Part 3 of Division 9, shall be required to implement similar nonpayment policies and practices through their contracts with health care facilities.

(d) A health care facility shall not ~~charge a patient~~ *accept and retain payment from a patient for* any applicable cost-sharing amounts for care and services for which payment is denied by the Medi-Cal program or any other program administered by the department pursuant to this article.

(e) This article shall be implemented only if, and to the extent that, federal financial participation is available and is not jeopardized for programs receiving federal funds.

(f) This article shall not be interpreted or implemented in a way that would limit patient access to needed health care services or payment to a health care facility for medically necessary followup care to correct or treat the complications or consequences of a hospital acquired condition or for the care originally sought by the patient.

(g) Nothing in this article shall be construed to authorize the disclosure of confidential information concerning contracted rates between health care providers and payers or another date source.

(h) (1) No person reporting data pursuant to this article shall be liable for damages in an action based on the use or misuse of patient-identifiable data by the department that has been properly mailed or otherwise properly transmitted to the department pursuant to the requirements of this article.

(2) No communication of data or information to the department pursuant to this article shall constitute a waiver of privileges preserved pursuant to Sections 1156, 1156.1, and 1157 of the Evidence Code, and Section 1370 of the Health and Safety Code.

(3) Information, documents, and records from original sources subject to discovery or introduction into evidence shall not be

immune from discovery or evidence because the information, document, or record was also provided to the department pursuant to this article.

(i) For purposes of this article, "health care facility" means a health care entity that is subject to the federal regulations promulgated pursuant to Section 2702 of Subtitle I of Title II of the Patient Protection and Affordable Care Act (Public Law 111-148).

(j) The implementation of guidelines or other standards pursuant to this section shall not be construed as establishing or altering in any way the standard of care or duty of care owed by a health care provider to his or her patient in a medical malpractice action or claim.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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