

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 1050

INTRODUCER: Senator Joyner

SUBJECT: Medicaid/Preventable Hospital Errors

DATE: March 7, 2009

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Bell | Wilson | HR | Favorable |
| 2. | | | HA | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

The bill requires the Agency for Health Care Administration (AHCA) to submit a report on the status of Medicaid reimbursement denials for preventable hospital errors to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2010. The bill specifies the issues to be addressed in the report and requires the AHCA to recommend an expanded list of preventable medical errors for which the Medicaid program may refuse reimbursement.

This bill creates an undesignated section of law.

II. Present Situation:

Medical Errors

The November 1999 Institute of Medicine (IOM) report, *To Err is Human: Building a Safer Health System*, brought national attention to the issues of medical errors and patient safety. The report indicated that as many as 44,000 to 98,000 people die in hospitals each year as the result of medical errors. Medical errors are also expensive. The IOM report estimated that medical errors cost the nation approximately \$37.6 billion each year; about \$17 billion of those costs are associated with preventable errors. A recent study conducted by the Agency for Healthcare Research and Quality (AHRQ) estimated that preventable medical errors during or after surgery cost employers \$1.5 billion a year. The AHRQ study found that insurers paid an additional \$28,218 (52 percent more) and an additional \$19,480 (48 percent more) for surgery patients who experience acute respiratory failure or post-operative infections, respectively, compared to patients who did not experience either error.

Medicare Nonpayment for Preventable Errors

Section 5001(c) of the 2005 federal Deficit Reduction Act (DRA) directed the Secretary of Health and Human Services (HHS) to select at least two preventable hospital-acquired conditions that met these criteria:

- High cost, high volume, or both;
- Identified through ICD-9-CM coding as a complicating condition or major complicating condition that, when present as a secondary diagnosis at discharge, results in payment at a higher Medicare Severity-Diagnosis Related Group (MS-DRG); and
- Reasonably preventable through the application of evidence-based guidelines.

On October 1, 2007, the Centers for Medicare and Medicaid Services (CMS) required hospitals to begin reporting on claims for hospital discharges and whether or not the selected conditions were present on the initial hospital admission to accurately identify which hospital-acquired conditions were preventable.

The CMS exercised its authority under section 5001(c) of the DRA and announced that beginning October 1, 2008, Medicare would no longer reimburse hospitals for the extra costs of treating eight specific preventable errors that occur in hospitals, unless the conditions were present on admission. Pursuant to the final acute care inpatient prospective payment system rule for federal FY 2008, Medicare no longer reimburses hospitals for the treatment of certain “conditions that could reasonably have been prevented,” and the facilities “cannot bill the beneficiary for any charges associated with the hospital-acquired complication.” The conditions that Medicare will no longer reimburse hospitals to treat include: falls; mediastinitis, an infection that can develop after heart surgery; urinary tract infections that resulting from improper use of catheters; pressure ulcers; and vascular infections that result from improper use of catheters. In addition, Medicare will not reimburse for three of the National Quality Forum’s “never events”: objects left in the body after surgery, air embolisms, and blood incompatibility. The inpatient prospective payment system rule for federal FY 2009 adds surgical site infections following certain elective procedures, certain manifestations of poor control of blood sugar levels, and deep vein thrombosis or pulmonary embolism following total knee replacement and hip replacement procedures to the list of conditions, if not present upon admission and subsequently acquired during a hospital stay, for which Medicare will not provide reimbursement for the additional hospitalization resulting from the hospital-acquired conditions.

On July 31, 2008 the CMS issued a letter to the state Medicaid directors to brief them on the new CMS Medicare payment policy for selected hospital-acquired conditions, brief them on policy considerations for state Medicaid programs, and provide direction on how states could align their Medicaid programs with Medicare to prevent payment liability as a secondary payer for recipients eligible for state Medicaid programs and Medicare.

Florida Medicaid Nonpayment for Preventable Errors

On March 12, 2008, the Medicaid Impact Conference discussed aligning the state Medicaid program with the Medicare policy to refuse payment to hospitals for certain preventable errors. At the conference, the AHCA estimated that \$215,647 would be saved if the AHCA adopted the

Medicare policy. In the 2008 general appropriations act, codified in Chapter 2008-152, Laws of Florida, the AHCA budget was reduced by \$215,647 to reflect expected cost savings from eliminating Medicaid payments for preventable hospital errors effective July 1, 2008. The bill authorized the AHCA to seek the necessary Medicaid waivers or state plan amendments for implementation.

On March 3, 2009, the Florida Medicaid Impact Conference again discussed the Medicaid payment policy for preventable hospital errors. The AHCA identified the Medicaid hospital reimbursement methodology that pays hospitals on a per diem rate as a barrier to implementation of Medicaid nonpayment of preventable hospital errors. The AHCA did not provide a fiscal estimate of savings or costs and is continuing to research the policy.

III. Effect of Proposed Changes:

The bill requires the AHCA to submit a report on Medicaid and preventable hospital errors to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2010. The AHCA is directed to provide a status report on its policy to deny Medicaid reimbursement for preventable hospital errors from July 1, 2008 through December 31, 2009. The report must include:

- Any problems the AHCA has encountered implementing Medicaid nonpayment for preventable hospital errors;
- The number and types of preventable medical errors in hospitals that the Medicaid program refused to reimburse and the dollar value of the denied claims;
- Whether there was a decline in the number of billings by hospitals for preventable medical errors under the state Medicaid policy and the estimated cost savings to Medicaid;
- Preventable medical errors that other state Medicaid programs, the Medicare program, and private insurers refuse to reimburse; and
- Recommendations to expand the list of preventable medical errors that the Florida Medicaid program may refuse to reimburse.

The effective date of the bill is July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires the AHCA to submit a report on Medicaid reimbursement of preventable hospital errors to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2010. According to the AHCA, there is no fiscal impact to implement this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.