

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/25/2019
Date

Honorable Dan Patrick
President of the Senate

Honorable Dennis Bonnen
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on SB 1971 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Buckingham

Campbell

Flores

Hinojosa

On the part of the Senate
Kolkhorst

Kirch

Deshotel

Hinojosa

Miller

On the part of the House
Noble

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

S.B. No. 1991

A BILL TO BE ENTITLED

AN ACT

relating to claims processes and reimbursement for, and overpayment
recoupment processes imposed on, health care providers under
Medicaid.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 531.024172, Government Code, is amended
by amending Subsection (g) and adding Subsections (g-1) and (g-2)
to read as follows:

(g) The commission may recognize a health care provider's
proprietary electronic visit verification system, whether
purchased or developed by the provider, as complying with this
section and allow the health care provider to use that system for a
period determined by the commission if the commission determines
that the system:

(1) complies with all necessary data submission,
exchange, and reporting requirements established under this
section; and

(2) meets all other standards and requirements
established under this section[~~, and~~

~~[(3) has been in use by the health care provider since
at least June 1, 2014].~~

(g-1) If feasible, the executive commissioner shall ensure
a health care provider that uses the provider's proprietary
electronic visit verification system recognized under Subsection

1 (g) is reimbursed for the use of that system.

2 (g-2) For purposes of facilitating the use of proprietary
3 electronic visit verification systems by health care providers
4 under Subsection (g) and in consultation with industry stakeholders
5 and the work group established under Subsection (h), the commission
6 or the executive commissioner, as appropriate, shall:

7 (1) develop an open model system that mitigates the
8 administrative burdens identified by providers required to use
9 electronic visit verification;

10 (2) allow providers to use emerging technologies,
11 including Internet-based, mobile telephone-based, and global
12 positioning-based technologies, in the providers' proprietary
13 electronic visit verification systems; and

14 (3) adopt rules governing data submission and provider
15 reimbursement.

16 SECTION 2. Section 531.1131, Government Code, is amended by
17 adding Subsection (f) to read as follows:

18 (f) In adopting rules establishing due process procedures
19 under Subsection (e), the executive commissioner shall require that
20 a managed care organization or an entity with which the managed care
21 organization contracts under Section 531.113(a)(2) that engages in
22 payment recovery efforts in accordance with this section and
23 Section 531.1135 provide:

24 (1) written notice to a provider required to use
25 electronic visit verification of the organization's intent to
26 recoup overpayments in accordance with Section 531.1135; and

27 (2) a provider described by Subdivision (1) at least

1 60 days to cure any defect in a claim before the organization may
2 begin any efforts to collect overpayments.

3 SECTION 3. Subchapter C, Chapter 531, Government Code, is
4 amended by adding Section 531.1135 to read as follows:

5 Sec. 531.1135. MANAGED CARE ORGANIZATIONS: PROCESS TO
6 RECOUP CERTAIN OVERPAYMENTS. (a) The executive commissioner
7 shall adopt rules that standardize the process by which a managed
8 care organization collects alleged overpayments that are made to a
9 health care provider and discovered through an audit or
10 investigation conducted by the organization secondary to missing
11 electronic visit verification information. In adopting rules under
12 this section, the executive commissioner shall require that the
13 managed care organization:

14 (1) provide written notice of the organization's
15 intent to recoup overpayments not later than the 30th day after the
16 date an audit is complete; and

17 (2) limit the duration of audits to 24 months.

18 (b) The executive commissioner shall require that the
19 notice required under this section inform the provider:

20 (1) of the specific claims and electronic visit
21 verification transactions that are the basis of the overpayment;

22 (2) of the process the provider should use to
23 communicate with the managed care organization to provide
24 information about the electronic visit verification transactions;

25 (3) of the provider's option to seek an informal
26 resolution of the alleged overpayment;

27 (4) of the process to appeal the determination that an

1 overpayment was made; and

2 (5) if the provider intends to respond to the notice,
3 that the provider must respond not later than the 30th day after the
4 date the provider receives the notice.

5 (c) Notwithstanding any other law, a managed care
6 organization may not attempt to recover an overpayment described by
7 Subsection (a) until the provider has exhausted all rights to an
8 appeal.

9 SECTION 4. (a) As soon as practicable after the effective
10 date of this Act, the Health and Human Services Commission shall
11 conduct a study to evaluate the impacts and effectiveness of using
12 the Medicare education adjustment factor assigned under 42 C.F.R.
13 Section 412.105 in effect on the effective date of this Act to
14 calculate the medical education add-on used to reimburse teaching
15 hospitals for the provision of inpatient hospital care under
16 Medicaid. The commission shall develop and make recommendations on
17 alternative factors and methodologies for calculating and annually
18 updating the medical education add-on that:

19 (1) best recognize the higher costs incurred by
20 teaching hospitals; and

21 (2) mitigate issues identified with using the Medicare
22 education adjustment factor without reducing reimbursements to
23 urban teaching hospitals that have maintained or increased the
24 number of interns and residents enrolled in the hospitals' approved
25 teaching programs.

26 (b) Not later than December 1, 2020, the Health and Human
27 Services Commission shall report its findings and recommendations

1 under Subsection (a) of this section to the governor, the standing
2 committees of the senate and the house of representatives having
3 primary jurisdiction over matters relating to state finance and
4 appropriations from the state treasury, the standing committees of
5 the senate and house of representatives having primary jurisdiction
6 over Medicaid, and the Legislative Budget Board.

7 SECTION 5. The Health and Human Services Commission is
8 required to implement a provision of this Act only if the
9 legislature appropriates money to the commission specifically for
10 that purpose. If the legislature does not appropriate money
11 specifically for that purpose, the commission may, but is not
12 required to, implement a provision of this Act using other
13 appropriations that are available for that purpose.

14 SECTION 6. If before implementing any provision of this Act
15 a state agency determines that a waiver or authorization from a
16 federal agency is necessary for implementation of that provision,
17 the agency affected by the provision shall request the waiver or
18 authorization and may delay implementing that provision until the
19 waiver or authorization is granted.

20 SECTION 7. This Act takes effect September 1, 2019.

Senate Bill 1991
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
SECTION 1. Section 531.024172, Government Code, is amended.	SECTION 1. Same as Senate version.	SECTION 1. Same as Senate version.
SECTION 2. Section 531.1131, Government Code, is amended.	SECTION 2. Same as Senate version.	SECTION 2. Same as Senate version.
SECTION 3. Subchapter C, Chapter 531, Government Code, is amended.	SECTION 3. Same as Senate version.	SECTION 3. Same as Senate version.
<i>No equivalent provision.</i>	SECTION __. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.02491. (b) If before implementing Section 32.02491, Human Resources Code, as added by this section, a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted. [FA1]	Same as Senate version.
SECTION 4. The Health and Human Services Commission is required to implement a provision of this Act only if the legislature appropriates money to the commission specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the commission may, but is not required to, implement a provision of this Act using other appropriations that are available for that purpose.	SECTION 4. Same as Senate version.	SECTION 5. Same as Senate version.

Senate Bill 1991
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Section-by-Section Analysis

SENATE VERSION

SECTION 5. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

No equivalent provision.

HOUSE VERSION (IE)

SECTION 5. Same as Senate version.

SECTION __. (a) As soon as practicable after the effective date of this Act, the *commission* shall conduct a study to evaluate the impacts and effectiveness of using the Medicare education adjustment factor assigned under 42 C.F.R. Section 412.105 in effect on the effective date of this Act to calculate the medical education add-on used to reimburse teaching hospitals for the provision of inpatient hospital care under Medicaid. The commission shall develop and make recommendations on alternative factors and methodologies for calculating and annually updating the medical education add-on that:

- (1) best recognize the higher costs incurred by teaching hospitals; and
 - (2) mitigate issues identified with using the Medicare education adjustment factor without reducing reimbursements to urban teaching hospitals that have maintained or increased the number of interns and residents enrolled in the hospitals' approved teaching programs.
- (b) Not later than December 1, 2020, the *commission* shall report its findings and recommendations under *Subsection (b)* of this section to the governor, the standing committees of the senate and house of representatives having primary jurisdiction over matters relating to state finance and

CONFERENCE

SECTION 6. Same as Senate version.

SECTION 4. (a) As soon as practicable after the effective date of this Act, the *Health and Human Services Commission* shall conduct a study to evaluate the impacts and effectiveness of using the Medicare education adjustment factor assigned under 42 C.F.R. Section 412.105 in effect on the effective date of this Act to calculate the medical education add-on used to reimburse teaching hospitals for the provision of inpatient hospital care under Medicaid. The commission shall develop and make recommendations on alternative factors and methodologies for calculating and annually updating the medical education add-on that:

- (1) best recognize the higher costs incurred by teaching hospitals; and
 - (2) mitigate issues identified with using the Medicare education adjustment factor without reducing reimbursements to urban teaching hospitals that have maintained or increased the number of interns and residents enrolled in the hospitals' approved teaching programs.
- (b) Not later than December 1, 2020, the *Health and Human Services Commission* shall report its findings and recommendations under *Subsection (a)* of this section to the governor, the standing committees of the senate and the house of representatives having primary jurisdiction over

Senate Bill 1991
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

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appropriations from the state treasury, the standing committees of the senate and house of representatives having primary jurisdiction over Medicaid, and the Legislative Budget Board. [FA2]

matters relating to state finance and appropriations from the state treasury, the standing committees of the senate and house of representatives having primary jurisdiction over Medicaid, and the Legislative Budget Board.

SECTION 6. This Act takes effect September 1, 2019.

SECTION 6. Same as Senate version.

SECTION 7. Same as Senate version.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 25, 2019

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Dennis Bonnen, Speaker of the House, House of Representatives

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: SB1991 by Buckingham (Relating to claims processes and reimbursement for, and overpayment recoupment processes imposed on, health care providers under Medicaid.),
Conference Committee Report

The fiscal implications of the bill cannot be determined at this time because it is unknown to what extent changes in overpayment collection methods would result in delayed or reduced revenue.

The Health and Human Services Commission is required to implement a provision of this Act only if the legislature appropriates money to the commission specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the commission may, but is not required to, implement a provision of this Act using other appropriations that are available for that purpose.

The bill would amend Chapter 531 of the Government Code to require the Health and Human Services Commission (HHSC) to ensure that providers are reimbursed for using a proprietary electronic visit verification system, if feasible. It would require HHSC to facilitate the use of proprietary electronic visit verification systems by developing an open model to mitigate administrative burdens, allowing providers to use emerging technologies in such systems, and adopting rules governing data submission and provider reimbursement. The bill would also require HHSC to adopt rules to standardize payment recovery efforts by managed care organizations including requiring a managed care organization to notify providers required to use electronic visit verification of the organization's intent to recoup overpayments and give the provider 60 days to cure the defect in a claim prior to the collection of overpayments. The bill would also require HHSC to conduct a study to evaluate and make recommendations on the use of the Medicare education adjustment factor by December 1, 2020. The bill would take effect September 1, 2019.

The fiscal impact of the provisions of the bill related to payment recovery efforts by managed care organizations cannot be determined because it is unknown to what extent the new rules might delay or reduce the amount of overpayments recovered by managed care organizations. Managed care organizations remit half of recovered payments to HHSC to be returned to General Revenue, so a reduction or delay in recoveries would have a negative fiscal impact to the state.

It is assumed that the provisions of the bill related to electronic visit verification systems could be implemented using existing resources. HHSC determined that costs associated with conducting a

study could be absorbed within existing resources.

Local Government Impact

The fiscal implications of the bill cannot be determined at this time.

Source Agencies: 529 Health and Human Services Commission, 304 Comptroller of Public Accounts

LBB Staff: WP, AKi, JQ, ND