

SUBJECT: Denying Medicaid payments to hospitals for certain preventable conditions

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Kolkhorst, Naishtat, Gonzales, Hopson, S. King, Laubenberg,  
McReynolds, Zerwas

0 nays

3 absent — Coleman, J. Davis, Truitt

WITNESSES: For — Starr West, Texas Hospital Association; (*Registered, but did not testify*: Ed Berger, Seton Family of Hospitals; Steven Bristow, Parkland Health & Hospital System; Marisa Finley, Scott & White Center for Healthcare Policy; Michael Gutierrez; Mazie Jamison, Children's Medical Center Dallas; Andrew Smith, University Health System; Gilbert Turrieta, Sanofi-Aventis; Chris Yanas, Teaching Hospitals of Texas)

Against — None

On — Billy Millwee, Health and Human Services Commission

BACKGROUND: The state Medicaid program, which is administered by the Health and Human Services Commission (HHSC), reimburses hospitals for services provided to Medicaid patients.

On October 1, 2008, the federal Centers for Medicare and Medicaid Services began limiting reimbursements to hospitals for Medicare claims related to certain preventable medical errors that could result in serious health consequences for the patient.

DIGEST: CSHB 852 would require HHSC to assure that no additional Medicaid payments were made to hospitals for treatments associated with any of the following preventable, adverse conditions involving a Medicaid patient during the patient's hospitalization:

- a foreign object retained after surgery;
- surgery performed on the wrong body part;

- surgery performed on the wrong person;
- the wrong surgical procedure performed on the recipient;
- intravascular air embolism;
- blood or blood product incompatibility;
- a stage three or four pressure ulcer;
- a fall or trauma resulting in a fracture, dislocation, intracranial injury, or crushing injury;
- a burn or electric shock;
- a catheter-associated urinary tract infection;
- an infection related to a catheter inserted into a blood vessel;
- certain manifestations of poor control in blood sugar levels;
- a surgical site infection or infection of the cavity that lies between the lungs following a coronary artery bypass graft;
- a surgical site infection following certain orthopedic procedures;
- a surgical site infection following certain bariatric surgeries for obesity; and
- deep vein thrombosis and pulmonary embolism following certain orthopedic procedures, including joint replacements.

Denial of Medicaid reimbursement related to these conditions in itself would not create civil liability, be subject to discovery, or be admissible in any civil action against a hospital. HHSC would make statistical information compiled from data collected regarding these denials of payments available on the commission's website.

The executive commissioner of HHSC could adopt rules to define additional preventable adverse conditions for which Medicaid could deny hospitals payment if these conditions had been added to the list of conditions for which the federal Medicare program limits reimbursement.

The bill would take effect September 1, 2009. HHSC would adopt rules regarding preventable, adverse conditions by November 1, 2009. Medicaid payment could not be denied for preventable, adverse conditions occurring prior to the effective date of these rules.

**SUPPORTERS  
SAY:**

CSHB 852 would save Texas money and encourage better patient care by prohibiting the state Medicaid program from reimbursing hospitals for additional treatment costs related to inadequate or improper care of a Medicaid patient. In October 2008, the federal government began limiting reimbursement to hospitals for Medicare claims related to preventable

medical errors that can result in serious health consequences for the patient. CSHB 852 would include all the conditions for which Medicare has limited reimbursements and would add to this list surgery performed on the wrong person or body part or performance of the wrong surgical procedure – all incidents that clearly never should occur.

A 1999 Institute of Medicine survey estimated that nearly 100,000 deaths per year were due to preventable errors and annually direct and indirect costs related to such errors could be as much as \$29 billion. CSHB 852 would enhance patient safety because hospitals would have a greater incentive to provide better care to patients when they would absorb the cost of care for avoidable conditions. Consumers also could make more well-informed decisions about the facilities at which they sought care based on the medical error information that would be posted on HHSC's website.

Texas would not be alone in pursuing the goals of this bill. Almost 20 states already have or are considering methods to eliminate payment for some preventable medical conditions. Twenty-seven states already collect data on medical errors.

CSHB 852 would not prohibit Medicaid reimbursement for any infections except those that could have been prevented by the hospital. The included infections only would be those that the patient did not have upon admission to the hospital and that occurred at a site on which the hospital performed a procedure.

**OPPONENTS  
SAY:**

CSHB 852 would establish broad classifications of infections as preventable, adverse conditions for which a hospital would be subject to nonpayment by Medicaid. Due to certain immune-compromising conditions or the limited ability of some patients to heal, some infections that develop during a patient's hospitalization are unavoidable even when the hospital strictly adheres to appropriate protocols. Hospitals, which already bear a large burden of the state's uncompensated care costs for the uninsured, should not have to absorb the cost of treatment for unavoidable infections acquired by Medicaid patients. CSHB 852 further would harm hospitals that were not paid for treatment of unavoidable infections by requiring HHSC to post on its website the facilities and conditions for which Medicaid payment was denied.

NOTES:

The fiscal note indicates CSHB 852 would cost \$565,377 to general revenue in fiscal 2010-11 due to higher costs in fiscal 2010 to adjust the Medicaid claims processing system. The bill would have a positive impact on general revenue funds of \$235,373 in fiscal 2011 increasing to \$340,687 by fiscal 2014.

The companion bill, SB 353 by Shapleigh, has been referred to the Senate Health and Human Services Committee.