



Lisa Musielewicz

Bill Analysis
Legislative Service Commission

H.B. 152
126th General Assembly
(As Introduced)

Rep. Blessing

BILL SUMMARY

- Requires any rules adopted by the Director of Job and Family Services (ODJFS) regarding services a hospital that receives funds under the Hospital Care Assurance Program (HCAP) must provide without charge specify that the services be directly related to an "emergency medical condition."
- For purposes of the law governing HCAP, defines "emergency medical condition" to have the same meaning as in the federal "Emergency Medical Treatment and Active Labor Act."
- Provides that a hospital or health care practitioner that renders services for purposes of HCAP pursuant to the rules adopted by the Director of ODJFS is immune from civil liability for any death, injury, or loss to person or property caused by the hospital's or practitioner's refusal to treat an individual based on a good faith determination that the individual does not have an emergency medical condition.
- Provides that the bill's provision regarding immunity from civil liability does not create a new cause of action or substantive legal right against a person, organization, or entity and does not affect any immunities from civil liability or defenses established by another section of Ohio law or available at common law.
- Specifies that any rules pertaining to Medicaid reimbursement for services provided in a hospital emergency department or room must provide that a hospital or medical provider will not be reimbursed for a claim at the emergency room rate unless the patient has an emergency medical condition.

CONTENT AND OPERATION

Hospital Care Assurance Program (HCAP)

Background

The Hospital Care Assurance Program (HCAP) is Ohio's implementation of the federal Medicaid Disproportionate Share Hospital Program. Congress created the Medicaid Disproportionate Share Hospital Program in 1981 to ensure that state Medicaid programs provide adequate payments to hospitals with patient populations disproportionately composed of low income Medicaid and uninsured patients.¹

Under Ohio's HCAP, private hospitals are annually assessed an amount based on their total facility costs and public hospitals make annual intergovernmental transfers to the Ohio Department of Job and Family Services (ODJFS). Assessments and intergovernmental transfers are made in periodic installments. ODJFS distributes to hospitals money generated by these assessments and transfers, as well as federal matching funds generated by these assessments and transfers. In federal fiscal year 2004, HCAP distributed \$552.6 million to hospitals; of that amount, \$225.5 million was collected from assessments and transfers while the balance was provided by federal matching funds.²

Services a hospital must provide under HCAP

(R.C. 5112.17)

Current law. Under current law, each hospital that receives funds distributed under HCAP must provide, without charge, "basic, medically necessary hospital level services" to Ohio residents who are not Medicaid recipients and whose income is at or below the federal poverty guideline.³ The term, "basic, medically necessary hospital level services," is not defined in statute; rather, ODJFS has established a definition for this term through a rule adopted pursuant to general rulemaking authority for HCAP.⁴ Under this rule, "basic,

¹ National Association of Public Hospitals and Health Systems. "Medicaid Disproportionate Share Hospital Program," accessible at <http://www.naph.org/Template.cfm?Section=Medicaid_DSH&Template=/ContentManagement/ContentDisplay.cfm&ContentID=4174> (visited April 14, 2005).

² Ohio Department of Job and Family Services. "Hospital Care Assurance Program (HCAP) – FFY 2004 Program Year," accessible at <<http://jfs.ohio.gov/ohp/bhpp/hcap/hcap2004.stm>> (visited April 14, 2005).

medically necessary hospital level services" means all inpatient and outpatient services covered under Medicaid as described in Ohio Administrative Code Chapter 5101:3-2 with the exception of transplantation services and services associated with transplantation (see **COMMENT**, below). The covered services must be ordered by a physician who holds a certificate of registration to practice from the State Medical Board and must be delivered at a hospital where the physician has clinical privileges and the hospital has authority to provide the services under its certificate of authority.⁵

The bill. The bill changes current law to require each hospital that receives HCAP funds to provide, without charge, "treatment for emergency medical conditions" to the individuals described above. The bill provides that "emergency medical condition" has the same meaning as in the federal Emergency Medical Treatment and Active Labor Act (EMTALA).⁶ This Act defines "emergency medical condition" to mean the following:

³ *The "federal poverty guideline" is defined as the official poverty guideline as revised annually by the United States Secretary of Health and Human Services in accordance with Section 673 of the "Community Service Block Grant Act," 95 Stat. 511 (1981), 42 U.S.C. 9902, as amended, for a family size equal to the size of the family of the person whose income is being determined (R.C. 5112.17(A)(2)). For 2005, the federal poverty guideline for a family of two in the 48 contiguous states and the District of Columbia is \$12,830; for a family of four, \$19,350. Recipients of disability financial and medical assistance qualify for HCAP services (R.C. 5112.17(B)).*

⁴ *ODJFS' statutory authority to adopt rules for purposes of HCAP is codified at R.C. 5112.03. The rule that establishes a definition for "medically necessary services" is codified at O.A.C. 5101:3-2-02(B)(14).*

⁵ *Certificates of authority are granted pursuant to R.C. Chapters 3711., 3727., and 5119.*

⁶ *The Emergency Medical Treatment and Active Labor Act (EMTALA) is codified at 42 United States Code 1395dd. According to information cited in a federal Circuit Court of Appeals opinion, EMTALA was enacted in 1986 amid growing concern over the availability of emergency health care services to the poor and uninsured. The statute was designed principally to address the problem of "patient dumping," whereby hospital emergency rooms deny uninsured patients the same treatment provided paying patients, either by refusing care outright or by transferring uninsured patients to other facilities. Reports of patient dumping rose in the 1980s, as hospitals, generally unencumbered by any state law duty to treat, faced new cost containment pressures combined with growing numbers of uninsured and underinsured patients. Congress responded with the Emergency Act, which imposes on Medicare-provider hospitals a duty to afford medical screening and stabilizing treatment to any patient who seeks care in a hospital emergency room. Gatewood v. Washington Healthcare Corp., 290 U.S. App. D.C. 31, 933 F.2d 1037, 1039 (D.C. Cir. 1991).*

(1) A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate physical attention could reasonably be expected to result in:

(a) Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(b) Serious impairment to bodily functions;

(c) Serious dysfunction of any bodily organ or part.

(2) With respect to a pregnant woman who is having contractions:

(a) That there is inadequate time to effect a safe transfer to another hospital before delivery;

(b) The transfer may pose a threat to the health or safety of the woman or the unborn child.

The bill removes ODJFS' authority to adopt rules specifying the "hospital services" to be provided under HCAP and instead authorizes ODJFS to adopt rules specifying the "services directly related to an emergency medical condition" that must be provided under HCAP.

Civil immunity for hospitals and health care practitioners

The bills provides that a hospital or health care practitioner⁷ that renders HCAP services in a hospital in accordance with the provisions in the bill described above (see "**Services a hospital must provide under HCAP--the bill**") is immune from civil liability for any death, injury, or loss to person or property caused by the hospital's or practitioner's refusal to treat an individual based on a good faith

⁷ The bill defines "health care practitioner" to mean all of the following professionals licensed, registered, or certified in Ohio: (1) a dentist or dental hygienist, (2) a registered or licensed practical nurse, (3) an optometrist, (4) a dispensing optician, spectacle dispensing optician, contact lens dispensing optician, or spectacle-contact lens dispensing optician, (5) a pharmacist, (6) a physician, (7) a physician assistant, (8) a practitioner of a limited branch of medicine, (9) a psychologist, (10) a chiropractor, (11) a hearing aid dealer or fitter, (12) a speech-language pathologist or audiologist, (13) an occupational therapist or occupational therapy assistant, (14) a physical therapist or physical therapy assistant, (15) a professional clinical counselor, professional counselor, social worker, or independent social worker, or a social worker assistant, (16) a dietician, (17) a respiratory care professional, (18) an emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic.

determination⁸ that the individual does not have an emergency medical condition. Further, the bill provides that the provision regarding immunity from civil liability neither creates a new cause of action nor a substantive legal right against a person, organization, or entity and does not affect any immunities from civil liability or defenses established by another section of Ohio law or available at common law to which a person, organization, or entity may be entitled.

Administrative rulemaking with respect to Medicaid reimbursement

(R.C. 5111.02(B))

Current law. Current law provides that the ODJFS Director may adopt, amend, or rescind rules in accordance with the Ohio Administrative Procedure Act (R.C. Chapter 119.) establishing the amount, duration, and scope of medical services to be covered by Medicaid. The rules must establish the conditions under which services are covered and reimbursed, the method of reimbursement applicable to each covered service, and the amount of reimbursement or, in lieu of such amounts, methods by which such amounts are determined for each covered service. Rules that pertain to nursing facilities or intermediate care facilities for the mentally retarded (ICF/MRs) must be consistent with Ohio law governing these facilities (R.C. 5111.20 through 5111.33).

In accordance with this statutory authority, ODJFS has adopted rules in several sections of Ohio Administrative Code Chapters 5101:1 and 5101:3 pertaining to Medicaid reimbursement. Ohio Administrative Code § 5101:3-1-01, in the "general provisions" subchapter of the Medicaid rules, provides the following:

Medical necessity is a fundamental concept underlying the Medicaid Program...[and] [u]nless a more specific definition of medical necessity for a particular category of service is included within division-level designation [of O.A.C. Chapter 5101:3] , "medically-necessary services" are defined as services which are necessary for the diagnosis or treatment of disease, illness, or injury and without which the patient can be expected to suffer prolonged, increased or new morbidity, impairment of function, dysfunction of a body organ or part, or significant pain and discomfort. A medically necessary service must: (1) [m]eet generally accepted standards of medical practice; (2)

⁸ *The bill does not define "good faith determination."*

[b]e appropriate to the illness or injury for which it is performed as to type of service and expected outcome; (3) [b]e appropriate to the intensity of service and level of setting; (4) [p]rovide unique, essential, and appropriate information when used for diagnostic purposes; (5) [b]e the lowest cost alternative that effectively addresses and treats the medical problem; and (6) meet general principles regarding reimbursement for medicaid covered services found in [O.A.C.] 5101:3-1-02.

The bill. The bill maintains current law but adds that rules that pertain to reimbursement for services provided in a hospital emergency services department or room must provide that a hospital or medical provider will not be reimbursed for a claim at the emergency room rate unless the patient has an emergency medical condition as that term is defined in the federal Emergency Medical Treatment and Active Labor Act (EMTALA) (see "**Services a hospital must provide under HCAP--the bill,**" above, for this definition).

COMMENT

Medicaid pays for "medically necessary covered inpatient and outpatient services provided to eligible Medicaid recipients by an eligible hospital provider...." (O.A.C. 5101:3-2-02(A)). "Medically necessary services" are services which are necessary for the diagnosis or treatment of disease, illness, or injury and without which the patient can be expected to suffer prolonged, increased or new morbidity, impairment of function, dysfunction of a body organ or part or significant pain and discomfort. A "medically necessary service" must (a) meet accepted standards of medical practice, (b) be appropriate to the illness or injury for which it is performed as to type of service and expected outcome, (c) be appropriate to the intensity of service and level of setting, and (d) provide unique, essential, and appropriate information when used for diagnostic purposes (O.A.C. 5101:3-2-02(B)(14)). "Inpatient services" are services which are ordinarily furnished in a hospital (as defined in O.A.C. 5101:3-2-01) and include emergency room services when a patient is admitted from the emergency room. "Outpatient services" are diagnostic, therapeutic, rehabilitative, or palliative treatment, or services furnished by or under the direction of a physician or dentist, which are furnished to an outpatient by a hospital as defined in O.A.C. 5101:3-2-01 (O.A.C. 5101:3-2-02(B)(4)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-24-05	p. 354

h0152-i-126.doc/kl

