

Massachusetts Governor Introduces Health Care Payment Reform Legislation

On February 17, 2011, Massachusetts Governor Deval Patrick announced major health care payment reform legislation entitled *An Act Improving the Quality of Health Care and Controlling Costs by Reforming Health Systems and Payments*. The bill paves the way for substantial health care payment and delivery reform by providing a framework for the use of alternative payment methodologies and the widespread establishment of accountable care organizations (ACOs). The bill also gives the Insurance Commissioner increased powers over reimbursement rates, provides for medical malpractice reform, sets up a Health Information Technology Council, and instructs the Attorney General to take measures to protect competition in the health care market during the transition to the use of ACOs.

The bill is the culmination of reform efforts that began in 2008, when the legislature tasked a commission with restructuring the Commonwealth's health care payment system in order to improve quality of care, reduce costs, and incentivize efficient, patient-centered care. In 2009 the commission released its final report, and a year later the Massachusetts Committee on the Status of Payment Reform Legislation (Committee) was formed to assist with drafting. The Committee issued its Goals for Payment Reform Legislation on February 16, 2011, the day before Governor Patrick filed his proposed legislation. Highlights of the bill follow:

Timeline

- The bill directs the Executive Office of Health and Human Services (EOHHS) to begin immediately the process of obtaining the necessary federal waivers.
- By June 1, 2012, the Division of Health Care Finance and Policy (DHCFP) must develop regulations to guide ACO formation.
- By January 1, 2014, all state-funded insurance programs must use ACOs and implement alternative payment methodologies "to the maximum extent feasible."
- By June 2015, ACOs must be established throughout the Commonwealth, and all payers must transition to the utilization of alternative payment methodologies. Alternative payment methodologies are to be adopted across the health care industry by the end of 2015.

Development of ACOs

A Health Services System and Payment Reform Coordinating Council (Coordinating Council), along with DHCFP, is charged with overseeing the establishment of ACOs in accordance with the above timeline.

- ACOs must accept patients regardless of payer source or clinical profile.
- ACOs must meet minimum "functional capacities" in areas including clinical services, communication, behavioral health services, quality measurement, and population, financial, and contract management.
- DHCFP must develop standardized quality measures to evaluate ACO performance.

- Contracts establishing alternative payment arrangements between payers and ACOs must include quality-based rewards and/or penalties.
- The Division of Insurance will monitor risk arrangements between payers and ACOs to ensure that ACOs are not subject to excessive risk. Specified methodologies may be used to control risk, including risk corridors, outliers, and reinsurance. The bill also mandates the establishment of an ACO Reinsurance Plan, of which all ACOs must be members.
- DHCFP must recommend incentives to encourage the use of alternative payment methodologies by employers who furnish health benefits through self-funded plans.
- EOHHS will provide quality improvement incentive grants to one or more health systems as part of an ACO and global payment pilot program.

Transition from Fee-for-Service to Alternative Payment Methodologies

The Coordinating Council and DHCFP are required to oversee a transition to the use of alternative payment methodologies in accordance with the above timeline.

- DHCFP must develop regulations to decrease the use of fee-for-service models and facilitate the adoption of alternative payment methods industry-wide.
- Potential alternative payment methodologies include a wide variety of arrangements, such as global payment with limits on ACO financial risk, partial global payment and gainsharing with pay for performance, practice expense capitation with gainsharing, and episode-based payments.
- All payers must offer alternative payment methodologies to compensate ACOs for the provision of integrated health care services, consistent with DHCFP regulations.
- DHCFP will develop cost containment benchmarks and growth rates and, at least annually, collect data indicating whether payers' contracts with providers and ACOs meet those standards.

Insurance Commissioner to Establish Acceptable Annual Rate Increases

The bill includes provisions regulating reimbursement rate setting between providers and payers, building upon insurance reforms adopted by the legislature in August 2010 (S. 2585).

- Carriers may not increase contractual rates of reimbursement for providers beyond amounts established annually by the Insurance Commissioner.
- In establishing allowable rate increases, the Insurance Commissioner must consider factors such as the rate of increase of the Commonwealth's gross domestic product or consumer price index, the rate of increase in total medical expenses, a provider's rate of reimbursement with a specific carrier (especially compared to the carrier's average price across the Commonwealth), and whether the carrier and the provider are transitioning to an alternative payment methodology.

Medical Malpractice Reform

A number of reforms are aimed at preventing costly litigation and facilitating prompt resolution of medical malpractice claims.

- Providers' apologies (defined broadly to include activities and conduct suggesting mistake or error) will become inadmissible evidence in malpractice litigation.

- In general, a written notice of intent to file a claim will be required six months before initiation of a lawsuit.
- The claimant and the provider will be required to share relevant medical records and documentation with one another prior to commencement of the litigation.
- The Commonwealth's peer review protections will be extended to ACOs.

There appears to be substantial support for the bill in the Massachusetts legislature. On February 22, 2011, the bill was sent to the Joint Committee on Health Care Financing for review. Hearings and debate will follow in the coming months. If you have any questions about the proposed payment reform legislation or its implications, please contact your regular Ropes & Gray advisor. Governor Patrick's bill may be viewed by clicking [here](#).