Shared Healthcare Savings for Public Employees Act Model Bill

SECTION 1. This act shall be known and may be cited as the "Shared Healthcare Savings for Public Employees Act of 2021."

(A) Purpose. This Act lowers the costs of health benefit plan for public employees and taxpayers by requiring the State to negotiate agreements with third-party administrators that promote transparency, cost savings, and patient choice.

(B) Definitions. As used in this Act, the following terms shall mean:

(i) "Third-party administrator" shall mean an entity that enters into an agreement with the State to process claims or certain aspects of the health benefit plan(s) for public employees enrolled in a plan offered by the State.

(ii) "Claims data" shall mean the record of healthcare procedures or services received by health benefit plan members, including prescriptions for pharmaceuticals.

(iii) "Procedure or service" shall mean individual items, evaluations, examinations, diagnosis, actions, and service packages for the provision of care by a healthcare provider to a patient in connection with an inpatient admission or outpatient department visit for which the healthcare provider charges the health benefit plan or plan member.

(iv) "Health Benefit Plan" shall mean any group health benefit plan as defined in [relevant State statute] that is offered to a public employee enrolled in a plan offered by the State.

(v) "Plan member" shall mean a State employee who is a participant in a health benefit plan as well as dependents of the State employee who are also covered by the health benefit plan.

(vi) "Campus" shall mean:

(a) A hospital's main buildings;

(b) The physical area immediately adjacent to a hospital's main buildings and other areas and structures related to the provision of healthcare that are not strictly contiguous to the main buildings but are located within 250 yards of the main buildings; or

(c) Any other area that has been determined on an individual case basis by the Centers for Medicare & Medicaid Services to be part of a hospital's campus.

(vii) "Facility fee" shall mean any fee charged or billed by a healthcare provider for outpatient procedures or services provided in a hospital-based facility or freestanding emergency facility, regardless of how the procedures or services were provided, that is:

(a) Intended to compensate the healthcare provider for the operational expenses of the healthcare provider; and
(b) Separate and distinct from a professional fee.

(viii) “Freestanding emergency facility” shall mean an emergency medical care facility that is licensed under [relevant State statute] and shall not include urgent care clinics.

(ix) “Health system” shall mean:
(a) A parent corporation of one or more hospitals and any entity affiliated with such parent corporation through ownership, governance, membership or other means; or
(b) A hospital and any entity affiliated with such hospital through ownership, governance, membership or other means.

(x) “Hospital” shall mean a hospital licensed under [relevant State statute].

(xi) “Hospital-based facility” shall mean a facility that is owned or operated, in whole or in part, by a hospital where hospital or professional medical procedures or services are provided.

(xii) “Professional fee” shall mean any fee charged or billed by a healthcare provider for professional medical procedures or services provided in a hospital-based facility.

(xiii) “Healthcare provider” shall mean an individual, entity, corporation, person, or organization, whether for profit or nonprofit, that furnishes, bills, or is paid for healthcare procedure or service delivery in the normal course of business, and includes, without limitation, health systems, hospitals, hospital-based facilities, freestanding emergency facilities, and urgent care clinics.

(xiv) “Accessible” shall mean published on a third-party entity’s website and available through a toll-free phone number for use by health benefit plan members.

(xv) “Reference price” shall mean a flat payment paid by the health benefit plan(s) in compensation for specific procedures or services performed by a healthcare provider.

(xvi) “Shoppable procedure or service” shall means a procedure or service that can be scheduled by a patient in advance and where the consumer can reasonably choose between healthcare providers or location. Shoppable procedures or services may be provided within or outside the State and include:
(a) Any of the 500 shoppable procedures or services specified in Table 1 in CMS-9915-F as originally finalized;
(b) Shoppable procedures or services identified by the Health Care Cost Institute; and

(c) Any additional procedures or services published by the [relevant State agency].

(xvii) “Shared savings program” shall mean a financial incentive program offered to health benefit plan members for choosing certain procedures or services at more cost-efficient healthcare providers or locations. Such incentives may include, but are not limited to, cash payments, gift cards, credits or reductions of premiums, copayments, cost-sharing, or deductibles.

(xiii) “Chargemaster rate” shall mean the rate included in the list of all individual items and procedures or services maintained by a healthcare provider for which the healthcare provider has established a charge.

SECTION 2. A new section of State Code is created, which shall read:

(A) Transparency and Accountability Requirements.

(i) The [relevant State agency] shall only enter into agreements with third-party administrators health benefit plans, and any related entities that agree to provide claims data at the [relevant State agency]’s request. The claims data shall contain clear identification for the healthcare provider. Any disclosure of claims data must comply with health privacy laws, including the federal Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. No. 104-191, 110 Stat. 1936).

(ii) The [relevant State agency] shall only enter into agreements with third-party administrators, health benefit plans, and any related entities that agree to provide the contracts signed with hospitals and health systems to the [relevant State agency] at its request.

(iii) The [relevant State agency] is authorized to share the claims data with any independent entity and may consider recommendations on third-party administrator, health benefit plan, and related entity performance. These recommendations shall include, but are not limited to, policies aimed at:

(a) Reducing health benefit plan costs;
(b) Reducing the use of the highest-price healthcare providers; and
(c) Reducing improper utilization.

(iv) The [relevant State agency] is authorized to access contracts between third-party administrators and healthcare providers, including health systems, hospitals, and hospital-based facilities.

(B) Restriction on Abusive Contracting Practices.

(i) The [relevant State agency] shall not enter into agreements with third-party administrators, health benefit plans, and related entities whose contracts with healthcare providers for the State health benefit plan contain an established rate or payment to healthcare providers, including for facility fees and professional services, tied to chargemaster rates.

(ii) The third-party administrator, health benefit plan, or related entity shall disclose the procedure codes, rates, and payments, including facility fees and professional fees, made to healthcare providers to the [relevant State agency] and health benefit plan members at least once a year.

(C) Transparency and Accountability with Facility Fees. The [relevant State agency] shall not enter into agreements with third-party administrators, health benefit plans, and related entities that utilize contracts with healthcare providers for the State health benefit plan which:

(i) Allow a health care provider to charge, bill, or collect a facility fee, except for:

(a) Procedures or services provided on a hospital's campus;

(b) Procedures or services provided at a facility that includes a licensed hospital emergency department; or

(c) Emergency procedures or services provided at a freestanding emergency facility.

(ii) Regardless of location, permit healthcare providers to charge, bill, or collect a facility fee for outpatient evaluation and management services or any other outpatient, diagnostic, or imaging services identified annually by the [relevant State agency] as able to be provided safely and effectively in settings other than hospitals.

(iii) Each hospital, health system, and freestanding emergency facility shall submit a report annually to the [relevant State agency] concerning facility fees charged or billed during the preceding calendar year. The report shall be in a machine-readable format such as XML, CSV, JSON, or other such format as the [relevant State agency] may specify. The [relevant State agency] shall publish the information reported on an accessible website designated by the [relevant State agency]. Such report shall include, without limitation, the following information:

(a) The name and full address of each facility owned or operated by the hospital, health system, or freestanding emergency facility that provides procedures or services for which a facility fee is charged or billed;

(b) The number of patient visits at each such hospital-based facility or freestanding emergency facility for which a facility fee was charged or billed;

(c) The number, total amount, and range of allowable facility fees paid at each such facility by Medicare, Medicaid, and private insurance;

(d) For each hospital-based facility, the hospital or health system as a whole, or freestanding emergency facility, the total amount billed and the total revenue received from facility fees;

(e) The 100 procedures or services, identified by current procedural terminology (CPT) category I codes, provided by the hospital, health system, or freestanding emergency facility overall that generated the highest facility fee gross revenue, the volume and gross and net revenue totals for each of these 100 procedures or services, and the total net amount of revenue derived from facility fees by the hospital, health system, or freestanding emergency facility for each such procedure or service;
(f) The 100 procedures or services, identified by current procedural terminology (CPT) category I codes most frequently provided by the hospital, health system, or freestanding emergency facility overall for which facility fees are billed or charged based on patient volume including the gross and net revenue totals received for each such procedure or service; and
(g) Any other information related to facility fees that the [governor's office or relevant State agency] may require.

(iv) A healthcare provider that violates any provision of this subsection shall be subject to a penalty of not more than $10,000 per occurrence. Each healthcare provider shall make available, upon written request of the [relevant State agency] or its designee, copies of any books, documents, records, or data for the purpose of an audit to establish compliance with the requirements of this section.

(D) Reference Pricing and Shared Saving Program for Health Benefit Plan Members.

(i) The [relevant State agency] shall solicit proposals to establish a reference pricing system and shared savings program to incorporate in the employee health benefit plan(s) to be received within six months after the passage of this Act.

(ii) The [relevant State agency] shall evaluate and select from among the proposals a reference pricing system and shared savings program to start no later than January 1, 2023. The reference pricing system and shared savings program shall have as its goals to:
(a) Provide clear information for health benefit plan members;
(b) Permit sufficient choice of healthcare providers for health benefit plan members;
(c) Focus on shoppable services; and
(c) Maximize cost savings for health benefit plan members and the health benefit plan.

(E) Rulemaking Authority. The [relevant State agency] is directed to promulgate all rules and regulations necessary for the purposes of carrying out this Act.

SECTION 3. Severability and Effective Date.

(A) Severability. It is the intention of the legislature that the provisions of this section shall be severable. If any provision of this section or its application to any person or circumstance is held invalid, the remainder of the section or the application of the provision to other persons or circumstances is not affected, including but not limited to the applicability of this section to the provisions of future agreements subject to this section.

(B) Effective Date. The provisions of this Act shall take effect on January 1, 2022.

December 10th, 2020